

TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney
District of Nevada
Nevada Bar Number 8264
MARTIN J. MAYER
Special Assistant United States Attorney
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Fax: (702) 388-6787
Martin.Mayer@usdoj.gov

Attorneys for the Federal Respondents

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Gilberto Gonzalez-Diaz,

Petitioner,

v.

Pamela Bondi, *et al.*,

Respondents.

Case No. 2:26-cv-00413-APG-BNW

**Federal Respondents' Response to
Motion for Temporary Restraining
Order (ECF No. 8) and Amended
Petition for Writ of Habeas Corpus
(ECF No. 7)**

Federal Respondents, through undersigned counsel, hereby respond to Petitioner Gilberto Gonzalez Diaz's Motion for Temporary Restraining Order and Amended Petition for Writ of Habeas Corpus. The motion and petition should be denied for the reasons stated below in the memorandum of points and authorities.

Memorandum of Points and Authorities

I. INTRODUCTION

Based on the language in the petition, Federal Respondents' interpretation of the basis for the Petitioner's writ is rooted in the distinctions between 8 USC § 1225(b) and § 1226(a) framework. This case fits squarely into the framework of mandatory detention under § 1225(b). See *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830 (2018); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); see also, *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission" and defines that term to

1 encompass any “alien present in the United States who has not been admitted” following
2 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(1), (b)(2)(A). Specifically,
3 under § 1225(b)(1)(iii)(II) aliens that are described are such that have not been admitted or
4 paroled, who have not shown to the satisfaction of an immigration officer that they have
5 been present in the United States for 2-years continuously. There is no dispute that
6 Petitioner is an “applicant for admission” under Section 1225(a), because he entered the
7 United States without admission or parole near Del Rio, Texas on or about March 2022,
8 and was apprehended by Customs and Border Patrol agents in close proximity to the
9 international border. ECF No. 7, at 4. *See* Notice to Appear, I-213, collectively attached as
10 **Exhibit A**. The Petitioner was detained and later released. Following the denial of all forms
11 of relief, Petitioner requested a bond redetermination hearing. The IJ denied citing *Matter of*
12 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). However, the Petitioner falls neatly into the
13 detention authority pursuant to the narrower holding in *Matter of Q. Li*. This is not to say
14 that *Yajure Hurtado* was incorrectly applied. Rather, *Hurtado* broadly and correctly applies
15 the detention authority of § 1225(b) to all aliens present without inspection and
16 encompasses those aliens covered under *Q. Li*, whereas *Q. Li* applies only to those who were
17 detained at the international border or shortly after crossing the international border.

18 An alien, like the respondent, “who tries to enter the country illegally is treated as an
19 ‘applicant for admission.’” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting INA §
20 235(a)(1), 8 U.S.C. § 1225(a)(1)). All applicants for admission who are placed into removal
21 proceedings are detained under § 1225(b) and are ineligible for bond for the duration of their
22 removal proceedings. *Jennings*, *See also Matter of Q. Li*. Petitioner is properly detained under
23 section 1225(b).

24 **II. STATUTORY FRAMEWORK**

25 IIRIRA effected these changes through several provisions codified in Section 1225 of
26 Title 8:

27 **Section 1225(a):** Section 1225(a) codifies Congress’s decision to make lawful
28 “admission,” rather than physical entry, the touchstone. That provision states that an alien

“present in the United States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant for admission”:

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States” are required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks — expedited removal and normal “Section 240” proceedings — and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which apply to a subset of aliens — those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see*

8 C.F.R. § 235.3(b)(2)(iii). “If an [asylum] officer determines at the time of the interview that an alien has a credible fear of persecution. . . the alien *shall* be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240]. 8 U.S.C. § 1225(b)(2)(A) (emphasis added).¹ See 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to temporarily release an applicant for admission “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole . . . been served,” the “alien shall . . . be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). See 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for

¹ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewman, (3) stowaways, or (4) aliens who “arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-(C).

1 example, lawfully enter the country but overstay, otherwise violate the terms of their visas,
 2 or later determined to have been improperly admitted. The statute provides that “[o]n a
 3 warrant issued by the Attorney General, an alien may be arrested and detained pending a
 4 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a).
 5 Detention under this provision is generally discretionary: The Attorney General “may”
 6 either “continue to detain the arrested alien” or release the alien on bond or conditional
 7 parole. *Id.* § 1226(a)(1)-(2).²

8 That “default rule,” however, does not apply to certain criminal aliens who are being
 9 released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8
 10 U.S.C. § 1226(c). Section 1226(c) provides that “[t]he Attorney General shall take into
 11 custody” certain classes of criminal aliens — those who are inadmissible or deportable
 12 because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§ 1182 and 1227;
 13 or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must
 14 detain these aliens “when the alien is released, without regard to whether the alien is
 15 released on parole, supervised release, or probation, and without regard to whether the alien
 16 may be arrested or imprisoned against for the same offense.” *Id.*

17 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L.
 18 No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for)
 19 aliens who (1) are inadmissible because they are physically present in the United States
 20 without admission or parole, have committed a material misrepresentation or fraud, or lack
 21 required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[]
 22 having committed, or admit[] committing acts which constitute the essential elements of”
 23 certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

24 **III. STANDARD OF REVIEW**

25 In a petition for a writ of habeas corpus, the petitioner is challenging the legality of
 26 his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show

27
 28 ² Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

1 the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically,
2 here, Petitioner challenges his temporary civil immigration detention pending his removal
3 proceeding.

4 Judicial review of immigration matters, including detention issues, is limited. *I.N.S.*
5 *v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525
6 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430
7 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*,
8 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character and therefore
9 subject only to narrow judicial review”). The Supreme Court has thus “underscore[d] the
10 limited scope of inquiry into immigration legislation,” and “has repeatedly emphasized that
11 over no conceivable subject is the legislative power of Congress more complete than it is
12 over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews*
13 *v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

14 The plenary power of Congress and the Executive Branch over immigration
15 necessarily encompasses immigration detention, because the authority to detain is elemental
16 to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United*
17 *States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to
18 expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's
19 political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S.
20 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*
21 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be
22 vain if those accused could not be held in custody pending the inquiry into their true
23 character, and while arrangements were being made for their deportation.”); *Demore v. Kim*,
24 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally
25 permissible part of that process.”).

26 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

27 The Petitioner was encountered by Customs and Border Patrol in the Del Rio, Texas
28 sector of responsibility. **Exhibit A.** Petitioner was determined to have entered the United

States without authorization. Petitioner was apprehended and issued a Notice to Appear. On October 10, 2025, an Immigration Judge ordered Petitioner removed, Petitioner appealed that decision. **Exhibit B.** On February 10, 2026, Petitioner was denied release from custody by an Immigration Judge. The immigration Judge cited to *Matter of Yajure Hurtado* detailing an inability to grant bond for lack of jurisdiction. **Exhibit C.**

V. ARGUMENT

a. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings — regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”).

Federal Respondent’s position is that Petitioner is subject to mandatory detention under § 1225(b) guided by the decision in *Matter of Q. Li*. The BIA held “[a]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under [8 U.S.C. § 1225(b)] and is ineligible for any subsequent release on bond under section [8 U.S.C. § 1226(a)].” The holding of *Q. Li* matches the circumstances in which the Petitioner was originally encountered by Immigration Officials immediately following illegal entry. Therefor he was apprehended as an arriving alien and subject to mandatory detention.

1. *The Plain Language of Section 1225(b)(2) Mandates the Detention of the Petitioner Who is an Applicant for Admission.*

Section 1225(a) defines “applicant for admission” to encompass an alien who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical

entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border. Parole is not considered admission into the United States. 8 U.S.C. 1101(a)(13)(B).

In turn, Section 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A) (emphasis added). The statute's use of the term "shall" makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception for the duration of the alien's presence in the country or where in the country he is located. Therefore, the statute's plain text mandates that DHS detain all "applicants for admission" who do not fall within one of its exceptions.

Petitioner falls squarely within the statute. To be sure, Petitioner is an "alien . . . who arrives in the United States", "present in the United States," and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a). Petitioner was inspected and determined to not be admissible at the port of entry, yet was paroled into the United States. Moreover, Petitioner cannot — and did not — establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is appropriately detained and "shall be detained for a proceeding under [8 U.S.C. § 1229a]."

b. A Growing Body of Well-Reasoned and Persuasive Authority Supports the Federal Respondents' Legal Positions Including the Recent Fifth Circuit Court of Appeals Decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026).

In the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals, *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) the Court ruled, "unadmitted aliens apprehended anywhere in the United States are ineligible for release on bond, regardless of how long they have resided inside the United States." *Id.* at 9 (quoting

1 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216). See *Buenrostro-Mendez v. Bondi*, 2026 U.S.
2 App. LEXIS 3899 (5th Cir. 2026). In *Buenrostro-Mendez* the court stated, "The Supreme
3 Court has said, Section 1225(b)(2) operates as a "catchall provision that applies to all
4 applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S.
5 281, 287, 138 S. Ct. 830, 837 (2018). Section 1225(b)(2) does not include any exception that
6 permits the government to release detained aliens on bond." *Id.* at 7. In *Buenrostro-Mendez*
7 the court explained, "unlike § 1225(b), § 1226(a)(2)(A) permits, but does not require, the
8 Attorney General to release detained aliens on "bond of at least \$1,500 with security
9 approved by, and containing conditions prescribed by, the Attorney General." *See also* 8
10 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Because § 1226 is not limited to applicants
11 for admission, it also covers numerous grounds of deportability, including for admitted
12 aliens who overstay or violate the terms of their visas, engage in conduct that renders them
13 removable, or were improperly admitted. Not all aliens detained under § 1226(a) are
14 eligible for release on bond. If an alien has committed one of the criminal offenses
15 enumerated in § 1226(c), he loses his bond eligibility. 8 U.S.C. § 1226(c)(1)(A)-(E). The
16 Laken Riley Act, enacted in 2025, expanded § 1226(c) by adding new bases for ineligibility
17 for bond. *See* 8 U.S.C. § 1226(c)(1)(E). Aside from being ineligible for bond, aliens covered
18 by § 1226(c) also may not be granted parole under 8 U.S.C. § 1182(d)(5)(A)." *Id.* at 8. In
19 *Buenrostro-Mendez*, the court emphasized that 8 U.S.C. § 1225(b)(2)(A) requires detention
20 without eligibility for bond of individuals like Petitioner who entered the U.S. without
21 being admitted and stated "The statute unambiguously provides for mandatory
22 detention. *See* 8 U.S.C. § 1225(b)(2)(A) (providing that aliens "*shall* be detained") (emphasis
23 added); *see also Jennings*, 583 U.S. at 302, 138 S. Ct. at 845 ("§§1225(b)(1) and
24 (b)(2) *mandate* detention of aliens throughout the completion of applicable proceedings and
25 not just until the moment those proceedings begin.") (emphasis added). And "neither §
26 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583
27 U.S. at 297, 138 S. Ct. at 842. *Id.* at 11-12.

1 In *Buenrostro-Mendez* the court explained how 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C.
2 § 1226(a) operate and overlap by stating, “It is true that § 1226 applies to aliens in the
3 United States. That it does so, however, does not preclude § 1225 from also applying to
4 such aliens. As the government acknowledges, the two provisions overlap. Accordingly, for
5 petitioners to find support in *Jennings*, they must overread the Supreme Court's language. In
6 particular, they seem to infer that when the Supreme Court specified that § 1226 applies to
7 aliens inside the United States, it implied that § 1225 does not apply to such aliens. But this
8 is the exact sort of language-parsing inquiry that the Supreme Court has cautioned lower
9 courts against. See *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S. Ct. 1142,
10 1155 (2023) (“[T]he language of an opinion is not always to be parsed [like the] language of
11 a statute.” (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979))).
12 Moreover, even if this court should conduct a granular analysis of the language in *Jennings*,
13 doing so supports the government's interpretation. In claiming that the Supreme Court's
14 pronouncement that § 1225(b) applies to aliens who are seeking admission supports their
15 interpretation, the petitioners inexplicably assume that the Supreme Court understood
16 “seeking admission” in the same way that petitioners do. It demonstrably did not.
17 Elsewhere in *Jennings*, the Supreme Court explained that “§ 1225(b) applies to aliens
18 seeking entry into the United States (‘applicants for admission’ in the language of the
19 statute).” *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That language supports the
20 government's contention that “applicants for admission” are according to the statute
21 seeking entry or admission. And it suggests that when the Supreme Court described § 1225
22 as applying to aliens “seeking admission,” it understood that to mean aliens who, like the
23 petitioners here, are present in the United States without admission.” *Id.* at 20-22. In
24 *Buenrostro-Mendez*, the court addressed the issue of government’s longstanding practice
25 which allowed illegal resident aliens who are present without being admitted, to seek
26 release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A) and
27 explained, “While that is true, the government's past practice has little to do with the
28 statute's text. The text says what it says, regardless of the decisions of prior

Administrations. Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111 (2018). In *Pereira*, the court considered whether notices to appear for removal proceedings under 1229(a) had to specify the time and place of removal proceedings. *Id.* at 202, 138 S. Ct. at 2110. Despite 21 years during which the government consistently served notices to appear that omitted time and place information, the court rejected the government's practice based on the text of § 1229(a). *Id.* at 205, 209, 138 S. Ct. at 2111, 2114. The same approach is appropriate here. Regardless of the government's past practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls." *Id.* at 22.

Buenrostro-Mendez applies to this case, since Petitioner entered the U.S. without inspection and is an applicant for admission who is lawfully mandatorily detained under § 1225(b)(2)(A) and is not subject to discretionary detention under 8 U.S.C. § 1226(a). Although *Buenrostro-Mendez* is not a case from the Ninth Circuit Court of Appeals, it is a very recent Circuit Court of Appeals decision, which is cited as persuasive authority that squarely addresses the issues involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) and supports the Federal Respondents' position.

In addition, the United States notes the following recent decisions, each of which concludes that, when properly interpreted and applied, the governing statutes support the Federal Respondents' position in this case: *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

c. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices.

Any argument that prior agency practice supports applying § 1226(a) to Petitioner is unavailing because under *Loper Bright*, the plain language of the statute and not prior practice controls. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[] our own mistakes” *Loper Bright Enterprises*, 603 U.S. at 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore*, 323 U.S. at 140 (cleaned up)).

The BIA’s decision in *Matter of Q. Li* includes thorough reasoning. In *Q. Li*, the BIA analyzed the statutory text applicable Supreme Court interpretations, and prior BIA holdings regarding § 1225. *Id.* at 66–71. It highlights that an alien, like the Petitioner, who tries to enter the United States illegally is treated as a “applicant for admission” *Id.* at 68 (citing *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). An “‘applicant for admission’ is defined, in relevant part, as an alien ‘who arrives in the United States’ [whether or not at a designated port of arrival.]” *Id.* (quoting 8 U.S.C. § 1225(a)(1)). The BIA goes on to distinguish aliens detained under § 1226(a) and § 1225(b) by detailing that aliens who arrive in the United States who are detained under § 1225(b)(1) or (b)(2) are not eligible for bond because both provisions “mandate detention for applicants for admission until certain proceedings have concluded.” *Id.* (quoting *Jennings*, 583 U.S. at 298).

To be sure, “when the best reading of the statute is that it delegates discretionary authority to an agency,” the Court must “independently interpret the statute and effectuate the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§

1 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
2 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does
3 not support a position that the plain language mandates detention under § 1226(a) given
4 that the Petitioner was originally apprehended at the international border.

5 **d. Petitioner’s Temporary Detention Does Not Offend Due Process.**

6 As mentioned above, Congress directed aliens like the Petitioner to be detained
7 during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297
8 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for
9 admission until certain proceedings have concluded.”). In so doing, Congress made a
10 legislative judgment to detain aliens who have not been admitted during removal
11 proceedings, as they — by definition — have crossed borders and traveled in violation of
12 United States law. As explained above, that is the prerogative of the legislative branch
13 serving the interest of the government and the United States.

14 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.
15 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
16 sovereign attribute exercised by the Government’s political departments largely immune
17 from judicial control.”). And with this power to remove aliens, the Supreme Court has
18 recognized the United States’ longtime Constitutional ability to detain those in removal
19 proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation
20 procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain
21 if those accused could not be held in custody pending the inquiry into their true character,
22 and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531
23 (“Detention during removal proceedings is a constitutionally permissible part of that
24 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
25 detain some classes of aliens during the course of certain immigration proceedings.
26 Detention during those proceedings gives immigration officials time to determine an alien’s
27 status without running the risk of the alien’s either absconding or engaging in criminal
28 activity before a final decision can be made.”).

1 In another immigration context (aliens already ordered removed awaiting their
 2 removal), the Supreme Court has explained that detaining these aliens less than six months
 3 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
 4 presumptive constitutional limit has been subsequently distinguished as perhaps
 5 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
 6 explained Congress was justified in detaining aliens during the entire course of their removal
 7 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
 8 similar to undocumented aliens like Petitioner, Congress provided for the detention of
 9 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
 10 emphasized the constitutionality of the “definite termination point” of the detention, which
 11 was the length of the removal proceedings.³ *Id.* at 512.⁴ In light of Congress’s interest in
 12 dealing with illegal immigration by keeping specified aliens in detention pending the
 13 removal period, the Supreme Court dispensed of any Due Process concerns without
 14 engaging in the “*Mathews v. Eldridge* test” *See id. generally.*

15 Likewise, in the case at bar, Petitioner’s temporary detention pending his removal
 16 proceedings does not violate Due Process. Resolution is forthcoming. Petitioner’s ample
 17 available process in his current removal proceedings demonstrate no lack of Procedural Due
 18 Process — nor any deprivation of liberty “sufficiently outrageous” required to establish a
 19 Substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young*
 20 *v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as*
 21 *corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal
 22 which is a “constitutionally permissible part of that process.” *See Demore*, 538 U.S. at 531.

23
 24 ³ “In contrast, because the statutory provision at issue in this case governs detention of
 25 deportable criminal aliens *pending their removal proceedings*, the detention necessarily serves
 26 the purpose of preventing the aliens from fleeing prior to or during such proceedings.
 27 Second, while the period of detention at issue in *Zadvydas* was ‘indefinite’ and ‘potentially
 28 permanent,’ *id.*, at 690–691, 121 S.Ct. 2491, the record shows that § 1226(c) detention not
 only has a definite termination point, but lasts, in the majority of cases, for less than the 90
 days the Court considered presumptively valid in *Zadvydas*.”

⁴ In 2018, the Court again highlighted the significance of a “definite termination point” for
 detention of certain aliens pending removal. *See Jennings*, 583 U.S. at 304.

1 In this case, Petitioner, who entered without inspection and was apprehended at the
2 international border, is an applicant for admission in INA § 240 removal proceedings and is
3 therefore detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is
4 mandatory and the IJ does not have jurisdiction to issue a bond. As history has revealed, the
5 BIA issued its precedential decision in *Q. Li*, in which it ruled that Immigration Judges
6 lacked jurisdiction to grant bonds to illegal aliens like the Petitioner, those who are
7 apprehended shortly after crossing the international border illegally. The United States is
8 aware of prior rulings in this District and others rejecting these arguments, but the United
9 States respectfully maintains Petitioner has not been deprived of Due Process in light of the
10 aforementioned precedent.

11 If the Court were to decide this petition in favor of Petitioner, deciding that the
12 Petitioner is detained pursuant to § 1226(a) Federal Respondents request that the Petitioner
13 receive a bond hearing before an Immigration Judge, rather than immediate release from
14 custody. 8 U.S.C. § 1226(a) does not explicitly grant an alien a right to be released on bond;
15 rather, the section merely grants the Attorney General authority to release an alien in the
16 exercise of discretion where bond is warranted if there is a reasonable foundation for the
17 denial. *Matter of Guerra*, 24 I&N Dec. 379 BIA 2006) (citing 8 U.S.C. § 1226(a), *Carlson v.*
18 *Landon*, 342 U.S. 524, 534 (1952)). The burden is on the alien seeking redetermination to
19 show they merit release on bond based on several factors including criminal history,
20 manner of entry, and the IJ is not limited to only criminal history that results in conviction.
21 *Id.* at 40, See also, *Matter of Patel*, 15 I&N Dec 666 (BIA 1976).

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **VI. CONCLUSION**

2 For the foregoing reasons, Federal Respondents respectfully request that the Court
3 deny the Motion for Temporary Restraining Order and Amended Petition for Writ of
4 Habeas Corpus.

5 Respectfully submitted this 17th day of March 2026.

6 TODD BLANCHE
7 Deputy Attorney General of the United States
8 SIGAL CHATTAH
9 First Assistant United States Attorney

10 /s/ Martin J. Mayer
11 MARTIN J. MAYER
12 Special Assistant United States Attorney
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28