No. 26-6019

United States Court Of Appeals For The Tenth Circuit

RIGOBERTO SANTILLAN QUIROZ,

Petitioner - Appellant,

v.

KRISTI NOEM, IN HER OFFICIAL CAPACITY; JOSHUA JOHNSON, IN HIS OFFICIAL CAPACITY; PAMELA BONDI, IN HER OFFICIAL CAPACITY; AND SCARLET GRANT, IN HER OFFICIAL CAPACITY,

Respondents - Appellees.

On Appeal from the United States District Court for the Western District of Oklahoma
Hon. Patrick R. Wyrick
Case No. 5:25-cv-01349-PRW

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Oral Argument Requested

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STATEMENT OF RELATED CASES

There are no prior or related appeals in this case.

GLOSSARY

BIA or Board – Board of Immigration Appeals

DHS – Department of Homeland Security

DOJ – Department of Justice

ICE – U.S. Immigration and Customs Enforcement

IIRIRA – Illegal Immigration Reform and Immigrant Responsibility Act of 1996

INA – Immigration and Nationality Act

INS – Immigration and Naturalization Service

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Oral argument will help the Court evaluate the important issues that this case presents. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1. This case arises from the Executive Branch's unprecedented interpretation of the Immigration and Nationality Act ("INA") to mandate detention without the possibility of bond for noncitizens who entered the United States without inspection. This policy has led to the unlawful detention of Petitioner and countless noncitizens nationwide. In response, hundreds of federal district courts have rejected the government's policy and granted writs of habeas corpus in thousands of cases.

The district court's decision below is a stark outlier. The court held that Petitioner, who has been living in the United States for about 20 years, must be detained under 8 U.S.C. § 1225(b)(2), even though that statute applies only to noncitizens "seeking admission" at the border. This case thus presents a critical legal question that impacts numerous cases in the Circuit. *See, e.g.*, *Munoz Teran v. Bondi*, No. 2:25-CV-01218-KWR-SCY, 2026 WL 161527 (D.N.M. Jan. 21, 2026); *Cortez-Gonzalez v. Noem*, No. 2:25-CV-00985-MLG-KK, 2025 WL 3485771 (D.N.M. Dec. 4, 2025); *Lopez v. Corecivic Cimmaron Corr. Facility*, No. CIV-25-1175-SLP, 2026 WL 165490, at *1 (W.D. Okla. Jan. 21, 2026). In addition, some of Petitioner's counsel are also counsel in a class action in the District of Colorado seeking a declaratory judgment and other relief on behalf of a certified class of noncitizens

detained in that district; the government has appealed an order granting the lead plaintiff's request of preliminary relief in that case. *See Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *14 (D. Colo. Oct. 17, 2025), *appeal filed* No. 25-1460 (10th Cir.).

JURISDICTIONAL STATEMENT

The district court had federal question jurisdiction and habeas corpus jurisdiction over Petitioner's challenge to his detention by immigration officials under 28 U.S.C. §§ 1331 and 2241. The district court denied the habeas petition and entered final judgment on January 13, 2026, and Petitioner filed a timely appeal on January 28, 2026. Appendix ("App.") 122-27; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

8 U.S.C. § 1226 is the default detention statute that governs detention pending removal of noncitizens arrested in the United States. It generally provides for noncitizens' release on bond. 8 U.S.C. § 1225(b)(2) imposes mandatory, no-bond detention on noncitizens "seeking admission" to the United States at the border or a port of entry. Is Petitioner—a noncitizen who has lived in the county for about 20 years after entering the country without inspection—subject to detention under § 1226 or § 1225(b)(2)?

INTRODUCTION

This case involves this administration's decision to reinterpret the Immigration and Nationality Act ("INA") to require the mandatory detention, without possibility of bond, of Petitioner Rigoberto Santillan Quiroz and millions of other noncitizens residing in the country, solely because they entered without inspection. In 1996, when it enacted the detention statutes, Congress made the deliberate choice to maintain the longstanding scheme that provided for release on bond to noncitizens, like Mr. Santillan Quiroz, who are arrested in the United States and placed into removal proceedings. The Executive understood this, promulgating contemporaneous regulations that provided such individuals bond hearings before an immigration judge to determine if they pose a danger or flight risk. Since then, for the last three decades, *everyone*—Congress, the Executive, and the courts—has understood the detention statutes to work in this way. Indeed, five different presidential administrations (including the first Trump administration), have faithfully applied the statutes in this manner.

But in mid-2025, the government claimed to discover a novel mandate—in a statute that by its terms applies only to noncitizens "seeking admission" into the United States at the border or ports of entry—to subject every noncitizen living in the country who was not previously admitted to no-bond detention. This change was not based on any action by Congress; in fact, Congress had amended the detention

statutes earlier that year and reaffirmed that noncitizens who have not been admitted, like Mr. Santillan Quiroz, are bond eligible.

Mr. Santillan Quiroz is one of the many noncitizens the government has imprisoned based on this about-face. He has lived in the United States for about twenty years. He is married to a lawful permanent resident, and has a U.S. citizen stepdaughter. Mr. Santillan Quiroz has been jailed for four months and counting based on the government's assertion that his detention is governed by a statute, 8 U.S.C. § 1225(b)(2), that imposes mandatory detention on people "seeking admission" to the country. The government is not detaining Mr. Santillan Quiroz because he is a flight risk or danger to the community; he is neither. Rather, the government's sole justification is that its novel reinterpretation of the law categorically requires his detention.

"When an agency claims to discover in a long-extant statute an unheralded power . . . [the courts] typically greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). This is especially true here, given the breathtaking consequences of the government's position. If accepted, the government's new interpretation would require the unnecessary detention of *millions* of people who, like Mr. Santillan Quiroz, are alleged to have entered the country without authorization—*regardless* of whether they present a danger or flight risk. That would be the largest expansion of

mandatory detention in U.S. history—and one that escaped the notice of Congress and five different administrations tasked with enforcing the law.

Hundreds of district court judges across the country have rejected the government's new detention policy as irreconcilable with the statutes' text, structure, and history.[1] The Seventh Circuit has preliminarily concluded the same. *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060–63 (7th Cir. 2025) (granting and denying stay motion in part). And although a divided panel of the Fifth Circuit recently adopted the government's position, *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), the dissent forcefully explains how that position distorts the laws Congress enacted, *id*. at 508–21 (Douglas, J., dissenting).

As elaborated below, the district court's analysis ignored the text, structure, history, and congressional, executive, and judicial understanding of the detention statutes, and reached conclusions squarely foreclosed by Supreme Court precedent. This Court should reject the government's attempt to rewrite the statutes, reverse the district court's judgment, and grant Mr. Santillan Quiroz's habeas petition.

STATEMENT OF THE CASE

[1] *See* Kyle Cheney, *Our running list of judges who have ruled on ICE's mass detention policy*, Politico (updated Mar. 10, 2026), https://www.politico.com/news/2026/02/18/trump-judges-immigration-detention-00784614 (reporting that over 400 judges have rejected the government's position to date).

I. The History of Detention During Removal Proceedings and the Current Statutory Framework

A. Pre-1996

Before 1996, proceedings to remove noncitizens from the United States were divided into "deportation proceedings" and "exclusion proceedings." Deportation proceedings applied both to noncitizens who had entered lawfully but were subject to removal (e.g., as a result of criminal convictions), and to noncitizens who had entered the United States without inspection and were later apprehended. *See* 8 U.S.C. § 1252(a)(1) (1995). Exclusion proceedings applied to people encountered at the border during the inspection process, but who had not yet "enter[ed]" the country. *See id*. §§ 1225(a)–(b) (1995), 1226(a) (1995).

For people in deportation proceedings, the statute authorized arrest and detention "[p]ending a determination of deportability" and permitted release on bond. 8 U.S.C. § 1252(a)(1) (1995). But for noncitizens apprehended at the border and placed in exclusion proceedings, the statute mandated detention without bond. *Id*. § 1225(b) (1995).

This differential treatment was consistent with the long-established constitutional distinction between noncitizens who had entered the United States (even if without authorization), and noncitizens stopped at the border seeking to come in. *See, e.g.*, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be

expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (explaining Due Process Clause protects "all persons within the territory of the United States are entitled to the protection guarantied").

B. IIRIRA (1996)

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104–208, 110 Stat. 3009 (1996). IIRIRA overhauled the immigration statute, including the rules governing the removal of noncitizens. It established new "expedited removal" proceedings for certain noncitizens arriving at the border and recent entrants; significantly limited access to asylum protections; enacted enhanced penalties for recidivist immigration violators; and broadened the definitions of "aggravated felonies," which led to mandatory deportation and detention. IIRIRA §§ 302, 321, 324, 604, 110 Stat. 3009-579 to 3009-584, 3009-627 to 3009-628, 3009-629, 3009-690 to 3009-694. However, in the midst of these and other changes, Congress explicitly maintained the basic rules for detention by preserving the possibility of bond under 8 U.S.C. § 1226 for noncitizens apprehended inside the country while mandating detention without bond under 8 U.S.C. § 1225(b)(2) for those apprehended at the border. *See* Addendum (reproducing §§ 1225 and 1226).

As relevant to this case, Congress in IIRIRA made the following changes:

First, it eliminated separate deportation and exclusion proceedings, combining them into a single "removal" proceeding for adjudicating the cases of all individuals charged with removal, regardless of whether they had entered the United States or were stopped at the border. *See* IIRIRA § 304, 110 Stat. 3009-587 to 3009-593.

Second, it made the applicable grounds of removal (i.e., deportability or admissibility) depend *not* on physical entry into the United States, but instead on the fact of an "admission," newly defined as a "lawful entry" after inspection by an immigration officer. 8 U.S.C. § 1101(a)(13)(A). Under the new scheme, a noncitizen who has been "admitted" to the country is subject to grounds of "deportability," *see id*. § 1227(a), whereas someone who entered the country without inspection and has *not* been admitted or paroled is subject to grounds of "inadmissibility," *see id*. § 1182(a). Thus, noncitizens who enter without inspection and are physically present in the country are no longer "deportable" but instead "inadmissible."

Third, Congress deemed an "applicant for admission" a noncitizen "present in the United States who has not been admitted" as well as a noncitizen "who arrives in the United States" either at or outside a "designated port of arrival." 8 U.S.C. § 1225(a)(1). By doing so, Congress placed the burden on noncitizens who entered without inspection to show that they are "clearly and beyond doubt entitled to be admitted and [are] not inadmissible" in their removal proceedings. *Id.* § 1229a(c)(2)(A).

Fourth, while making these changes, Congress retained the prior detention framework that made individuals who entered the country without inspection eligible for release on bond. It did this by making § 1226—the new detention statute governing individuals apprehended inside the country—applicable to noncitizens who are both inadmissible and deportable, whereas the prior statute applied only to noncitizens charged with deportability. *Compare* 8 U.S.C. § 1226(a) (authorizing detention and bond "pending a decision on whether the alien is to be *removed*," a term that encompasses noncitizens charged with inadmissibility or deportability (emphasis added)), *with* 8 U.S.C. § 1252(a)(1) (1995) (authorizing detention and bond "[p]ending a determination of deportability"); *see also id.* § 1226(c) (referencing both inadmissible and deportable noncitizens). The accompanying House report and Conference report explained that the new § 1226 "restate[d] the current provisions" in the INA that authorized "release on bond" for individuals who entered without inspection. H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Fifth, in § 1226(c), Congress expanded the categories of inadmissible and deportable "criminal aliens" subject to mandatory detention by carving them out as an exception from bond eligibility under § 1226(a). 8 U.S.C. §§ 1226(c)(1)(A)–(D), (c)(4); *see also* IIRIRA §§ 303(a), 321, 110 Stat. 3009-585, 3009-627 to 3009-628. Importantly, Congress acknowledged the significant increase in detention that would

result from the expansion of mandatory detention under § 1226(c). *See* H.R. Rep. No. 104-469, pt. 1, at 120, 123, 207. Accordingly, Congress included in IIRIRA an option to delay the provision's implementation for up to two years to allow the then-Immigration and Naturalization Service ("INS") to increase its detention capacity. IIRIRA § 303(b), 110 Stat. 3009-586 to 3009-587; *see also* IIRIRA § 386(a), 110 Stat. at 3009-653.

Finally, in § 1225(b), Congress retained the prior practice of detaining, without the possibility of bond, individuals who are taken into custody at the border and are determined to be inadmissible. Section 1225(b)(1) imposes mandatory detention on certain "arriving" noncitizens and other recent entrants who are subject to new expedited removal proceedings.[2] *Id*. § 1225(b)(1)(A)(i). Section 1225(b)(2) applies to "other" applicants for admission who are not subject to expedited removal, *see id.* 1225(b)(2)(B)(ii), and are "seeking admission" to the country, *see id*. § 1225(b)(2)(A). Specifically, § 1225(b)(2)(A) 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

[2] The expedited removal procedures apply to noncitizens determined to be inadmissible based on fraud or lack of proper entry documents. *See* 8 U.S.C. § 1225(b)(1)(A)(i); *see also id*. §§ 1182(a)(6)(C), 1182(a)(7). Congress authorized the application of this provision to noncitizens "arriving in the United States." *Id*. § 1225(b)(1)(A)(i). It also gave the Executive the option of applying the provision to noncitizens already present in the country, but for less than two years, who had not been admitted or paroled. *See id*. § 1225(b)(1)(A)(iii).

admitted, the alien shall be detained for [removal proceedings]." *Id*. (emphasis added).

Under both provisions of § 1225(b), noncitizens have no access to bond. Instead, the only option for release is through a discretionary grant of parole. *See* 8 U.S.C. § 1182(d)(5)(A) (authorizing the Department of Homeland Security ("DHS"), the jailing authority, to parole the noncitizen "for urgent humanitarian reasons or significant public benefit").

Congress did not indicate in IIRIRA that the detention mandated by either § 1225(b)(1) or § 1225(b)(2) warranted any delay in implementation, as it did for the new detention mandate enacted at § 1226(c).

C. Laken Riley Act (2025)

The Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), enacted last year, amended § 1226(c). The Act expanded the types of criminal history that exclude individuals who are charged with inadmissibility under, *inter alia*, § 1182(a)(6)(A) for being present without being admitted or paroled, from § 1226(a) bond eligibility. The Act carves out such individuals who are additionally accused or convicted of specified criminal conduct from § 1226(a). *See* 8 U.S.C. § 1226 (c)(1)(E).

II. Executive Branch and Judicial Interpretation and the Government's New Mandatory Detention Policy.

Since IIRIRA's enactment in 1996 until mid-2025, the Executive Branch consistently acknowledged that § 1226 governed noncitizens, like Petitioner, who are inside the country without having been admitted and afforded the possibility of bond to that group. Contemporaneously with IIRIRA's enactment, the Executive Branch issued regulations in March 1997 confirming that noncitizens arrested inside the country and placed into removal proceedings are eligible for release on bond under § 1226(a) (unless § 1226(c) applies). *See* 8 C.F.R. §§ 1003.19(a) & (h)(2), 1236.1(d). Pursuant to these regulations, noncitizens detained "may seek review of [their] detention by an officer at the Department of Homeland Security and then by an immigration judge," and may "secure [their] release" on bond upon "convinc[ing] the officer or immigration judge that [they] pose[] no flight risk and no danger to the community." *Nielsen v. Preap*, 586 U.S. 392, 397–98 (2018) (citing 8 C.F.R. §§ 1003.19, 1236.1(d); *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006)). The regulations further specify who is *not* eligible for bond—primarily "arriving aliens" and noncitizens subject to § 1226(c)(1). Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323, 10,361 (Mar. 6, 1997); *see also* 8 C.F.R. §§ 236.1(c)(5), 1003.19(h)(2).

In promulgating the March 1997 rule, which is still in place today, the Department of Justice ("DOJ") explained that:

- "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination";
- "[I]nadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge"; and,
- "This procedure maintains the status quo regarding release decisions for aliens in proceedings . . .."

62 Fed. Reg. at 10,323. These regulations have remained essentially unchanged for three decades.

Consistent with this settled view, the Executive Branch—including the first Trump administration—consistently interpreted § 1226 to apply to those who entered without inspection. *See*, *e.g.*, *Matter of D-J-*, 23 I. & N. Dec. 572, 579 (A.G. 2003) (Attorney General "exercising [his] authority under section [1226]" to deny release on bond to Haitian noncitizen who had evaded inspection); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 262 (BIA 2010) (observing that noncitizen present without admission or parole was released under § 1226); *Matter of Akhmedov*, 29 I. & N. Dec. 166, 166 (BIA 2025) (stating, as of June 30, 2025, in the

case of noncitizen who entered unlawfully, "[t]he respondent's custody determination is governed by the provisions of section [1226]").

Judicial interpretations of the immigration detention statutes reflected this understanding as well. As the Supreme Court explained, § 1225 operates "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is inadmissible," *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1226 is the detention authority for noncitizens who are "already in the country." *Id.* at 289; *see also Castañon-Nava*, 161 F.4th at 1061 (observing distinction made in *Jennings* between statutes applicable to noncitizens "*seeking admission*" versus those "*already in the country*").

Indeed, the government itself in *Jennings* described § 1226 as governing the detention of noncitizens "who are already inside the United States," while describing § 1225(b) as "the most recent iteration of a statutory framework that, for a century, has provided for the exclusion of inadmissible aliens arriving at the Nation's borders," Br. for the Pet'rs at *4, *19, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204), 2016 WL 5404637; *see also id*. at *2 (§ 1225(b)(2)(A) applies to those "who arrive at our Nation's doorstep seeking admission"); Suppl. Br. for the Pet'rs at 12, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204), 2017 WL 430387 ("Section 1226(a) governs the detention and release of other aliens arrested

inside the United States . . . including those who are present after entering illegally . . . .") (internal citation omitted).

On July 8, 2025, DHS, in coordination with DOJ, peremptorily adopted a novel interpretation of the detention statutes. Breaking with decades of prior understanding, DHS "determined," with little explanation and in unpublished guidance, "that section [1225] of the [INA], rather than section [1226], is the applicable immigration detention authority for all applicants for admission," including anyone who entered without inspection. *See* U.S. Immig. & Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (Jul. 8, 2025), https://perma.cc/SNA2-XNSZ. DHS instructed Immigration and Customs Enforcement ("ICE") to subject any noncitizen present in the United States without being admitted or paroled to mandatory detention under § 1225(b)(2), explaining that these "applicants for admission" would now be "treated in the same manner that 'arriving aliens' have historically been treated." *Id.*

Months later, the Board of Immigration Appeals ("BIA" or "Board") adopted that interpretation in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).[3] The BIA concluded that noncitizens arrested inside the country

[3] A federal district court in California vacated *Matter of Yajure-Hurtado* under the Administrative Procedure Act, but that court's decision has been administratively stayed pending appeal. *Maldonado Bautista v. Santacruz Jr.*, __ F. Supp.3d __, 2026 WL 468284, at *12 (C.D. Cal. Feb. 18, 2026), *stayed on appeal by* Order, No. 26-1044 (9th Cir. Mar. 6, 2026), ECF No. 5.

and charged with inadmissibility are now subject to mandatory detention under § 1225(b)(2) and not bond-eligible under § 1226. *Id*. at 228; *see also id*. at 219. The result is that the government is applying § 1225(b)(2) not only at the border, but also to noncitizens apprehended anywhere within the United States who entered without inspection, and is refusing to afford such noncitizens the possibility of bond under § 1226.

III. Factual Background

Petitioner Rigoberto Santillan Quiroz is a Mexican national who has lived in the United States for about twenty years. App. 9. He is married to a lawful permanent resident and has a U.S. citizen stepdaughter. App. 9. Other than a 2021 conviction for driving under the influence, he has no criminal history. App. 9.

On November 2, 2025, the government arrested Mr. Santillan Quiroz after a traffic stop. App. 9, 56. Immigration officials initiated removal proceedings against him and charged him with being a noncitizen present in the United States without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). App. 56.

IV. Procedural History

On November 14, 2025, Mr. Santillan Quiroz filed a habeas petition seeking his release or a bond hearing. App. 1. He raised two claims: (1) that his detention

under § 1225(b)(2) violates the INA; (2) that his detention violated due process. App. 14-17. The case was referred to a magistrate judge for a report and recommendation.

On December 11, 2025, the magistrate judge recommended that the district court grant the petition based on the statutory claim. App. 95-96. The magistrate judge explained, in lengthy and careful reasoning, that Mr. Santillan Quiroz is entitled to a bond hearing under § 1226(a), and recommended that the district court order Respondents to provide him a bond hearing within seven days or else order his release. App. 71-96. The magistrate judge also recommended that the district court decline to address Petitioner's due process claim. App. 94-95. The government filed objections to the magistrate judge's recommendation. App. 97-119.

On January 13, 2026, the district court declined to adopt the magistrate judge's report and recommendation, and denied the habeas petition. App. 120. On the statutory claim, the district judge briefly denied the petition without an independent analysis of Petitioner's claims. Instead, the district judge cited his earlier opinion in *Gutierrez Sosa v. Holt*, Case No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026), which rejected Petitioner's statutory argument in a similar case.[4] App. 122. The district court further denied Petitioner's due process claim, stating that under *Zadvydas v. Davis*, 533 U.S. 678 (2001), "a six-month detention period is

[4] For this reason, when this brief refers to the district court's reasoning or analysis on Petitioner's statutory claim, such references are to the district court's opinion in *Gutierrez Sosa*.

presumptively constitutional before the government must release a removable alien who shows 'that there is no significant likelihood of removal in the reasonably foreseeable future.'" App. 122 (quoting *Zadvydas*).

On January 28, 2026, Mr. Santillan Quiroz appealed the district court's decision. App. 125-27.

STANDARD OF REVIEW

In an appeal from a district court's grant of habeas relief, this Court reviews issues of law de novo and findings of fact for clear error. *Fontenot v. Crow*, 4 F.4th 982, 1018 (10th Cir. 2021). Statutory interpretation is a question of law that this Court reviews *de novo*. *Solar v. City of Farmington*, 2 F.4th 1285, 1289 (10th Cir. 2021).

SUMMARY OF THE ARGUMENT

Section 1226 is the INA's default detention rule for noncitizens living in the United States. It applies broadly to individuals placed into § 1229a removal proceedings after apprehension in the interior, including those who entered without inspection and are therefore charged as inadmissible. Congress made this clear by drafting § 1226 as a general authorization to detain "pending a decision on whether the alien is to be removed"—as the term "removed" encompasses individuals who are inadmissible. In contrast, the pre-IIRIRA statute providing for bond-eligible

detention of those apprehended inside the United States was limited to noncitizens "pending a determination of deportability." *See infra* Argument, Section I.A.1.

Were there any doubt that Congress intended § 1226 to govern the detention of inadmissible noncitizens like the Petitioner, § 1226(c) would dispel it. That neighboring provision expressly carves out an exception to § 1226(a)—which provides for release on bond—for noncitizens charged with inadmissibility (or deportability) on certain criminal or terrorism-related grounds. Section 1226(c) makes detention mandatory for such individuals. By doing so, Congress clearly understood and intended that inadmissible noncitizens who are *not* charged on these grounds are eligible for release on bond under § 1226(a). Otherwise, there would have been no need to carve them out from that subsection. *See infra* Argument, Section I.A.2.

Congress's recent enactment of the Laken Riley Act ("LRA") reinforces this understanding. By specifically expanding the scope of § 1226(c) mandatory detention to include a new category of inadmissible noncitizens—namely, those who entered without inspection (i.e., are inadmissible) and committed certain criminal offenses—the legislation intentionally took that subset of inadmissible noncitizens out of § 1226(a). Thereby, the LRA necessarily recognizes that inadmissible noncitizens in general are covered by § 1226(a). *See infra* Argument, Section I.A.2.

Indeed, the Executive Branch's own contemporaneously-adopted regulations and three decades of unbroken practice underscore that the INA affords noncitizens who are present in the United States access to bond, regardless of whether they entered the country without inspection. *See infra* Argument, Section I.A.3.

By contrast, § 1225(b)(2) does *not* apply to people like Petitioner. Section 1225(b)(2)'s detention mandate applies only to an applicant for admission who is "*seeking admission.*" *Id*. Even if noncitizens who entered the country without inspection are considered "applicants for admission," that does not mean that they are also "seeking admission." That language—specifically chosen by Congress—reflects an activity, not a status, that takes place at the border, not inside the country. Consistent with the INA's definition of "admission," the term "seeking admission" means a present-tense effort to obtain "lawful entry into the United States after inspection and authorization." 8 U.S.C. § 1101(a)(13). A noncitizen who entered without inspection years ago and has been living in the United States is not "seeking admission." *See infra* Section I.B.1. Moreover, the structure and context of § 1225 confirms that § 1225(b)(2) applies only to noncitizens undergoing inspection at the border and ports of entry. *See infra* Argument, Section I.B.2.

The district court's interpretation of § 1225(b)(2) cannot be squared with the statutory text or context. The court held that individuals who have entered the country without inspection are covered by § 1225(b)(2), regardless of how long they

have lived in the country, because (according to the district court) all "applicants for admission" are necessarily "seeking admission" to the United States. But this interpretation ignores how Congress defined "applicant for admission" as a status, not an activity; how it defined "admission"; and how it used the phrase "seeking admission" in the statute. *Castañon-Nava*, 161 F.4th at 1061. The district court effectively wrote "seeking admission" out of the statute, stripping it of independent meaning and rendering it superfluous.

Both the text of IIRIRA and the staggering ramifications of the district court's interpretation further demonstrate that Congress could not have intended to mandate the administration's new detention policy. When Congress in IIRIRA expanded mandatory detention through § 1226(c) for noncitizens charged with removal based on criminal conduct, it was acutely sensitive to resource constraints and permitted the agency to delay implementation and increase its detention capacity to hold the estimated 45,000 noncitizens that § 1226(c) would cover each year. But if the district court were correct about the scope of § 1225(b)(2), that would mean the same Congress silently enacted § 1225(b)(2) to require the no-bond detention of an estimated population of two million people at that time—and closer to six million today—without giving any consideration to existing bedspace. *See infra* Argument, Section I.B.3.

And if the statute mandated what the government proposes, it would raise profound constitutional issues that the Court need not and should not decide. Mandatory detention of every noncitizen residing in the country who entered without inspection would run counter to longstanding precedent that noncitizens residing in the country are entitled to due process when deprived of liberty. Imposing mandatory detention without any opportunity for a bond hearing would contradict that core principle. *See infra* Argument, Section II.

Finally, if this Court decides that § 1225(b)(2)(A), and not § 1226(a), applies to Petitioner, it should find that his detention violates both his procedural and substantive constitutional due process rights. Mr. Santillan Quiroz has been living in this country for over a decade, where he has built strong family ties. He poses no risk of flight and is not a danger to the community. Petitioner's detention without the opportunity for a hearing before a neutral adjudicator violates his most basic due process right to be free from arbitrary detention. *See infra* Argument, Section III.

The district court incorrectly held that Mr. Santillan Quiroz's detention is governed by § 1225(b)(2), rather than § 1226, and also wrongly rejected Petitioner's due process claim. This Court should reverse the district court's judgment and remand with instructions to grant habeas relief.

ARGUMENT

I. The Detention Statutes Provide Petitioner Access to Bond.

A. Section 1226 Governs Petitioner's Detention.

1. Section 1226 provides the default detention authority for individuals arrested in the United States for removal proceedings.

The text, structure, and history of § 1226 make clear that it is the detention authority for Petitioner. This Court must "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history, and purpose.'" *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)).

Starting with the text: § 1226 provides the "default rule" for noncitizens who are apprehended "inside the United States" and detained for a removal proceeding. *Jennings*, 583 U.S. at 288. The plain language of § 1226(a) provides that DHS "may" arrest and detain a noncitizen "pending a decision on whether the alien is to be removed from the United States" while also permitting the noncitizen's release "on bond" or other conditions. 8 U.S.C. § 1226(a)(2). By statute, removal proceedings cover people, like Mr. Santillan Quiroz, who are charged with being inadmissible after entering the country without inspection. *See* 8 U.S.C. § 1229a(a)(1) (directing the immigration judge to "conduct proceedings for deciding the inadmissibility . . . of [a noncitizen]"); *see also id*. § 1229a(a)(2), (c)(2)(A), & (e)(2)(A) (referring to charges and determinations of inadmissibility). Given that Congress wrote § 1226 to cover inadmissible noncitizens, it necessarily applies to individuals, like Mr.

Santillan Quiroz, who are charged as inadmissible for being "present in the United States without being admitted or paroled," 8 U.S.C. § 1182(a)(6)(A)(i), and are detained "pending a decision on whether [they will] be removed," *id*. § 1226(a).

Next, "the historical context in which [§ 1226] was adopted confirms the plain import of its text." *See Biden v. Texas*, 597 U.S. 785, 804 (2022) (citing *Niz-Chavez v. Garland*, 593 U.S. 155, 165 (2021)). As it enacted IIRIRA in 1996, Congress maintained the basic detention framework that had long provided bond to people who had entered without inspection and were arrested for a deportation proceeding. Congress did so by replacing the language providing for detention and bond "[p]ending a determination of deportability" in the predecessor statute, 8 U.S.C. § 1252(a) (1995), with "pending a decision on whether the alien is to be removed" in § 1226. Through this change, Congress thus made clear that the noncitizens who entered without inspection and whom IIRIRA reclassified as inadmissible rather than deportable would remain eligible for bond. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) "restates" the provisions in former § 1252(a)(1) (1995) providing for "release on bond" to people in the country (including those who entered without inspection)); *accord* H.R. Rep. No. 104-828, at 210 (1996) (similar). Had Congress intended for § 1226 to apply only to deportable noncitizens, it could have simply retained the prior language referring to "deportability," as it did in other

sections of the statute. *See, e.g.*, 8 U.S.C. § 1229c(a)(1) (retaining reference to "deportable").

2. Section 1226(c) reinforces that § 1226 provides Petitioner with access to bond.

Section 1226(c) confirms the applicability of § 1226 to inadmissible noncitizens like Mr. Santillan Quiroz through the statute's structure. Section 1226(c) is the sole statutory exception to § 1226(a)'s general release authority. Section 1226(c) carves out a subset of inadmissible noncitizens from eligibility for bond under § 1226(a) where they are charged with criminal or terrorism-based grounds of removal, and instead subjects them to mandatory, no-bond detention. *See* 8 U.S.C. §§ 1226(c)(1)(A) & (D), 1226(c)(4); *see also* 8 U.S.C. § 1226(a) (permitting release on bond "[e]xcept as provided in subsection (c)"); *Preap*, 586 U.S. at 397, 409.

Section 1226(c) is thus the exception that proves the rule: § 1226(a) generally affords bond to inadmissible noncitizens—including those, like Mr. Santillan Quiroz, who entered the country without inspection—*unless* the exception in § 1226(c) applies. If § 1226(a) did not generally provide bond to inadmissible noncitizens, Congress would have had no need to exclude a subset of them from bond-eligibility under § 1226(a) in the first place. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (the fact that Congress has created specific exceptions "proves" that the statute applies in general).

Congress confirmed this point just last year when it enacted the LRA. That Act added a new ground of mandatory detention to § 1226(c) that specifically targets people, like Petitioner, who entered the country without inspection but—unlike Petitioner—are also charged with, arrested for, convicted of, or admit to committing an additional list of crimes. *See* 8 U.S.C. § 1226(c)(1)(E). The Act again makes even clearer that § 1226(c) is the exception to the general rule that people, like Mr. Santillan Quiroz, charged as inadmissible for entering the country without inspection, are eligible for bond under § 1226(a). Otherwise, there would have been no need for Congress to exclude a subset of those entrants from § 1226(a) bond eligibility. Congress is presumed to be "knowledgeable about existing law pertinent to the legislation it enacts." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988).

Indeed, accepting the government's position would *undermine* the LRA. Were the government correct that § 1225(b)(2), and not § 1226, governs the detention of noncitizens who entered without inspection, those noncitizens would become eligible for release on parole under § 1182(d)(5) at the agency's discretion—*even if* they are accused of or committed the Act's predicate crimes. But Congress enacted the LRA precisely to avoid that result and require such noncitizens' detention. The Court should not "impute to Congress such a contradictory and absurd purpose,

particularly where doing so has no basis in the statutory text." *Pereira v. Sessions*, 585 U.S. 198, 212 (2018) (cleaned up).[5]

The district court, at the government's invitation, reduced the LRA to require only the detention of "individuals admitted through fraud who might not otherwise be applicants for admission." *Gutierrez Sosa*, 2026 WL 36344, at *5. Even assuming that were true, it would mean the LRA would do passing little. More importantly, the district court did not engage with Petitioner's key point regarding the Act: by amending § 1226(c) to explicitly deny bond to a subset of inadmissible individuals who had entered without inspection (namely, those who also had the requisite criminal history), *see* 8 U.S.C. § 1226 (c)(1)(E), Congress reaffirmed that inadmissible individuals who entered without inspection, and who *lack* criminal history, are subject to § 1226 generally. The LRA thus confirms that such noncitizens are thus eligible for bond under § 1226(a).

3. Executive Branch interpretation and practice confirm that § 1226 applies to Petitioner.

Contemporaneous Executive Branch interpretation and longstanding practice also support reading § 1226 to govern Mr. Santillan Quiroz's detention. In March

[5] Courts have agreed that petitioners challenging their detention under the LRA are not subject to § 1225(b)(2) but rather § 1226. *See, e.g.*, *Doe v. Moniz*, 800 F. Supp. 3d 203, 209-10 (D. Mass. 2025); *Helbrum v. Williams Olson*, No. 4:25-CV-00349-SHL-SBJ, 2025 WL 2840273, at *4 (S.D. Iowa Sept. 30, 2025); *Ojeda Montoya v. Joyce*, No. 2:25-CV-00558-SDN, 2025 WL 3557777, at *1 n.1 (D. Me. Nov. 17, 2025).

1997, just months after IIRIRA's enactment, DOJ promulgated regulations reaffirming that noncitizens "who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond." 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). And for three decades across five administrations, the government interpreted § 1226 to provide access to bond hearings to those placed into removal proceedings for having entered without inspection. *See supra* Background Section II.

Here, "the longstanding practice of the government . . . can"—and should—"inform [the Court's] determination of what the law is." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (internal citation omitted) (cleaned up). The government's contemporaneous interpretation of the statute and adherence to it for decades provides "powerful evidence that interpreting the Act in [this] way is natural and reasonable," *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting), and casts serious doubt on the government's departure from the consensus understanding. *See, e.g.*, *Learning Resources, Inc. v. Trump*, 146 S. Ct. 628, 643 (2026) ("[T]he fact that no President has ever found such power in [the statute] is strong evidence that it does not exist."); *Bankamerica Corp. v. United*

States, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law).

Furthermore, "Congress' failure to repeal or revise in the face of such administrative interpretation . . . constitute[s] persuasive evidence that that interpretation is the one [Congress] intended." *Zemel v. Rusk*, 381 U.S. 1, 11 (1965). Congress had multiple opportunities over three decades to correct the Executive's supposed misunderstanding of the scope of § 1226, including in post-IIRIRA legislation addressing immigration benefits and procedures, the restructuring of the immigration agencies, and judicial review of immigration matters. *See, e.g.*, USA PATRIOT Act of 2001, Pub. L. 107-56, 115 Stat. 272; Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135; REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231. But it never questioned the government's application of § 1226 to noncitizens like Petitioner; indeed, through the LRA, it enacted legislation just last year *confirming* that application. *See supra* Section I.A.2.

B. Section 1225(b)(2) Applies to Noncitizens, Unlike Petitioner, Who Are "Seeking Admission" at the Border.

By contrast, nothing in § 1225(b)(2)—not its text, context, or history—gives the government the mandate it now claims to detain individuals who are apprehended inside the country after having entered without inspection. Instead, § 1225(b)(2) is confined to individuals apprehended upon seeking admission at the border. That is because the statute applies only to "applicants for admission" who

are also "seeking admission," and individuals who are apprehended inside the country after having entered the country are not "seeking admission." This follows directly from the INA's definition of "admission" and "admitted" and the present participle that Congress chose in § 1225(b)(2)—"*seeking* admission." It is further supported by the statutory history and context, including the text and history of IIRIRA. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." (internal citations omitted)).

1. Individuals who are apprehended inside the country after having entered without inspection are not "seeking admission" and thus are not subject to mandatory detention under § 1225(b)(2)(A).

The plain language, history, and context of §§ 1225 and 1226 support Petitioner's reading.

Plain language. The plain text of § 1225(b)(2)(A) applies only to those "applicants for admission" who are "seeking admission" into the country. Section 1225(b)(2)(A) 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 a [removal] proceeding under section 1229a ...

Id. (emphasis added). This text makes clear that § 1225(b)(2)(A) applies only "in the case of an alien who is an applicant for admission" *who is also* "an alien seeking admission." *Id*.

Contrary to the district court's reasoning, *Gutierrez Sosa*, 2026 WL 36344, at *4, individuals who are already present in the United States after having entered without inspection, like Petitioner who entered years ago, are not "seeking admission." This is true for several reasons.

First, Congress defined the terms "admission" and "admitted" in the INA to mean "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). An individual who has already entered the country without inspection cannot be seeking a "lawful entry . . . into the United States." *Id*. Nor is such an individual at the border, which the definition of admission clearly requires, as that is where an "entry . . . into the United States" occurs. *Id*.

Second, Congress's choice of the word "seeking" shows why individuals who are apprehended in the interior are not "seeking admission" under the statute. Dictionaries define "seek" as, *inter alia*, "to go in search of; look for;" to "ask for" or "request;" "to try to acquire or gain; aim at," all of which carry a sense of affirmative action. *See* Oxford Encyclopedic English Dictionary 729 (3d ed. 1996) (defining "seek" as, *inter alia*, to "try or want to find" or "ask for; request");

Webster's Third New International Dictionary 2055 (1993) (defining "seek" as, *inter alia*, "to go in search of; look for" or "to try to acquire or gain; aim at" or "to make an attempt"). Thus, the term "seeking admission" means "to go in search of, or to try to acquire or gain, lawful entry into the United States after inspection or authorization by an immigration officer." This definition connotes present-tense action to "to try to acquire or gain" a lawful entry into the United States. A noncitizen like Petitioner—who is already present in the country after having entered without inspection over 20 years ago, App. 9—is not engaged in any present-tense effort to gain "admission" to the country and thus cannot be "seeking admission."

Instead of applying to noncitizens like Petitioner, § 1225(b)(2)(A) addresses the "inspection"—and detention—"of noncitizens at ports of entry or of recent arrivals," noncitizens "detained shortly after entry" or those detained "at [a] port of entry." *Velasquez Salazar v. Dedos*, 806 F. Supp. 3d 1231, 1240 (D.N.M. 2025) ; *see also Garcia-Lopez v. Castro*, No. CIV 25-1144 JB/SCY, 2026 WL 524082, at *9–10 (D.N.M. Feb. 25, 2026). The only noncitizens who are "seeking admission" under § 1225(b)(2)(A) are those who present themselves at a port of entry for admission, or who cross the physical border into the United States but have not yet effected an entry. *See United States v. Gaspar-Miguel*, 947 F.3d 632, 633-34 (10th Cir. 2020) (describing history of "entry" definition under immigration statutes). The latter group are "seeking admission"—either when they affirmatively seek out an

immigration officer or when they are apprehended by one and continue to seek to enter upon inspection. But a noncitizen who has entered the country and is already present cannot be "seeking admission" to the United States. *See Garcia-Lopez*, 2026 WL 524082, at *34–35; *Diaz v. Holt*, No. CIV-25-1179-J, 2025 WL 3296310, at *2–3 (W.D. Okla. Nov. 26, 2025).

The district court's reasoning failed to give effect to Congress's deliberate choice of words. Congress deemed Mr. Santillan Quiroz (and people like him) an "applicant for admission" based merely on his being "*present* in the United States" without having "been admitted." 8 U.S.C. § 1225(a)(1) (emphasis added). Congress did *not* define being an "applicant for admission" in terms of the act of "seeking" admission—or, for that matter, doing anything except being in the country. In effect, the district court read the action of "seeking admission" *into* the definition of "applicant for admission" where Congress defined being such an applicant based on mere presence (or status) alone. "But it is Congress's prerogative"—not the Executive's—"to define a term however it wishes . . .." *Castañon-Nava*, 161 F.4th at 1061. And Congress "could easily have included noncitizens who are 'seeking admission' within the definition [of applicants for admission] but elected not to do so." *Id*.

Indeed, the district court's conclusion "violat[es] one of the cardinal rules of statutory interpretation" by rendering parts of § 1225(b)(2)(A) "superfluous." *Id*. If Congress intended this reading, the statute would simply read as follows:

> 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~~ **[applicant for]** 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.

But courts "must give effect, if possible, to every clause and word of a statute," *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (internal quotation marks and citation omitted), and, as explained *supra*, it is surely possible to do so here.

History. The term "seeking admission" comes from a former version of § 1225, which governed exclusion proceedings and "[t]he inspection . . . of aliens . . . seeking admission" to the United States. 8 U.S.C. § 1225(a) (1995). "When a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019) (citation omitted). Under the prior regime, those who were "seeking admission" were those "outside the United States." *Landon v. Plasencia*, 459 U.S. 21, 25 (1982). Then, as now, those "seeking admission" are not those present in the United States without admission, but rather noncitizens who present themselves for admission at or near the border.

Context. The broader context of the INA underscores that the terms "applicant for admission" and "seeking admission" are not synonymous, and that "seeking

admission" is something that happens at the border. For instance, 8 U.S.C. § 1736 requires that a visa waiver program participant who is an "applicant for admission" must be checked against government databases "at the time the alien *seeks admission* to the United States." *Id*. (emphasis added). If they meant the same thing, the latter clause would be redundant. Other common examples underscore that those terms mean different things: A lawful permanent resident who returns from a trip abroad is an "applicant for admission" when they arrive at a port of entry, *see* 8 U.S.C. § 1225(a)(1), but are not "seeking admission" unless certain circumstances apply. *See* 8 U.S.C. § 1101(a)(13)(C). Similarly, a noncitizen who obtains "advance parole"—a special grant of permission to travel abroad, *see* 8 C.F.R. § 212.5(f)—and then tries to reenter the country at a port of entry is an "applicant for admission" under § 1225(a)(1), but they are not "seeking admission." *See* 8 U.S.C. § 1101(a)(13)(B) (distinguishing between a "paroled" noncitizen and admitted one). Conversely, a noncitizen who goes through the immigration inspection process at a pre-clearance location outside the United States, *see* 8 C.F.R. § 235.5(b), is clearly "seeking admission," but such a person is not an "applicant for admission" under § 1225(a)(1) at the time they do so as they are neither arriving in the country or present in the country without having been admitted.

Other provisions of the INA similarly distinguish between being an "applicant for admission" and making an "application for admission" at the border. For

example, in *Torres v. Barr*, the Ninth Circuit held that being deemed an "applicant for admission" is distinct from making an "application for admission" for purposes of the inadmissibility ground at § 1182(a)(7). 976 F.3d 918, 926 (9th Cir. 2020) (en banc). Section 1187(a)(7) renders a noncitizen inadmissible when they lack a "valid unexpired" entry document "at the time of application for admission." *Id*. at 924. In *Torres*, the Ninth Circuit declined to treat an "applicant for admission" as making a "continuing application for admission" based on their mere presence in the United States, as the government urged. *See id*. at 922, 926. Rather, the phrase "the time of application for admission" in § 1182(a)(7) "refer[s] to the moment an immigrant applies to physically enter the country"—that is, "the time of a real event: an actual application for admission." *Id*. at 926–28. Likewise, under § 1225(b)(2)(A), an "applicant for admission" is "seeking admission" only when they are requesting permission to lawfully enter the country.

Section 1225(b)(2)(A)'s focus on noncitizens "seeking admission" at the border is also reinforced by its neighboring provisions. For example, § 1225(a)(4) provides that "[a]n alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States." *Id*. This provision naturally refers to a noncitizen who is making an "application for admission"—which, consistent with the statutory meaning of "admission," is defined as "the

application for admission *into* the United States," 8 U.S.C. § 1101(a)(4) (emphasis added). In such cases, the statute grants the noncitizen permission, at the immigration officer's discretion, to "withdraw" their application and "depart immediately." Conversely, a noncitizen like Petitioner who is living in the country and placed in removal proceedings has no option to "withdraw" any application for admission and depart; instead, he must seek permission to leave the country in the form of voluntary departure. *See* 8 U.S.C. § 1229c.

Indeed, where Congress wished to apply § 1225(b)'s procedures based on noncitizens' presence in the country, it did so explicitly. Section 1225(b)(1)(A)(iii) gives the Executive the option of applying § 1225(b)(1)'s expedited removal provisions to certain noncitizens who are present without having been admitted or paroled and who are unable to demonstrate continuous physical presence for up to two years. Section 1225(b)(2)(A) provides no comparable authority. Instead, Congress limited § 1225(b)(2)(A)'s application to noncitizens who are "seeking admission"—a term noticeably absent from § 1225(b)(1)(A)(iii). This is "a distinction *with* a difference"—namely, § 1225(b)(2)'s focus on noncitizens seeking admission at the border, and not noncitizens who are present in the country. *See Esteras v. United States*, 606 U.S. 185, 196 (2025).

Lastly, treating noncitizens who entered the country without admission as "seeking admission" under § 1225(b)(2)(A), and therefore subject to mandatory

detention, would nullify large swaths of § 1226(a), under which such individuals are eligible for release on bond. But courts "aim[] for harmony over conflict in statutory interpretation." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 511 (2018). *See also* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 180 (2012) ("The imperative of harmony among provisions is more categorical than most other canons of construction . . .."). Here, nothing in the language, history, or context of § 1225(b)(2) requires treating noncitizens who have entered the country without inspection as subject to that provision, and §§ 1225(b)(2) and 1226(a) can and should be construed harmoniously.

2. IIRIRA confirms that § 1225(b)(2) does not apply to millions of noncitizens living in the United States.

The enactment history of IIRIRA confirms that § 1225(b)(2) cannot possibly apply to Mr. Santillan Quiroz. In passing IIRIRA, Congress was acutely concerned about the strain on detention capacity that § 1226(c)'s new detention mandate would impose by requiring the detention of an estimated 45,000 noncitizens subject to removal on criminal grounds each year. *See* H.R. Rep. No. 104-469, pt. 1, at 118, 120, 123. To address the problem, Congress authorized an option to defer implementation of § 1226(c) for two years while the agency built up its detention capacity—an option the government promptly invoked. IIRIRA § 303(b), 110 Stat. 3009-586 to 3009-587; Doris Meissner, Comm'r, INS to Henry J. Hyde, Chairman,

S. Comm. on the Judiciary, Letter Invoking IIRIRA Transitional Period Custody Rules (Oct. 3, 1997). *available at*: https://perma.cc/HFF9-MY3N.

It is implausible that the same Congress that showed such solicitude regarding § 1226(c)'s detention mandate simultaneously enacted the largest expansion of mandatory detention in U.S. history by imposing detention for *millions* of people under § 1225(b)(2)—without a whisper in the statutory text or congressional record.[6] Surely, "if Congress had such an intent, Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it at some point." *Chisom v. Roemer*, 501 U.S. 380, 396 (1991); *see also Whitman v. Am. Trucking Assocs.*, 531 U.S. 457, 468 (2001) (Congress does not "hide elephants in mouseholes.") (additional citations omitted).

The concern with detention capacity also helps explain why Congress sought to preserve bond eligibility for noncitizens arrested in the interior. *See* H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210. Applying the government's proposed rule would have overwhelmed the detention system by requiring the mandatory detention of potentially millions of people if and when the government

[6] The estimated population of noncitizens in the United States who entered without inspection was about two million in 1996 and is around six million today. *See* H.R. Rep. No. 104-469, pt. 1, at 111 (estimating that individuals who entered without inspection made up about half of four million "illegal alien[s]" then living in country); Jill Wilson, et al., Cong. Rsch. Serv., R47848, Nonimmigrant Overstays: Overview and Policy Issues, at 1 n.6 (2023).

encountered them. Even when DHS applied § 1225(b)(2) only to noncitizens arriving at the border and ports of entry, "DHS has never had sufficient detention capacity to maintain in custody every single person described in section 1225." *Texas*, 597 U.S. at 792 (internal quotation marks and citation omitted). The government remains incapable of that undertaking, even with the recent expansions in detention capacity.

Not to mention that this new class of mandatory detainees would have included the parents and grandparents of U.S. citizens, noncitizens with no criminal record, trafficking and domestic violence survivors, and longtime residents like Petitioner. Congress reasonably declined to require the use of detention resources on long-term residents with family and community ties like Petitioner by permitting their release on bond.

Finally, as set forth in greater detail below, Congress's enactment of these detention rules was consistent with the established constitutional "distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *Zadvydas*, 533 U.S. at 693; *see also Castañon-Nava*, 161 F.4th at 1061 ("[T]he difference in treatment between a noncitizen at the border and one already in the United States fits within the broader context of our immigration law."). That difference would have provided ample

reason—and indeed, obligation—for Congress to preserve access to bond hearings, even while it made other changes that diminished (but did not eliminate) procedural protections for noncitizens who entered without inspection.

II. Constitutional Avoidance Warrants Rejecting the Government's Reading of the Detention Statutes.

If there were any remaining doubt as to the detention statutes' interpretation, the canon of constitutional avoidance compels rejection of the government's novel detention mandate. Under that canon, where a statute can "fairly" be construed to avoid creating a serious constitutional problem, the court is obliged to adopt such a construction because Congress should not be presumed to have legislated so close to the constitutional line. *Almendarez-Torres v. United States*, 523 U.S. 224, 238 (1998). While Petitioner believes there is only one plausible interpretation of the statute, at a minimum, the detention statutes can and should "be construed to avoid serious constitutional doubts." *FCC v. Fox Television Stations*, *Inc.*, 556 U.S. 502, 516 (2009). The avoidance canon has particular force when, as here, an agency claims expansive and constitutionally-suspect authority that runs contrary to how the statute has been understood. *Cf. West Virginia v. EPA*, 597 U.S. 697, 725 (2022) ("established practice" and the "want of assertion of power" by the government are "equally significant in determining whether such power was actually conferred" (internal quotation marks omitted)).

Detaining Mr. Santillan Quiroz without a bond hearing under § 1225(b)(2) raises serious due process concerns. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Fifth Amendment's Due Process Clause protects all persons who have entered the country—even those who have entered illegally—from unjustified deprivations of liberty. *See id.* at 693; *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903); *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025); *Leng May Ma*, 357 U.S. at 187. Here, Mr. Santillan Quiroz's no-bond detention raises both grave procedural and substantive problems.

Procedural due process. The government cannot deprive individuals of liberty without "strong procedural protections." *Zadvydas*, 533 U.S. at 691. This includes a hearing before a neutral decisionmaker to ensure that detention is serving legitimate purposes. *See id*. (citing *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *United States v. Salerno*, 481 U.S. 739, 747, 750–52 (1987); *Foucha*, 504 U.S. at 81–83). An application of the classic balancing test from *Mathews v. Eldridge*, confirms that individuals like Mr. Santillan Quiroz are both entitled to a bond hearing and should be released based on the immigration judge's bond order. *See* 424 U.S. 319, 335 (1976) (weighing nature of "the private interest" being deprived, "the risk of an erroneous deprivation," and government's interests).

As to the private interest, Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). This interest is elevated for a civil detainee like Mr. Santillan Quiroz when, as here, he is "incarcerated under conditions indistinguishable from those imposed on criminal defendants" serving sentences "for violent felonies and other serious crimes." *Velasco Lopez v. Decker*, 978 F.3d 842, 850-51 (2d Cir. 2020); *see Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (similar). Moreover, Mr. Santillan Quiroz is not only locked behind bars in a private jail but also separated from his loved ones including his wife and U.S. citizen stepdaughter. App. 9.

As to the second *Mathews* factor, the risk of erroneous deprivation is clear: as the immigration judge recognized, Mr. Santillan Quiroz is an excellent candidate for release on bond due to the length of his residency in the United States and his strong family ties. App. 9. Yet he remains jailed because the government has deemed him ineligible for bond.

As to the last *Mathews* factor, the government cannot identify any interest that justifies depriving Mr. Santillan Quiroz of his liberty for months (or even years), when he poses no flight risk or danger. The government has no legitimate interest in "separat[ing] families and remov[ing] from the community breadwinners, caregivers, parents, siblings, and employees" like Mr. Santillan Quiroz. *Velasco*

Lopez, 978 F.3d at 855. Indeed, allowing for bond would *reduce* fiscal and administrative burdens associated with unnecessary detention, which saves money and *benefits* the public. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (noting that "[t]he costs to the public of immigration detention are 'staggering'").

Substantive due process. Construing the statute to mandate Mr. Santillan Quiroz's no-bond detention raises substantive due process problems because it imposes detention that is not reasonably related to a legitimate government interest—namely, the prevention of flight or protection of public safety. *See Zadvydas*, 533 U.S. at 690–91 (civil detention violates due process unless there is a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint") (citation and internal quotation marks omitted). Here, the government has jailed Mr. Santillan Quiroz based solely on its novel interpretation of the detention statutes, and not because he poses a flight risk or danger.

Finally, it is clear the statute can be "fairly" construed to avoid these serious due process problems, *see Almendarez-Torres*, 523 U.S. at 237, given that this is precisely how it was interpreted by the Executive for the past nearly 30 years over five administrations. Given the text, structure, and history, the Court can reasonably read § 1226(a) to apply to Mr. Santillan Quiroz because he is inadmissible for

entering without inspection, and read § 1225(b)(2) not to apply to him because he is not seeking admission to the United States.

III. Detaining Petitioner Without a Bond Hearing Violates His Due Process Rights.

If the Court nonetheless concludes that § 1225(b)(2) applies, it should find that its application to noncitizens like Mr. Santillan Quiroz who are present in the country, in some cases for years, violates the Due Process Clause.

As set forth above, applying the statute to Mr. Santillan Quiroz would offend both procedural and substantive due process. The government's mandatory detention of Petitioner—a person who has lived in the United States for about 20 years and has strong family ties in this country—was neither "carefully limited," *Salerno*, 481 U.S. at 755, nor "narrow," *Zadvydas*, 533 U.S. at 690, and had nothing to do with flight risk or public danger, as due process requires. In addition, Petitioner's mandatory detention lacked the most basic requirement of due process—a hearing before a neutral adjudicator to ensure that the purposes of such detention are being served. The balancing test from *Mathews v. Eldridge*, makes this clear. *See Landon*, 459 U.S. at 34 (applying *Mathews* in immigration context to analyze due process violation).

The district court rejected Petitioner's due process claim on the basis that "a six-month detention period is presumptively constitutional before the government must release a removable alien" who shows no significant likelihood of removal in

the foreseeable future. App. 122 (quoting *Zadvydas*, 533 U.S. at 701). Petitioner has already been detained for four months as of this filing, and will be detained for months longer by the time this Court resolves this appeal. His due process claim is therefore not "premature," *id.*, especially in light of the grave, process-free deprivation of liberty he is experiencing now.

Absent an individualized bond hearing to assess dangerousness and flight risk, detention of noncitizens like Petitioner violates due process. Thus, if this Court finds the INA cannot be construed to avoid the constitutional question, it should hold Petitioner's detention without a bond hearing unconstitutional.

CONCLUSION

The Court should reverse the district court's denial of habeas relief and remand with instructions to grant the habeas petition and order Petitioner's release, or in the alternative, a bond hearing.

Dated: March 24, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(a), 32(g) and 27(d), I hereby certify that this motion is compliant with the type-volume limitations contained in the rules as follows:

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 10,236 words.
2. This brief complies with the typeface requirements of Fed. R. App. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced and easy-to-read typeface using Microsoft Word in 14-point size font.

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2026, I electronically filed the foregoing Certificate with the Clerk for the United States Court of Appeals for the Tenth Circuit by using the CM/ECF system. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

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STATUTORY ADDENDUM

Key Provisions of Immigration and Nationality Act (INA)

Note: The text in red below reflects the amendments made by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

8 U.S.C. § 1226 - Apprehension and detention of aliens

(a) Arrest, detention, and release

On 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. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence to a term of imprisonment of at least 1 year, ~~or~~

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title, or

(E)

(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and

(ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

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 again for the same offense.

(2) Definition

For purposes of paragraph (1)(E), the terms "burglary", "theft", "larceny", "shoplifting", "assault of a law enforcement officer", and "serious bodily injury" have the meanings given such terms in the jurisdiction in which the acts occurred.

(3) Detainer

The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by

the Federal, State, or local officials, shall effectively and expeditiously take custody of the alien.

(~~2~~4) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention ~~or release~~ of any alien or the ~~grant,~~ revocation~~,~~ or denial of bond or parole.

(f) Enforcement by attorney general of a State

The attorney general of a State, or other authorized State officer, alleging an action or decision by the Attorney General or Secretary of Homeland Security under this section to release any alien or grant bond or parole to any alien that harms such State or its residents shall have standing to bring an action against the Attorney General or Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subsection to the greatest extent practicable. For purposes of this subsection, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of $100.

8 U.S.C. § 1225 - Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants 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.

(2) Stowaways

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the 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 under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has 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 under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) "Credible fear of persecution" defined

For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) "Asylum officer" defined

As used in this paragraph, the term "asylum officer" means an immigration officer who—

(i) has professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) Commonwealth of the Northern Mariana Islands

Nothing in this subsection shall be construed to authorize or require any person described in section 1158(e) of this title to be permitted to apply for asylum under section 1158 of this title at any time before January 1, 2014.

(2) Inspection of other aliens

(A) In general

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.

(B) Exception

Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

(3) Enforcement by attorney general of a state

The attorney general of a State, or other authorized State officer, alleging a violation of the detention and removal requirements under paragraph (1) or (2) that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this paragraph to the greatest extent practicable. For purposes of this paragraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of $100.

(4) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

(c) Removal of aliens inadmissible on security and related grounds

(1) Removal without further hearing

If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information

The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority relating to inspections

(1) Authority to search conveyances

Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens

Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence

The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

(4) Subpoena authority

(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any

matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RIGOBERTO SANTILLAN QUIROZ, Petitioner, v. SCARLET GRANT, *et al.*, Respondents.	)	Case No. CIV-25-1349-PRW

ORDER

Before the Court is a Report and Recommendation (Dkt. 10), which recommends that the Court grant in part Petitioner's Petition for Writ of Habeas Corpus (Dkt. 1) and order Respondents to either provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) or release him. Respondents timely objected (Dkt. 11). For the reasons given below, the Court declines to adopt the Report and Recommendation (Dkt. 10) and **DENIES** the Petition (Dkt. 1).

Background

This is a habeas claim, filed pursuant to 28 U.S.C. § 2241(c)(3).[1] Petitioner illegally entered the United States in or about 2006 without first being inspected or admitted.[2] Petitioner represents that his residency in the United States has continued uninterrupted for

[1] "Challenges to immigration detention are properly brought directly through habeas." Report and Recommendation (Dkt. 10), at 4 (quoting *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004)).

[2] R&R (Dkt. 10), at 3.

approximately nineteen years.[3] On November 2, 2025, ICE arrested Petitioner and placed him in removal proceedings pursuant and detained him pursuant to 8 U.S.C. § 1225(b)(2)(A) because he entered the country without inspection.[4] Petitioner, however, believes he is detained pursuant to 8 U.S.C. § 1226(a), which doesn't require detention and permits bond when detention occurs, and thus he requests that he either receive a detention hearing or be released.

Legal Standard

The Court must "determine de novo any part of the magistrate judge's disposition that has been properly objected to."[5] An objection is "proper" if it is both timely and specific.[6] A specific objection "enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties' dispute."[7] Additionally, "[a]n 'objection' that merely reargues the underlying motion is little different than an 'objection' that simply refers the District Court back to the original motion papers; both are insufficiently specific to preserve the issue for de novo review."[8] In the absence of a proper

[3] Pet. (Dkt. 1), ¶22.

[4] R&R (Dkt. 10), at 3.

[5] Fed. R. Civ. P. 72(b)(3).

[6] *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1059 (10th Cir. 1996).

[7] *Id.* (citation and internal quotation marks omitted).

[8] *Vester v. Asset Acceptance, L.L.C.*, No. 1:08-cv-01957-MSK-LTM, 2009 WL 2940218, at *8 (D. Colo. Sept. 9, 2009) (citing *One Parcel of Real Prop.*, 73 F.3d at 1060).

objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate.[9]

Analysis

I. Petitioner is detained under 8 U.S.C. § 1225(b)(2).

For the reasons given in the Court's Order in *Sosa v. Holt*, the Court finds that, because Petitioner entered the United States without admission or inspection, he is properly detained pursuant to 8 U.S.C. § 1225(b)(2).[10]

II. Petitioner has failed to show a due process violation.

Petitioner has been in ICE custody since November 2, 2025.[11] As in *Sosa,* "Petitioner's half-hearted due process claim merely quotes the Fifth Amendment, points to a short, non-doctrinal snippet from *Zadvydas v. Davis*, and then quite conclusory states that he has a fundamental liberty interest in 'being free from official restraint[,]'" and that he suffers a violation of his right to due process in not receiving a bond redetermination hearing.[12] *Zadvydas* states that a six-month detention period is presumptively constitutional before the government must release a removable alien who shows "that there is no significant likelihood of removal in the reasonably foreseeable future[.]"[13] The Court accordingly denies Petitioner's premature due process claim.

[9] *Summers v. State of Utah*, 927 F.2d 1165, 1167–68 (10th Cir. 1991).

[10] *See Sosa v. Holt*, Case No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026).

[11] Pet. (Dkt. 1), ¶22.

[12] *Sosa*, at *5.

[13] *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Conclusion

Accordingly, the Court declines to adopt the Report and Recommendation (Dkt. 10) and **DENIES** the Petition (Dkt.1). A separate judgment will follow.

IT IS SO ORDERED this 13th day of January 2026.

PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RIGOBERTO SANTILLAN QUIROZ, Petitioner, v. SCARLET GRANT, *et al.*, Respondents.	)	Case No. CIV-25-1349-PRW

JUDGMENT

In accordance with the Court's Order entered this date, the Petition for Writ of Habeas Corpus is **DENIED**. This judgment fully and finally resolves all claims and terminates this civil action.

ENTERED this 13th day of January 2026.

PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE