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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Jose D.L.S.,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, JEREMY CASEY, Warden at Imperial Regional Detention Facility,

Respondents.

Case No.: 26-cv-3908-BTM-JLB

Amended Petition for a Writ of Habeas Corpus

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I. Introduction

Respondents have improperly detained Mr. D.L.S. under 8 U.S.C. § 1225 pending immigration proceedings for the last ten months. This has been both a due process violation and a violation of the statutory scheme. Respondents also may not have "complied with the express terms of section 1226 when [they] detained" him without the "[i]ssuance of a[n administrative] warrant" prior to his arrest, this Court must order his "immediate release." *JACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *Cruz Pedraza v. Larose,* 26-cv-2697-LL-MSB, ECF 12 at 4 (S.D. Cal. May 27, 2026) (finding that because petitioner was "arrested by ICE without a warrant," immediate release is the "appropriate remedy").

Mr. D.L.S.'s detention arises from a sudden change in the way that the Board of Immigration Appeals ("BIA") interprets §§ 1225 and 1226. "For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the BIA accepted the government's new position that inadmissible immigrants are not eligible for bond under § 1226(a), even if they have been living in the United States for years or decades. Instead, the BIA held that all inadmissible immigrants are subject to the mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A).

This Court should reject this reasoning and either order Mr. D.L.S.'s immediate release or order a bond hearing.

II. Statement of Facts

Mr. D.L.S. is a citizen of the Dominican Republic. Exhibit A at ¶ 1. He has lived in the United States for about the last twenty years. *Id.* He was ordered

removed *in absentia* in 2015, and he was removed to the Dominican Republic as a result in 2023. Exhibit B at ¶¶ 21–27. [redacted] *Id.* He believed he would receive legal status. *Id.* Instead, he was deported. *Id.* He returned to the United States without inspection and lived in New Jersey. Exhibit A at ¶ 2.

In March 2025, Mr. D.L.S. was arrested on an indictment under 8 U.S.C. § 1326. *See* Exhibit E at 4 (Dkt. No. 12–15). He filed a motion to dismiss the indictment under § 1326(d), explaining that his *in absentia* removal order from 2015 was fundamentally unfair, and that he was eligible for relief from removal. *Id.* at 9 (Dkt. No. 48). In early September 2025, the government dismissed the indictment. *Id.* at 1. It maintained its position that it "could proceed to trial on the matter," but, "in the interests of justice, given the manner in which the deportation hearing was conducted, the government ha[d] decided to dismiss." *Id.*

Mr. D.L.S. was then transferred to ICE custody in early September 2025. Exhibit A at ¶ 2; *see* Exhibit C (I-213). Because "[r]ecords checks indicates that he was incarcerated at the time of his previous final order," DHS chose to issue him a Notice to Appear to bring him "back before the EOIR." *Id.* at 6. It is not clear why, but Respondents did not file or docket the notice to appear until January 12, 2026. *See* Exhibit F (noting immigration case was docketed on "1/12/2026").

In the meantime, Mr. D.L.S. remained detained. He was first at the Otay Mesa Detention Center, where he obtained *pro bono* immigration counsel and submitted an application for asylum, withholding of removal, and related forms of relief. Exhibit A ¶ 3. In April 2026, Respondents moved him to the Imperial Regional Detention Center, where he is currently detained. Exhibit G. His *pro bono* counsel is not able to represent him there and had to withdraw.

Mr. D.L.S.'s next master calendar hearing is scheduled for August 6, 2026. Exhibit F.

III. Mr. D.L.S.'s ten-month detention without a bond hearing violates due process.

The Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. Some courts have "conclude[d] . . . that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing." *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. D.L.S. would automatically qualify. He has been detained for over ten months.

Other courts have adopted various factors tests, which often include:

(1) the total length of detention to date, which is the most important factor;

(2) the likely duration of future detention;

(3) the conditions of detention;

(4) delays in removal proceedings caused by the detainee;

(5) delays in removal proceedings caused by the government; and

(6) the likelihood that the removal proceedings will result in a final order of removal.

Seged v. Larose, No. 26-cv-2564-BTM-DEB, 2026 WL 1480801, *1 (S.D. Cal. May 27, 2026) (citing *Kydryali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020).

Mr. D.L.S. prevails upon balancing these factors: His over-ten-month detention, plus his still-pending case, his conditions of confinement, and the government's delay all warrant a bond hearing.

First, the "most important factor," the length of detention, favors Mr. D.L.S. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019). He has been detained since September 2025. In assessing this factor, "[i]t is important to bear in mind the context: The detention that is being examined here is the

detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released." *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). And, of course, many "[c]ourts have found that detention over seven months without a bond hearing weighs toward a finding that it is unreasonable." *Amando*, 2025 WL 3079052 at *5 (collecting cases).

Second, Mr. D.L.S. has reason to anticipate significant future detention. His asylum case is still pending without a final merits hearing date set. Exhibit F. If he loses his case, he does intend to appeal.

Third, his confinement, first at the Otay Mesa Detention Center, and now at the Imperial Regional Detention Center, "is similar to penal confinement." *Ayideji v. Casey*, No. 26-cv-16244-CAB-MMP, 2026 WL 948669, *2 (S.D. Cal. Apr. 8, 2026). His "conditions of detention favor setting a bond hearing," as "[c]ourts in this district have found that conditions at the Otay Mesa Detention Center are 'indistinguishable from penal confinement,' and that this factor weighs in favor of petitioners' due process arguments of prolonged detention." *Mtiulishvili v. Larose*, No. 26-cv-387-RSH-JLB, 2026 WL 377870, *3 (Feb. 10, 2026) (quoting *Kydyrali*, 499 F. Supp. 3d at 773); *accord Uferk v. Brightman*, No. 26-cv-2354-RBM-DDL, 2026 WL 1157166, *2 (S.D. Cal. Apr. 28, 2026) (same as to Imperial Regional Detention Center).

The fourth and fifth factors, regarding delay by the parties, favor Mr. D.L.S. Immigration officials took Mr. D.L.S. into immigration custody in early September 2025, yet did not file a notice to appear to even begin his immigration case until January 2026. *See* Exhibit F. Several months after Mr. D.L.S. was able to obtain San Diego County-based *pro bono* counsel while at Otay Mesa, and file his asylum application, Respondents moved him to a different county in which *pro bono* counsel could not represent him. Mr. D.L.S. is still diligently pursuing alternative *pro bono* counsel.

Sixth, there is a significant likelihood that Mr. D.L.S. will prevail on his

substantiated asylum and protection claims. But, even if this factor were neutral, together, these factors indicate is "continued detention is unreasonably prolonged and, without a bond hearing, is inconsistent with the right to due process." *Seged*, 2026 WL 1480801 at *2. This Court should thus order the specific bond hearing relief it adopted and ordered in *Seged*. *See id.* at *2–*3.

IV. As a noncitizen who entered without inspection, Mr. D.L.S. is at a minimum entitled to the process outlined in 8 U.S.C. § 1226(a).

As an additional claim this Court need not reach if it orders a bond hearing as a matter of due process, Mr. D.L.S. is at a minimum entitled to the bond hearing procedures established under § 1226(a).

A. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter without inspection of the right to seek bond.

"Section 1226(a) provides for the arrest and detention of noncitizens 'pending a decision on whether the alien is to be removed from the United States.'" *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained." 8 U.S.C. § 1226(a). Then, the Attorney General "may continue to detain" arrestees or "may release [them] on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." *Id.* (punctuation latered). "Federal regulations" implementing this statute "provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. § 1236.1(d)(1)).

Section 1225(b)(2)(A), by contrast, provides that "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" certain immigration proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people detained under that section. Instead, "DHS has the sole

discretion to temporarily release on parole 'any alien applying for admission to the United States' on a 'case-by-case basis for urgent humanitarian reasons or significant public benefit.'" *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

By their terms, these statutes apply to different groups of immigrants. "Section 1226(a) sets out the default rule," which governs unless some other, more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an "applicant for admission" who is also an "alien seeking admission." 8 U.S.C. § 1225(b)(2)(A).

In *Yajure Hurtado*, the BIA considered which of these provisions—the default rule in § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to immigrants who enter the United States without inspection but live for years in the country's interior. 29 I.&N. Dec. at 216. The BIA concluded that noncitizens who enter without inspection have no right to seek bond from an IJ, regardless of how long they have been residing in the country and irrespective of whether they were apprehended by immigration authorities. *Id.* at 228.

B. Courts disagree with the BIA's reasoning.

Since *Yajure Hurtado* was decided, many immigrants who otherwise would have received bond hearings under § 1226(a) have challenged that decision in the federal courts. Courts broadly agree that the BIA's novel constructions of § 1225(b)(2)(A) and § 1226(a) are not correct.

On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who are at or near the border or other ports of entry, for at least three reasons.

First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies only to persons apprehended at or near the border. As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking

entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. at 297, 287. Throughout its text, the statute refers to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); *id.* § 1225(b)(1)–(2) (referring to "inspections" in their titles); *id.* § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"). Many statutory provisions, various regulations, and BIA precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner's interpretation accords with these usages.

Second, consistent with the statute's overall focus on the moment of physical entry, § 1225(b)(2)'s plain language limits the statute's reach to persons actively attempting to enter the United States. The statute applies only to those who are *both* "applicants for admission" *and* in the process of "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Because the statute's first clause already limits the provision to "applicants for admission," the phrase "seeking admission" must have a different meaning. Any other reading would constitute "an obvious violation of the rule against surplusage." *Romero*, 2025 WL 2403827, at *10.

On its face, the phrase "seeking admission" suggests an active attempt to enter the country. Congress's use of the present and present progressive tenses "necessarily requires some sort of present-tense action," excluding noncitizens in the interior who are no longer in the process of seeking admission to the U.S. *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL

2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the statute's "present-tense active language"). "Realistically speaking," it is hard to accept that the statute's plain language could mean anything else: "[I]f Congress's intention" to detain everyone who entered without inspection "was so clear, why did it take thirty years to notice?" *Romero*, 2025 WL 2403827, at *12.

Third, the statutory history supports a limited reading of § 1225(b)'s reach. When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.). There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b).

The BIA's contrary reading of the legislative history is not persuasive. True, IIRIRA "altered the typology of immigration *proceedings* to 'place[ ] on equal footing' 'all immigrants who have not been lawfully admitted.'" *Romero*, 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). But that "says nothing about *detention* pending the outcome of those proceedings." *Id.* (emphasis added). All these indicators suggest that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not people who have already entered the country.

On the other hand, § 1226(a) is best read to apply to some inadmissible persons. It cannot plausibly be the case that all inadmissible persons fall under § 1225(b)(2)(A) and none fall under § 1226(a).

First, § 1226(a)'s statutory structure makes clear that it reaches some individuals who entered without inspection. Section 1226(c) exempts specific

categories of noncitizens from the default eligibility to seek release on bond in § 1226(a). "Among the individuals carved out and subject to mandatory detention are certain categories of 'inadmissible' noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D), (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category" of persons not eligible for bond "includes those noncitizens who are deemed inadmissible, including for being 'present in the United States without being admitted or paroled,' and who have been arrested, charged with, or convicted of certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to inadmissible noncitizens, then the longstanding carve outs that refer to inadmissibility and Congress' most recent amendments would all be surplusage. *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's in *Jennings*: that § 1226(a) "applies to aliens already present in the United States." 583 U.S. at 303.

Second, § 1226(a)'s legislative history supports Petitioner's reading. "After passing the IIRIRA, Congress declared the new § 1226(a) 'restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond' a noncitizen 'who is not lawfully in the United States.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed inadmissible "were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA," § 1226(a) must "allow for a discretionary release on bond for" inadmissible noncitizens, too. *Id.*

Thus, the best reading of 8 U.S.C. §§ 1225 and 1226 shows that Petitioner is not subject to detention under § 1225 and can instead only fall within § 1226. And under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court must independently interpret the meaning and scope of §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S. 369, 385, 401

(2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA's decision in *Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225 and 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, this Court should give it no weight. If anything, the government's "decades of practice" providing bond hearings to those who entered without inspection is a more persuasive guide. *Martinez*, 2025 WL 2084238, at *4.

V. The proper remedy for Mr. D.L.S.'s potential warrantless immigration arrest under § 1226(a) would be immediate release.

As noted, Mr. D.L.S. may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). But, under section 1226, "[i]ssuance of a[n administrative] warrant is a necessary condition to justify discretionary detention under section 1226(a)." *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025). It provides that, *"[o]n a warrant issued by the Attorney General*, an alien may be arrested and detained." 8 U.S.C. § 1226(a) (emphasis added). Such a warrant "must be issued *before* the alien is arrested and taken into custody." *Ramos v. Lyons*, 809 F. Supp. 3d 1015, 1023 (C.D. Cal. Nov. 12, 2025). "[I]t follows that absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a)." *Chogllo Chafla*, 804 F. Supp. 3d at 264 (emphasis in original).

In *Cruz Pedraza v. Larose,* the petitioner was parked at a gas station when two unmarked cars blocked his truck. 26-cv-2697-LL-MSB, ECF 12 at 1 (S.D. Cal. May 27, 2026). Several ICE officers got out of their vehicles, asked the petitioner for proof of status, and then arrested him without a warrant. *Id.* at 1–2. The Court found *Matter of Yajure Hurtado* "unpersuasive" and determined that the petitioner was detained pursuant to § 1226(a), rather than § 1225(b). *Id.* at 4.

Importantly, the Court then noted that the statutory language of § 1226(a)

provides that "a noncitizen may only be arrested and detained pending a decision on removal '[o]n a warrant issued by the Attorney General.'" *Id.* (quoting 8 U.S.C. § 1226(a)). And "[w]hen the government does not comply with the plain language of section 1226(a), a petitioner's immediate release is justified." *Id.* (quotations and alterations omitted). Because Respondents did not dispute that they lacked the necessary warrant to arrest the petitioner, the Court held that "Petitioner's arrest and detention are unauthorized" and immediate release was the "appropriate remedy." *Id.*

Other courts have similarly held that when ICE makes a warrantless arrest contrary to the plain language of § 1226(a), the "arrest and detention are therefore unauthorized, and the appropriate remedy for detention that lacks a proper statutory basis under § 1226(a) is release." *Eslid. B.G. v. Bondi*, No. 26-cv-5020-RAL, 2026 WL 734992, *6 (D.S.D. Mar. 16, 2026) (collecting cases); *see also JACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *Diaz v. Albarran*, No. 25-cv-9837-JSC, 2025 WL 3214972 (N.D. Cal. Nov. 18, 2025); *R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL 788263, *2 (D. Minn. Mar. 20, 2026) (collecting cases ordering immediate release in the absence of a warrant); *Romero-Perez v. Blanche*, 26-cv-1708-RFB-BNW, 2026 WL 1724752, *3 (D. Nev. June 15, 2026) (finding petitioner's detention "unlawful from the very moment it began").

Here, Mr. D.L.S. was transferred to immigration custody directly from Marshal's custody, and it is not apparent that he has been detained in immigration custody upon a warrant. Because this arrest may have violated the plain language of § 1226(a), his "arrest and detention are unauthorized," and immediate release would be the "appropriate remedy." *Cruz Pedraza,* 26-cv-2697-LL-MSB, ECF 12 at 4.

VI. Prayer for Relief

For the above reasons, this Court should order that:

1. Respondents order Petitioner's immediate release;
2. Respondents provide Petitioner with a hearing and individualized bond determination:
   (a) within fourteen days of its order unless Petitioner requests a continuance;
   (b) at which hearing the government shall bear the burden of proof, by clear and convincing evidence, to establish that Petitioner is a danger to the community or a risk of flight for which there are no conditions available to him that will deter such risk, and subject to the additional requirements made clear in *Seged*, 2026 WL 1480801 at *2–*3; and
   (c) Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel at counsel's request; and
3. Any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 15, 2026

s/ Jessie Agatstein

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