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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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| Ismael AVALOS GONZALEZ<br><br>Petitioner,<br><br>v.<br><br>John MATTOS, Warden, Nevada Southern Center; Brian HENKE, Las Vegas/Salt Lake City Regional Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE/ERO); Kristi NOEM, Secretary, United States Department of Homeland Security, Pamela BONDI Attorney General of the United States, Daren K. MARGOLIN, Director Executive Office for Immigration Review<br><br>Respondents. | PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS<br><br>Case No. 2:26-cv-00462-RFB-DJA<br><br>Judge Richard F. Boulware, II |

## I. SUMMARY OF OPPOSITION ARGUMENTS

The Respondents reassert their legal arguments from prior briefing in related cases before this court, incorporating by reference the arguments from their Response Briefs filed in *Jacobo-Ramirez v. Noem*, 2:25-cv-02136-RFB-MDC, (D. Nev. Oct. 30, 2025) and *Baca-Beltran v. Knight*, 2:25-cv-01430-CDS-EJY (D. Nev. Oct. 17, 2025). In summary, the Respondents' position remains that because Petitioner is deemed by law to be "an applicant for admission" 8 USC § 1225(a) he is therefore ipso facto "seeking admission" at the time he was detained by ICE in January 2026. According to Respondents' reading of the statutes all those deemed applicants for admission in §1225(a)(1) are, solely *by virtue of that classification*, "seeking admission," and are therefore subject to mandatory detention without bond as members of the class described in 8 USC § 1225 (b)(2)(A). This assertion misinterprets the statutory language, and ignores or discards governing precedent, including the constitutional context of the original statute, the congressional record, and the explicit choices made during notice and comment rulemaking in 1997.

Respondents' reading of 8 U.S.C. § 1225(b)(2)(A) has been the subject of intense scrutiny in the Federal Courts across the U.S., and (as Respondents note, Response Brief 2-3) has been repeatedly rejected by this court. *See, e.g., Escamilla-Lopez v. Holston*, 2:26-cv-00242-RFB-BNW (D. Nev. Feb 12, 2026); *Jacobo-Ramirez v. Noem, supra.* Among the most recent national events, Judge Sykes in the Central District of California ordered, pursuant to the authority of the Administrative Procedure Act, that the controlling agency decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) be vacated. *Maldonado Bautista et. al. v. Santacruz Jr.* "Order Granting Plaintiff Petitioners' Motion to Enforce Judgement," 5:25-cv-01873-SSS-BFM (February 18, 2026). That decision followed a split panel ruling from the Fifth

Circuit, agreeing with the agency's reading, in *Buenrostro-Mendez v. Bondi*, 25-20496 (5th Cir. February 6, 2026). Neither the Fifth Circuit ruling nor the Order from Judge Sykes are controlling in this case, although both should be read as evidence of the national division and for what persuasive value they offer. Judge Sykes' ruling in *Maldonado Bautista* does, arguably, restrict the ability of the Respondents in this case who are Respondents in that case to raise *Matter of Yajure Hurtado* as a valid agency decision.[1]

Despite the Respondents' concession that this court's prior decisions will control the outcome, and despite his membership in the *Maldonado Bautista* "Bond Eligible" class, Petitioner nevertheless files, to ensure full development of the legal and factual record, the following additional reasons why he believes that 8 U.S.C. § 1225(b)(2)(A) provides no legal authority for detaining him without bond.

## II. ARGUMENT

In response to the Respondents' reiteration of their prior legal arguments, Petitioners note that repeatedly, throughout the referenced argument from *Jacobo-Ramirez*, Respondents treat as identical, in some cases interchangeable, numerous statutory terms of art, all of which have slightly different meanings. This is understandable. Even the U.S. Supreme Court has been known to improperly equate "arriving aliens" as defined in 8 C.F.R. 1.2 with the phrase "applicants for admission" from 8 U.S.C. §1225(a). *See, e.g., Jennings v. Rodriguez,* 583 U.S. 281, 297 (2018) (As noted, §1225(b) applies primarily to aliens seeking entry into the United States ("applicants for admission" in the language of the statute.")).

[1] At least one district court has held that the Declaratory Judgement issued by Judge Sykes in *Maldonado-Bautista* "has the 'force and effect of a final judgment.' 28 U.S.C. §2201" and therefore precludes the Government from relying on § 1225 (b)(2) to subject the Petitioner to mandatory detention. *See, Samayoa v. Smith*, 5:25-cv-190-BJB *11, *14 (W.D. Ky. Feb. 20, 2026).

But conflating the terms "applicants for admission" and "arriving aliens" and "seeking admission"—treating them as identical—misunderstands and misinterprets the statutory term "applicants for admission" and completely elides out of existence the two identifiably separate subgroups within the "applicants for admission" class. That is a critical error because when this "applicants for admission" class was created in 1996, Congress explicitly recognized that while both subgroups in the class can be treated equally for purposes of removal proceedings, when it comes to detention, the two subgroups are not identical and cannot, constitutionally, be subject to the same detention regime.

***1. The Statutory Text and the Record of Congressional Intent***

8 U.S.C. § 1225(a) was enacted as section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (IIRIRA). In § 1225(a), Congress defined a large class, that of "applicants for admission" in opposition to the class of aliens who have been lawfully admitted. The stated intent of the creation of this new legal classification was to collapse the prior legal distinctions between exclusion and deportation proceedings, particularly with regard to burdens of proof and due process protections. *Report of the Committee on the Judiciary on H.R. 2202*, Report No. 104-469, 225, Part I (March 1996). ("This subsection is intended to replace certain aspects of the current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted.") *Id.* In other words, Congress deliberately created and defined the new class of "applicants for admission" and specifically added statutory language to the INA designed to collapse what Congress saw as procedural advantages gained by

aliens subject to deportation as opposed to exclusion, and to explicitly combine into one single "removal" proceeding all efforts to remove noncitizens unlawfully present in the U.S., regardless of how and when they arrived.

Nevertheless, the class of "applicants for admission" (or inadmissible aliens) was not intended to be monolithic. As the statutory language and Congressional history indicate, while Congress intended to collapse the prior legal distinctions between those who have made an entry, and those who have not, and to combine both exclusion and deportation into one single removal procedure, Congress in 1996 also recognized the constitutional constraints of due process. Consistent with that awareness, IIRIRA drew very careful lines. The class of "inadmissible aliens" (subject to charges of inadmissibility under 8 U.S.C. § 1182) and also known as "applicants for admission" was defined in opposition to the class of "admitted but removable" aliens, (subject to charges of removability under 8 U.S.C. § 1227). To ensure that all noncitizens who had not been lawfully admitted or paroled would be charged with a ground of inadmissibility, IIRIRA added 8 U.S.C. § 1182(a)(6)(A)(i):

> This subsection will conform the grounds of inadmissibility under section 212(a) with the new doctrine of ''admission'' established in section 301(a) of the bill. Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B). Under the new ''admission'' doctrine, such aliens will not be considered to have been admitted, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, based on their presence without admission. (Deportation grounds will be reserved for aliens who have been admitted to the United States.)

*Report of the Committee on the Judiciary on H.R. 2202*, Report No. 104-469, 226, Part I (March 1996).

But because Congress understood the constitutional constraints of due process, the definition of "applicants for admission" includes two separate and clearly identifiable subclasses: A) aliens "present without admission" and B) aliens "who arrive in the United States." 8 U.S.C.

§ 1225(a). Note that these two groups are parallel, (but not identical) to the two groups that under prior law fell within each of the two separate procedures—deportation and exclusion. As part of the enabling regulations, the government precisely defined the second subclass, known as "arriving aliens." 8 C.F.R. § 1.2.

***2. The Constitutional Context***

Congress had solid constitutional reasons, especially in the context of detention, for distinguishing between the subclass of "arriving alien" applicants for admission at the nation's borders, and those present without authorization, and deemed 'applicants for admission' as a legal fiction for purposes of removal proceedings. Limiting the applicability of 8 U.S.C. § 1225(b) to 'arriving aliens' as defined in 8 C.F.R. § 1.2 or aliens actively 'seeking admission' at the U.S. border recognized the deep-rooted Supreme Court precedent distinguishing between the restricted procedural rights of aliens seeking admission at the border and the constitutional due process rights of aliens present within the U.S., regardless of status. A foundational premise of that precedent is the recognition that foreign nationals are persons included within the protections of the U.S. Constitution, and that the constitutional requirements of due process are at their strongest when the government is depriving a human person of her liberty:

> But this Court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution.
>
> One of these principles is that no person shall be deprived of his liberty without opportunity at some time to be heard before such officers in respect of the matters upon which that liberty depends -- not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore it is not competent for the Secretary of the Treasury or any executive officer, at any time within the year limited by the statute, arbitrarily to cause an alien who has entered the country,

> and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.

*Yamataya v. Fisher* (Japanese Immigrant Case), 189 U.S. 86, 100-101 (1903). [As cited in *Reno v. Flores*, 507 U.S. 292, 306 (1993)].

When Congress drafted and passed IRRIRA, it deliberately chose to define the class of all aliens who have not been lawfully admitted to the U.S. as "applicants for admission." But Congress just as deliberately recognized and enshrined in the statute the two subclasses composing "applicants for admission:" arriving aliens, (i.e., actual aliens seeking admission) and individuals present in the United States who have not been admitted, (who have never sought admission), but who Congress nevertheless deems "applicants for admission" as a legal fiction. The distinction between these two subclasses is squarely based in the long history of Supreme Court precedent recognizing that A) the requirements of constitutional due process are lowest for those seeking admission from outside the nations' borders, *supra, ft.* 2 and B) Aliens arrested and detained within the United States, regardless of how they entered, and especially when they have been present for extended periods, cannot be taken into custody and held arbitrarily. e.g., *Yamataya, supra; Reno v. Flores, supra. See also,* the extended discussion of these intertwined issues in *Make the Road New York, el. al. v. Noem* 1:25-cv-190 (D.D.C.) Memorandum Opinion August 29, 2025, pp. 23-25; and *Coalition for Humane Immigrant Rights v. Noem*, 1:25-cv-872 (D.D.C.) Memorandum Opinion August 1, 2025.

Petitioner asserts that because of that larger legal context of constitutional due process precedent Congress, following the combination of "arriving aliens" and "aliens present without admission" into one single class of "applicants for admission" in 8 U.S.C. § 1225(a),

nevertheless carefully distinguishes and focuses on the "arriving alien" sub-group of the "applicants for admission" class throughout 8 U.S.C. § 1225(b). The provisions of (b)(1)(A)(i) are explicitly limited to any "alien who is arriving" in the U.S. For the same constitutional reasons, Congress deliberately drafted the syntactically convoluted text of 8 U.S.C. § 1225(b)(2)(A) to maintain this distinction between the two sub-classes of "applicants for admission." There is no other explanation for the addition of the "seeking admission" qualifier. If an applicant for admission is an applicant for admission regardless of whether they are at the border or in the interior, then why is the modifying clause necessary? What purpose does that clause serve? The BIA's reading of §1225(b)(2)(A) in *Matter of Yajure Hurtado*, supported and argued to be controlling by the Respondents, renders that 'seeking admission' clause superfluous. But conflating the two subgroups, (as the BIA and Respondents' reading does) treats aliens present without admission throughout the entire territory of the United States as though they are seeking admission at the border. This violates decades of Supreme Court precedent holding that aliens present--regardless of how they arrived--are persons within the meaning of the 5th and 14th amendments.

The Supreme Court wrote in *Plascencia, supra*: "an alien seeking initial admission to the United States requests a privilege, and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Plascencia* at 33. In *Yajure Hurtado*, the BIA and the Respondents conflate the "seeking admission" qualifier with the entirety of the "applicant for admission" group, failing to recognize that the 'seeking admission' qualifier functions explicitly to distinguish between the two sub-groups of the larger class. *Yajure Hurtado, supra* at 221. As the government now reads it, 8 U.S.C. § 1225(b)(2)(A) says: "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." This reading would function to convert every immigration agent throughout the United States into a border admissions officer.

Again, Petitioner contends that Congress explicitly included that "seeking admission" phrase in 8 U.S.C. § 1225(b)(2)(A) in order to reemphasize that the examination procedures laid out in 8 U.S.C. § 1225(b) are applicable *at the nation's borders*. Threaded through both the Report of the House Judiciary Committee and the Conference Committee Report explications of the text of INA § 235/8 U.S.C. § 1225, are the qualifiers: "arriving alien" "aliens seeking admission, readmission or transit" "aliens arriving." *House Judiciary Report* pp. 228-229; *Conference Report* pp. 208-210. Regarding the (b)(2) provisions at issue here, Congress explicitly applies them to "inspection of other *arriving aliens*". *House Judiciary Report*, *supra*. at 229 (emphasis added). These reports make clear that, as used in these statutes, the phrase "arriving aliens" and/or "aliens seeking admission" in the active sense, apply only to a subgroup of the larger group of "inadmissible aliens," otherwise known as "applicants for admission."

### *3. The Implementing Regulations*

As summarized in Petitioner's Petition for Writ of Habeas, the regulations published in 1997 by the Respondent departments, agencies and their predecessors, "Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures" 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), also directly contradict Respondents' current interpretation, and instead squarely support the intended distinction between the two sub-classes of "applicants for admission." To begin, the caption of 8 C.F.R. § 236 explicitly includes within the scope of its detention provisions both inadmissible

and deportable aliens. If, as Respondents argue, all "applicants for admission" are always and only covered by the detention provisions of 8 C.F.R. § 235, then which inadmissible aliens is 8 C.F.R. § 236 referencing? As noted above, the primary Congressional purpose for creating the "applicant for admission" class was to separate the "inadmissible" noncitizens, who had never been lawfully paroled or admitted from the "deportable" aliens who had been admitted, but were now removable. "Inadmissible aliens" and "applicants for admission" are two different terms for the same group of people.

But the caption of 8 C.F.R. § 236 is not the only challenge to Respondents' new interpretation of the statutory language. That is the case because Respondents' predecessor agencies initially proposed regulations which would have done precisely what Respondents now assert Congress intended. That is, the proposed regulations published in January 1997 included explicit language stating, with regard to the 8 U.S.C. 1226, *"An immigration judge may not exercise authority provided in this section and the review process described in paragraph (d) of this section shall not apply with respect to: (i) inadmissible aliens in removal proceedings."* 62 F.R. 444, 483 (January 3, 1997) [236.1(c)(5)(i)](emphasis added). Had that regulation remained as proposed, the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) would not have been novel; instead, it would have been the law for the past nearly thirty years. But in 1997 when the government published the final regulations that proposed language was explicitly and deliberately removed, with the following explanation:

> The supplementary information stated the Department's intended approach, and clause (i) of the proposed regulation was in error. Accordingly, the interim rule removes paragraph (c)(5)(i) of § 236.1 and renumbers the remaining paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.

62 F.R. 10312, 10323 (March 6, 1997). Compare 62 F.R. 10312, 10361 [236.1(c)(5)(i)] with 62 F.R. 444, 483 [236.1(c)(5)(i)].

In other words, the BIA's assertion in *Yajure Hurtado* that the Immigration Judges do not have authority to adjudicate bonds for any inadmissible alien, (otherwise defined in 8 U.S.C. § 1225(a) as an "applicant for admission") was considered and explicitly rejected when the implementing regulations were published in 1997. As Petitioners wrote in their Petition for Writ of Habeas Corpus, the Ninth Circuit has held that an executive branch agency such as the BIA cannot 'overrule' by adjudication regulations that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980). ["Thus, by adjudication, the Board attempted to add a requirement to the 1973 regulation which had been expressly discarded during its rule-making proceedings."] And yet that is precisely the action that Respondents are here asking this Court to validate, as they ask this Court to sustain the BIA's decision in *Yajure Hurtado* that Immigration Judges do not have authority to grant bond to any member of the entire class of "inadmissible aliens" otherwise known as "applicants for admission."

***4. Precedent and Policy Prior to 2025***

The government's argument boils down to the claim that—read and interpreted as they chose to read and interpret the statutory language in 2025—because Petitioners have not been lawfully admitted, they could only ever, as a matter of law, be detained pursuant to 8 U.S.C. § 1225. But as the above statutory and regulatory history documents, the Respondents' interpretation of the statutory text finds no support in the legislative history, and is directly opposed to the clear choice of the March 1997 implementing regulations. For the last nearly thirty years, the government policy has been that the provisions of 8 U.S.C. § 1226(a) applied to

all individuals present without admission who are encountered for the first time within the interior of the United States.

Petitioner entered the U.S. without inspection. He did not seek admission or apply for admission; he has never applied for any legal status or adjustment of status or in any other way sought lawful admission to the United States. He was encountered and detained in Utah by Immigration and Customs Enforcement Customs and Border Patrol, during a search of his business premises that violated the Fourth amendment.[2] He has been residing in the United States without any contact with immigration authorities for more than 20 years. Respondents do not assert that Petitioner at any point in time applied for admission into the United States. Respondents merely assert that Congress in 1996 intended the entire class of "applicants for admission" without regard to subclass, to be subject to mandatory detention.

The U.S. Supreme Court's analysis of 8 U.S.C. § 1225 and § 1226 in *Jennings v. Rodriguez*, 583 U.S. 281, (2018) recognizes the distinction at issue, stating:

> In sum, U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c).

*Jennings* at 289. Note the clear recognition that while "aliens seeking admission" (or arriving aliens, as defined in the regulations) are subject to detention under §§1225(b)(1) and (b)(2), "aliens already in the country" are detained under §§1226(a) and (c). The Supreme Court further wrote "As noted, §1226 applies to aliens already present in the United States." *Id.* at 303. In other words, the Supreme Court in Jennings recognized that 8 U.S.C. §1225(b) applied only to

[2] Petitioner notes that while the 4th Amendment violation that led to his detention is not in the same class as the 4th Amendment violation addressed in *Urquilla-Ramos v. Trump*, 2:26-cv-00066 (S.D. W. Vir. Feb. 19, 2026), the lack of any significant remedy to the consistent failure of ICE agents to comply with the requirements of U.S. Constitutional protections is, at the present time, a serious gap in U.S. constitutional law.

the subclass of "applicants for admission" who were actually "seeking admission" at the border. *Jennings* does not support a legal conclusion that individuals who are not seeking admission, who are already present in the country, who have never sought admission, are subject to detention pursuant to 8 U.S.C. § 1225(b).

## III. CONCLUSION

The Respondents' legal position, as announced in *Matter of Yajure Hurtado*, and supported by the 5th Circuit's split panel decision in *Buenrostro-Mendez v. Bondi*, 25-20496 (5th Cir. February 6, 2026), amounts to the claim that for nearly thirty years the regulations stating that inadmissible aliens detained within the United States were subject to detention pursuant to 8 U.S.C. § 1226(a) were unlawful, *ultra vires*. But the governments' implicit argument that its policies and procedures over the past 29 years have been invalid and illegal, and the Respondents' argument that the statutory language can only be read and interpreted as they now propose to do, are unsupported by the Congressional record or the statutory text. As this Court and numerous federal courts have found in the last few months, Respondents' reinterpretation contradicts and ignores the Congressional history, the regulatory history, the regulations themselves, and the intervening precedent. *See, e.g.*, *Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY, 6-8, (D. Nev. Sep 17, 2025); Martinez v. Hyde, 1:25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); Pablo-Sequen v. Kaiser, 25-cv-06487-PCP, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025), subsequent decision 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); Lopez-Arevalo v. Ripa, EP-25-cv-337, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); Santiago-Helbrum v. Williams, 4:25-cv-00349-SHL-SBJ, (S.D. Iowa Sept. 30, 2025); Quispe-Ardiles v. Noem, 1:25-cv-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); Cordero Pelico, et. al. v. Kaiser, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); Sanchez-Ballesteros v. Noem, et.al., 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9,

2025); Ochoa-Ochoa v. Noem, 25-cv-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025). Ultimately, the agency's desired interpretation of the statute remains nothing more than an invalid and unconstitutional attempt by an executive branch agency to impose via adjudication a statutory interpretation rejected in the Congressional Record and thereafter proposed and explicitly rejected as part of the implementing regulations.

## IV. PRAYER FOR RELIEF

WHEREFORE, Petitioner pray that this Court grant the following relief:

a. Assume jurisdiction over this matter.

b. Issue a Writ of Habeas Corpus requiring that Respondents immediately provide Petitioner with a constitutionally adequate bond hearing, and that Petitioner be allowed to post the bond and be released.

c. Declare that Petitioner's continued detention without bond or any individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment.

d. Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under the law.

And

e. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 27th day of February 2026.

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