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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Dilan Coronado Serrano, Petitioner, v. Pamela Bondi, *et al.*, Respondents.	Case No. 2:26-cv-00684-GMN-BNW **Federal Respondents' Response to Amended Petition for Writ of Habeas Corpus (ECF No. 11)**

Federal Respondents, through undersigned counsel, hereby respond to Petitioner Dilan Coronado Serrano's Amended Petition for Writ of Habeas Corpus. The 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 Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); see also, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *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

encompass any "alien present in the United States who has not been admitted" following inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(1), (b)(2)(A). Specifically, under § 1225(b)(1)(iii)(II) aliens that are described are such that have not been admitted or paroled, who have not shown to the satisfaction of an immigration officer that they have been present in the United States for 2-years continuously. Further, 8 C.F.R. 1003.19(h)(2)(i)(B) restricts an immigration judge from redetermining the conditions of custody of an "arriving alien"[1] in removal proceedings. See also, OCIJ Immigration Court Practice Manual, Rule 8.3(b)(1) ("By regulation, an immigration judge does not have jurisdiction to conduct bond hearings involving [] . . . arriving aliens [] . . . in removal proceedings.") There is no dispute that Petitioner is an arriving alien and an "applicant for admission" under Section 1225(a), because he applied for admission San Ysidro, California port of entry in December 2015 and was issued a Notice to appear and was released into the United States. *See*, Notice to Appear and I-213, collectively attached as **Exhibit A**. This clear statutory text means that Petitioner is not entitled to a bond hearing and potential release. Petitioner was placed into full removal proceedings rather than expedited removal but remains subject to mandatory detention.[2] Applicants for admission who are placed into removal proceedings are detained under § 1225(b) and are ineligible for bond for the duration of their removal proceedings. *Jennings*, See also *Matter of Q. Li*.

Federal Respondents' position is that the Immigration Judge correctly applied the applicable regulations and alternatively, *Matter of Yajure Hurtado* and *Matter of Q. Li* applies. The petition should be denied because Petitioner is subject to mandatory detention under both regulation and § 1225(b).

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[1] The term *arriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry[] . . . An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. 8 C.F.R. 1001(q)

[2] See *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that "[a]n alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his removal proceedings conclude, unless he is granted parole.")

II. STATUTORY FRAMEWORK

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

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "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).

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).[3] *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).

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[3] 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).

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

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

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

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[4] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

III. STANDARD OF REVIEW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically, here, Petitioner challenges his temporary civil immigration detention pending his removal proceeding.

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

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

IV. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen of Guatemala who applied for admission to the United States and was deemed inadmissible. *See* **Exhibit A**. Petitioner was released into the interior of the United States. *See* **Exhibit A**. on November 4, 2025, Petitioner was encountered by immigration officials at the Clar County Detention Center following his arrest for DUI. He was taken into immigration custody following the encounter. On November 24, 2025, Petitioner's bond was denied by the immigration judge. **Exhibit B.**

V. ARGUMENT

Federal Respondents hereby incorporate by reference the Federal Respondents' Response *in Jacobo Ramirez v. Noem*, Case No. 2:25-cv-02136-RFB-MDC (D. Nev. Oct. 30, 2025). The *Jacobo Ramirez* Response addresses substantially the same questions at issue in the case at bar regarding DHS's authority to detain individuals under § 1225(b)(2) who are not yet admitted and whose cases remain in pending removal proceedings.

For efficiency and consistency, Federal Respondents adopt the *Jacobo Ramirez* Response in full. As the response demonstrates, Petitioner's lawful detention under § 1225(b)(2)(A) is mandatory by statute. Further, as the response demonstrates, the Court lacks jurisdiction to adjudicate this matter.

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 Respondents' position is that Petitioner is subject to mandatory detention under § 1225(b) guided by federal regulation and the decision in *Matter of Q. Li*. First the regulations, as pointed out by the Immigration Judge in **Exhibit B**, deny the Immigration

Judge from hearing bond requests for arriving aliens. This is the correct decision from the Immigration Judge. Based on this, the petition should be denied.

Further, 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. Therefor he was apprehended as an arriving alien, applicant for admission 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 released 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 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216). See *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026). Following this decision the Eighth Circuit Court of Appeals decided a similar case in which they ultimately agreed with the Fifth Circuit and their analysis. See *Avila v. Bondi*, No. 25-3248, 2026 LX 118293 (8th Cir. Mar. 25, 2026). In *Buenrostro-Mendez* the court stated, "The Supreme Court has said, Section 1225(b)(2) operates as a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 837 (2018). Section 1225(b)(2) does not include any exception that permits the government to release detained aliens on bond." *Id.* at 7. In *Buenrostro-Mendez* the court explained, "unlike § 1225(b), § 1226(a)(2)(A) permits, but does not require, the Attorney General to release detained aliens on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." See also 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Because § 1226 is not limited to applicants for admission, it also covers numerous grounds of deportability, including for admitted aliens who overstay or violate the terms of their visas, engage in conduct that renders them removable, or were

improperly admitted. Not all aliens detained under § 1226(a) are eligible for release on bond. If an alien has committed one of the criminal offenses enumerated in § 1226(c), he loses his bond eligibility. 8 U.S.C. § 1226(c)(1)(A)-(E). The Laken Riley Act, enacted in 2025, expanded § 1226(c) by adding new bases for ineligibility for bond. See 8 U.S.C. § 1226(c)(1)(E). Aside from being ineligible for bond, aliens covered by § 1226(c) also may not be granted parole under 8 U.S.C. § 1182(d)(5)(A)." *Id.* at 8. In *Buenrostro-Mendez*, the court emphasized that 8 U.S.C. § 1225(b)(2)(A) requires detention without eligibility for bond of individuals like Petitioner who entered the U.S. without being admitted and stated "The statute unambiguously provides for mandatory detention. See 8 U.S.C. § 1225(b)(2)(A) (providing that aliens "shall be detained") (emphasis added); see also *Jennings*, 583 U.S. at 302, 138 S. Ct. at 845 ("§§1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.") (emphasis added). And "neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. *Id.* at 11-12.

In *Buenrostro-Mendez* the court explained how 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) operate and overlap by stating, "It is true that § 1226 applies to aliens in the United States. That it does so, however, does not preclude § 1225 from also applying to such aliens. As the government acknowledges, the two provisions overlap. Accordingly, for petitioners to find support in *Jennings*, they must overread the Supreme Court's language. In particular, they seem to infer that when the Supreme Court specified that § 1226 applies to aliens inside the United States, it implied that § 1225 does not apply to such aliens. But this is the exact sort of language-parsing inquiry that the Supreme Court has cautioned lower courts against. See *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S. Ct. 1142, 1155 (2023) ("[T]he language of an opinion is not always to be parsed [like the] language of a statute." (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979)).

Moreover, even if this court should conduct a granular analysis of the language in *Jennings*, doing so supports the government's interpretation. In claiming that the Supreme Court's pronouncement that § 1225(b) applies to aliens who are seeking admission supports their interpretation, the petitioners inexplicably assume that the Supreme Court understood "seeking admission" in the same way that petitioners do. It demonstrably did not. Elsewhere in *Jennings*, the Supreme Court explained that "§ 1225(b) applies to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That language supports the government's contention that "applicants for admission" are according to the statute seeking entry or admission. And it suggests that when the Supreme Court described § 1225 as applying to aliens "seeking admission," it understood that to mean aliens who, like the petitioner here, are present in the United States without admission." *Id.* at 20-22. In *Buenrostro-Mendez*, the court addressed the issue of government's longstanding practice which allowed illegal resident aliens who are present without being admitted, to seek release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A) and explained, "While that is true, the government's past practice has little to do with the 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.

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

D. Petitioner's Temporary Detention Does Not Offend Due Process.

As mentioned above, Congress directed aliens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain aliens who have not been admitted during removal proceedings, as they — by definition — have crossed borders and traveled in violation of

United States law. As explained above, that is the prerogative of the legislative branch serving the interest of the government and the United States.

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

In another immigration context (aliens already ordered removed awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the "definite termination point" of the detention, which

was the length of the removal proceedings.[5] *Id.* at 512.[6] In light of Congress's interest in dealing with illegal immigration by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the "*Mathews v. Eldridge* test" *See id. generally*.

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

In this case, Petitioner, who applied for admission and presented himself at a port of entry, is an applicant for admission in INA § 240 removal proceedings and is therefore detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory and the IJ does not have jurisdiction to issue a bond. As history has revealed, the BIA issued its precedential decision in *Q. Li*, in which it ruled that Immigration Judges lacked jurisdiction to grant bonds to illegal aliens like the Petitioner, those who are apprehended shortly after crossing the internation border illegally. The United States is aware of prior rulings in this District and others rejecting these arguments, but the United States respectfully maintains Petitioner has not been deprived of Due Process in light of the aforementioned precedent.

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[5] "In contrast, because the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas* was 'indefinite' and 'potentially 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*."

[6] 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.

If the Court were to decide this petition in favor of Petitioner, deciding that the Petitioner is detained pursuant to § 1226(a) Federal Respondents request that the Petitioner receive a bond hearing before an Immigration Judge, rather than immediate release from custody. 8 U.S.C. § 1226(a) does not explicitly grant an alien a right to be released on bond; rather, the section merely grants the Attorney General authority to release an alien in the exercise of discretion where bond is warranted if there is a reasonable foundation for the denial. *Matter of Guerra*, 24 I&N Dec. 37 9 BIA 2006) (citing 8 U.S.C. § 1226(a), *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). The burden is on the aliens seeking redetermination to show they merit release on bond based on several factors including criminal history, manner of entry, and the IJ is not limited to only criminal history that results in conviction. *Id.* at 40, See also, *Matter of Patel*, 15 I&N Dec 666 (BIA 1976).

VI. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court deny the Amended Petition for Writ of Habeas Corpus.

Respectfully submitted this 7th day of April 2026.

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