MARIO PORTUGAL, SBN 337525
Global Law Group San Diego, P.C.
1455 Frazee Road, Suite 500
San Diego, CA 92108
Telephone: (858) 833-2020
Facsimile: (619) 829-3152

Attorney for Petitioner Leodegario German CRUZ CRUZ

DETAINED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEODEGARIO GERMAN CRUZ CRUZ Petitioner, vs. CHRISTOPHER J. LAROSE, et al., Respondents.	Case No.: 26-cv-04016-TWR-MMP [redacted] **PETITIONER'S TRAVERSE IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS**

PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE

Petitioner Leodegario German Cruz Cruz, through undersigned counsel, respectfully submits this Traverse to Respondents' Response and in further support of his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.

I. INTRODUCTION

Respondents' Response concisely addresses a series of legal issues, beginning by clarifying and correcting the allegations concerning a purported prior grant of bond and the alleged existence of an automatic stay; next denies that Petitioner was placed in expedited removal; then maintains that 8 U.S.C. § 1225(b)(2)(A) requires mandatory detention; thereafter acknowledges materially indistinguishable decisions from this Court and other judges in this District and does not oppose relief if those decisions are followed; and finally addresses the scope and timing of a bond hearing. This Traverse answers those points directly and in the same order before addressing the additional habeas issues that confirm relief.

Petitioner accepts the two factual corrections and narrows his request accordingly. The question that remains is whether a person arrested in the interior, after years of physical presence and while awaiting ordinary removal proceedings under 8 U.S.C. § 1229a, may be denied access to the discretionary custody framework in § 1226(a) solely because the Government labels him an applicant for admission under § 1225.

The answer is no. Section 1226(a) directly addresses arrest and detention pending a removal decision; the operative language and structure of § 1225(b)(2)(A) concern inspection of a person seeking admission; and the judges of this District

have repeatedly rejected Respondents' broader construction under the same or materially similar facts. Respondents concede that the facts here are not materially distinguishable for that issue and do not oppose the Petition if the Court follows those decisions. The Court should therefore grant the Petition on the narrow statutory ground and order prompt, effective relief.

II. RESPONDENTS' CONTENTION REGARDING A PRIOR BOND AND AUTOMATIC STAY DOES NOT DEFEAT THE PETITION

Respondents state that Petitioner never requested a bond hearing, was not granted bond, and was not held because of an automatic stay. Petitioner accepts that correction. He does not ask this Court to enforce a nonexistent custody order, lift an automatic stay, or review an appeal from a bond determination that never occurred.

That correction does not establish that § 1225(b)(2)(A) governs. It establishes only that no immigration judge has yet made an individualized custody determination under § 1226(a). The absence of an earlier hearing cannot be converted into proof that no hearing is authorized. The statutory-classification question logically precedes the bond determination: if § 1226(a) applies, Petitioner is entitled to request the custody process Congress created even though no prior request was adjudicated.

Nor does the lack of a prior bond request create a factual dispute requiring an evidentiary hearing. Petitioner challenges the legal basis on which Respondents deny access to the § 1226(a) process. Respondents' own position supplies the reason no ordinary bond adjudication has occurred: they classify Petitioner as mandatorily detained under § 1225(b)(2)(A). Habeas review is available to determine whether that threshold classification is lawful.

III. RESPONDENTS' CONTENTION REGARDING EXPEDITED REMOVAL DOES NOT DEFEAT THE PETITION

Respondents also state that Petitioner was not placed in expedited removal proceedings and instead received a Notice to Appear initiating ordinary removal proceedings. Petitioner accepts that correction and withdraws any contention that this case requires invalidation of a retroactive expedited-removal designation. He does not ask this Court to review an asylum screening, vacate an expedited-removal order, invalidate the Notice to Appear, or interfere with the adjudication of removability.

The correction eliminates a collateral theory; it does not answer the detention question. Proceedings under § 1229a may follow detention under different statutory authorities. The fact that Petitioner is in ordinary removal proceedings therefore does not, by itself, prove either party's detention theory. The Court must still decide

whether the circumstances of his arrest and custody fall within § 1225(b)(2)(A) or § 1226(a).

The undisputed facts relevant to that question remain straightforward. Petitioner was arrested in the interior, away from a port of entry, after living in the United States for years. He was not encountered while presenting himself for inspection, affirmatively requesting admission, or attempting to enter at the border. Respondents do not contend that § 1226(c) applies. These are the same material features that the decisions identified in the Response have treated as placing detention within § 1226(a).

IV. RESPONDENTS' POSITION THAT § 1225(b)(2)(A) GOVERNS PETITIONER'S DETENTION IS INCORRECT

A. Section 1226(A) Directly Fits an Interior Arrest Pending a Removal Decision.

The Supreme Court has described the statutory division in practical terms: § 1225 addresses applicants seeking entry, while § 1226 generally governs detention of noncitizens already present in the country pending a decision on removal. *Jennings v. Rodriguez*, 583 U.S. 281, 287-88, 303 (2018). The Ninth Circuit likewise explains that § 1226(a) provides the general process for arresting and

detaining removable noncitizens who are present in the United States. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022).

The text of § 1226(a) speaks directly to this case. It authorizes arrest and detention, on a warrant, "pending a decision on whether the alien is to be removed from the United States," and permits continued detention, release on bond, or conditional parole. 8 U.S.C. § 1226(a)(1)-(2). Petitioner was arrested in the interior and is detained pending the immigration court's removal decision. Because Respondents identify no applicable mandatory category under § 1226(c), § 1226(a) is the direct statutory fit.

B. The Operative Language of § 1225(B)(2)(A) does not Convert Every Person Present Without Admission into a Perpetual Border Applicant.

Respondents rely on § 1225(a)(1), which deems a person present without admission an "applicant for admission." But § 1225(b)(2)(A) does not operate on that defined phrase alone. It applies when an "examining immigration officer" determines that an "alien seeking admission" is not clearly and beyond a doubt entitled to be admitted. Each operative phrase must be given effect. Courts read statutes as a whole and avoid interpretations that render words superfluous. *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023).

The phrase "seeking admission" describes a present act in an inspection setting. It naturally encompasses a person arriving at a port, crossing or recently encountered at the border, presenting for inspection, or otherwise affirmatively seeking permission to enter. Petitioner was not engaged in any such act when immigration officers arrested him during an interior enforcement operation. Treating him as perpetually "seeking admission" solely because he once entered without inspection would deprive that operative phrase of independent meaning.

The surrounding structure confirms the distinction. Section 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing" and repeatedly addresses arrival, inspection, and admission. Section 1226 is titled "Apprehension and detention of aliens" and begins with arrest on a warrant pending a removal determination. Petitioner's circumstances correspond to apprehension in the interior, not inspection at an entry point.

Respondents' construction would also make § 1226(a) largely unavailable to the broad class of people charged as present without admission or parole, even when they have lived in the interior for years and are not subject to § 1226(c). Congress, however, enacted § 1226(a) as a discretionary detention rule and separately specified the categories subject to mandatory custody in § 1226(c). The Court

should not enlarge mandatory detention beyond the operative text of § 1225(b)(2)(A).

C. The Inadmissibility Charge and the Use Of § 1229a Proceedings Do Not Determine the Source of Detention Authority.

The charge under 8 U.S.C. § 1182(a)(6)(A)(i) addresses removability as a person present without admission or parole. It does not itself prescribe detention. Likewise, the use of ordinary § 1229a proceedings does not answer the custody question because both § 1225(b)(2)(A) and § 1226 may operate while those proceedings are pending. The Court must interpret the detention provisions rather than infer mandatory custody from the charge or forum.

This distinction keeps the habeas case properly narrow. Petitioner does not contest the Government's authority to pursue removal proceedings or ask this Court to decide whether he is admissible, removable, or eligible for relief. He challenges only the categorical denial of the custody process made available by § 1226(a). Granting that relief leaves the removal case entirely intact.

D. This Court and Other Judges in This District Have Repeatedly Rejected Respondents' Interpretation Under Materially Similar Facts.

The decisions identified by Respondents form a consistent body of authority holding that interior arrests of people long present in the United States are governed

by § 1226(a), not mandatory detention under § 1225(b)(2)(A). See, e.g., *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB (S.D. Cal. Nov. 13, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025).

The same conclusion appears in *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); and *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025). These decisions are persuasive in their reasoning and compelling in their uniform treatment of the same statutory question.

Respondents offer no intervening controlling decision from the Supreme Court or Ninth Circuit requiring a different result. Their continued preservation of the contrary agency position does not supply a reason for this Court to depart from its own analysis or the District's consistent interpretation. The Court should again hold that § 1226(a) governs.

V. RESPONDENTS' ACKNOWLEDGMENT OF MATERIALLY INDISTINGUISHABLE AUTHORITY AND THEIR NON-OPPOSITION WARRANT RELIEF

Respondents expressly acknowledge that this Court and other judges in this District have repeatedly reached the opposite conclusion from the Government under the same or similar facts. They further acknowledge that the facts here are not materially distinguishable for purposes of the statutory issue and state that they do not oppose the Petition if the Court adheres to those decisions.

Those statements eliminate any basis for fact development on the dispositive question. Respondents identify no material circumstance that would take this case outside the prior decisions, no competing factual inference requiring testimony, and no new controlling authority. The remaining disagreement is a preserved legal position, not a factual defense.

The Government's reservation of appellate rights is understandable, but it does not justify continued detention under a classification this Court has already rejected. Preservation permits later review; it does not prevent this Court from applying its existing reasoning now. The appropriate disposition is to grant the Petition on the statutory ground and direct the remedy.

VI. RESPONDENTS' REQUEST THAT THE COURT DECLINE TO REACH ALTERNATIVE CLAIMS SUPPORTS A NARROW STATUTORY DISPOSITION

Respondents ask the Court, if it grants the Petition, to decline to decide the alternative claims under the Administrative Procedure Act, the Due Process Clause, and the Fourth Amendment. Petitioner agrees that the Court may grant complete immediate relief on the narrower statutory ground. Courts ordinarily need not decide additional issues when one ground resolves the case. *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976).

Consistent with the factual clarifications above, Petitioner does not seek adjudication of any theory that depends on a prior bond grant, an automatic stay, or placement in expedited removal. To the extent the Petition includes alternative constitutional or statutory theories independent of those corrected allegations, Petitioner preserves them only if the Court declines to grant complete relief under § 1226(a). A narrow ruling should leave those unnecessary issues undecided rather than reject them on the merits.

Resolving the case under § 1226(a) also accords with constitutional-avoidance principles. Freedom from physical restraint is a central liberty interest, and civil immigration detention must remain tied to legitimate regulatory purposes.

Zadvydas v. Davis, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 523, 528 (2003). Applying the custody procedure Congress supplied avoids unnecessary constitutional adjudication while correcting the immediate statutory defect.

VII. RESPONDENTS' REQUEST FOR FOURTEEN DAYS AND THEIR POSITION ON THE BOND-HEARING BURDEN DO NOT LIMIT THE RELIEF

A. The Hearing Should Occur Promptly, With Fourteen Days as the Absolute Outer Limit.

Respondents request fourteen days to conduct a hearing based on generalized caseload and staffing concerns. Petitioner respectfully requests a hearing within seven calendar days because the central legal issue is conceded and every additional day is a continued loss of liberty. At minimum, the Court should require the hearing no later than the fourteen-day period Respondents themselves propose.

The order should include an effective consequence for noncompliance. If Respondents do not provide the required § 1226(a) hearing within the stated period, Petitioner should be released on reasonable conditions pending removal proceedings. Habeas is intended to provide a swift remedy for unlawful restraint, and the statute directs the Court to resolve the matter as law and justice require. 28 U.S.C. § 2243; *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000).

B. The Burden at an Ordinary Initial § 1226(A) Hearing Does Not Determine Whether Petitioner Is Entitled to the Hearing.

Respondents correctly note that, under current Ninth Circuit law governing an ordinary initial bond hearing under § 1226(a), the detainee bears the burden by a preponderance of the evidence to show that he is not a danger to the community or a flight risk. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022). Petitioner is prepared to make that showing before the proper neutral decisionmaker.

That burden concerns the merits of release after § 1226(a) is found to apply. It does not answer the antecedent statutory question and cannot justify denying a hearing altogether. The Court need not prejudge the custody outcome; it need only ensure that the correct statute and process govern.

C. The Order Should Prevent § 1225(B)(2)(A) From Predetermining the Custody Result.

The Court should declare that Petitioner's detention is governed by § 1226(a), direct an individualized custody redetermination before an immigration judge, and state that bond may not be denied on the theory that § 1225(b)(2)(A) mandates detention. The immigration judge may then evaluate danger, flight risk, and appropriate conditions under the standards governing § 1226(a).

VIII. PETITIONER'S CLAIM IS A CORE HABEAS CHALLENGE AND EXHAUSTION DOES NOT BAR REVIEW

A. The Petition Challenges Present Physical Custody and Lies at the Core of Habeas.

Petitioner is in Respondents' physical custody and challenges the legal authority for that confinement. He seeks release or, at minimum, the custody process required by the governing statute. Success would necessarily alter the legal basis and permissible continuation of detention. That is a core habeas claim under 28 U.S.C. § 2241. *Pinson v. Carvajal*, 69 F.4th 1059, 1071-72 (9th Cir. 2023).

The claim is independent of the merits of removal. The Court need not review a removal order, halt proceedings, decide admissibility, or determine eligibility for relief. It need decide only which detention statute applies while the removal case proceeds. Challenges to detention that are distinct from the removal merits remain subject to habeas review. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018).

B. The Absence of a Prior Bond Request is not a Jurisdictional Exhaustion Bar.

Section 2241 contains no statutory exhaustion requirement for this claim. *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). Administrative exhaustion in immigration habeas matters is prudential, not jurisdictional, and may

be excused when the available process is inadequate, futile, or likely to cause irreparable injury. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017); *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

Futility is apparent. Respondents maintain that § 1225(b)(2)(A) requires mandatory detention, and the Board's precedential rule states that immigration judges lack authority to hear bond requests from persons present without admission. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025). Requiring Petitioner to request a hearing from a tribunal that the governing agency rule declares powerless would not develop the relevant record or permit meaningful correction of the legal issue.

Continued detention is also an irreparable loss of liberty. Prudential exhaustion should not be used to require additional confinement merely to obtain a predictable jurisdictional denial before a federal court may decide the governing statute, particularly where Respondents concede that the District's contrary decisions control if followed.

IX. COMPLETE HABEAS RELIEF IS AVAILABLE ON THE PRESENT RECORD

The material facts necessary to decide the statutory issue are undisputed, and Respondents have acknowledged that they are not materially distinguishable from

the prior District cases. No evidentiary hearing is required. The Court can resolve the matter as a question of law on the Petition, the Response, and this Traverse.

Complete relief consists of a declaration that § 1226(a) governs, a prompt individualized bond and custody-redetermination hearing before a neutral immigration judge, a direction that § 1225(b)(2)(A) may not be used to deny jurisdiction or predetermine detention, and release on reasonable conditions if Respondents fail to provide the hearing within the ordered period.

This remedy is appropriately limited. It does not order the immigration judge to grant bond, dictate the amount or conditions of release, interfere with the removal proceedings, or determine the ultimate immigration case. It restores only the process Congress made available under the correct detention statute.

X. CONCLUSION AND PRAYER FOR RELIEF

Respondents' Response narrows the dispute and confirms the appropriate result. Petitioner accepts the corrections concerning a prior bond order, an automatic stay, and expedited removal. Those collateral matters are no longer part of the requested adjudication. The dispositive claim remains that § 1226(a), not § 1225(b)(2)(A), governs this interior arrest and detention pending ordinary removal proceedings.

Respondents acknowledge materially indistinguishable decisions from this Court and other judges in the District, identify no meaningful factual distinction, and do not oppose the Petition if the Court follows those decisions. The Court should do so and provide prompt, effective habeas relief.

For the foregoing reasons, Petitioner respectfully requests that the Court:

(1) GRANT the Petition for Writ of Habeas Corpus;

(2) DECLARE that Petitioner's detention pending removal proceedings is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A);

(3) ORDER Petitioner's immediate release. In the alternative, order the Respondents to provide Petitioner an individualized bond and custody-redetermination hearing before a neutral immigration judge within seven calendar days, and in no event later than fourteen calendar days;

(4) ORDER that the immigration judge may not deny jurisdiction or deny bond on the ground that § 1225(b)(2)(A) requires mandatory detention;

(5) ORDER Petitioner released on reasonable conditions if Respondents do not provide the required hearing within the period ordered by the Court;

(6) PRESERVE without adjudication any alternative claim not dependent on the corrected allegations, unless the Court determines that consideration is necessary to afford complete relief; and

(7) GRANT such other just and equitable relief as the Court deems appropriate.

Respectfully submitted,

Dated: July 21, 2026

//s// Mario Portugal
Mario Portugal
Attorney for Petitioner