UNITED STATES DISTRICT COURT

DISTRICT OF NEBRASKA

CARLOS ROLDAN CHANG,

Plaintiff-Petitioner,

v.

KRISTI NOEM, in their official capacity as Secretary of the United States Department of Homeland Security;
PAMELA BONDI, in their official capacity as Attorney General of the United States;
TODD M. LYONS, in their official capacity as Acting Director of the United States Immigration and Customs Enforcement;
DAVID EASTERWOOD, in their official capacity as Acting St. Paul Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement; and,
WARDEN OF McCOOK DETENTION CENTER, in their official capacity.

Defendant-Respondents.

Case No. _____

COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF; VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Plaintiff-Petitioner, Carlos Roldan Chang, ("Petitioner") is a noncitizen and a resident of the United States for over twenty years who is currently detained at the Immigration and Customs Enforcement ("ICE") McCook Detention Center in McCook, Nebraska.

2. Petitioner is illegally detained by Respondents, whose new reinterpretation of longstanding immigration detention statutes wrongfully denies Petitioner eligibility for bond under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d)(1). Instead, pursuant to this new policy, Respondents now consider Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and without the opportunity for release on bond during the pendency of his lengthy removal proceedings. *See* Ex. 1, ICE Memo: Interim Guidance Regarding Detention (July 8, 2025).

3. Petitioner was detained by Respondents on December 03, 2025, when the Department of Homeland Security ("DHS") placed him in immigration removal proceedings pursuant to 8 U.S.C. § 1229a by serving Petitioner with a Notice to Appear ("NTA"). Ex. 2, Notice to Appear (Dec. 3, 2025). DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), someone who entered the United States without inspection; and, 8 U.S.C. § 1182(a)(7)(A)(i)(I), someone who was not in possession of valid, unexpired immigration documents at the time of application for admission—December 03, 2025. *Id.* at 4. Petitioner is represented in immigration removal proceedings by counsel, who sought a bond for him. *See* Ex. 3, Motion for Bond Redetermination (Jan. 9, 2026).

4. On January 15, 2026, the Immigration Judge ("IJ") denied Petitioner's bond request after finding that the EOIR "has no jurisdiction to issue a bond" under [8 U.S.C. 1225(b)(2)(A)] and *Matter of Yajure Hurtado*, 29 I&N 216 (B.I.A 2025). *See* Ex. 4, Order of Immigration Judge Denying Bond Hearing.

5. Petitioner remains in the physical custody of Respondents at the ICE McCook Detention Center in McCook, Nebraska. He faces unlawful detention because DHS has refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista*. Respondents are wrongly subjecting Petitioner to mandatory detention and have denied him a bond hearing under 8 U.S.C. § 1225(b)(2)(A) *See* Ex. 5, Chief IJ Memo Re: MB-Not National Stay.

6. Petitioner brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Bond Eligible Class certified in *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

7. Petitioner alternatively seeks to enforce his individual right to immediate release or a bond hearing under 8 U.S.C. § 1226(a).

8. Petitioner seeks relief under 28 U.S.C. § 2241 and asks for his immediate release from detention.

9. Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista* and contrary to 8 U.S.C. § 1226(a). This Court should accordingly order that within one day Respondent DHS must release Petitioner. Alternatively, the Court should order Respondents to provide a bond hearing under 8 U.S.C. § 1226(a) within seven days, and order Petitioner's release immediately if said order is not complied with.

JURISDICTION AND VENUE

10. Petitioner is in the physical and legal custody of Respondents. Petitioner is detained by ICE at the McCook Detention Center in McCook, Nebraska and within the jurisdiction of this Court.

11. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Nebraska, the judicial district in which Petitioner currently is detained.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless this Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

16. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (quoting *Ruby v. United States*, 341 D.2d 585, 587 (9th Cir. 1965)).

17. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

PARTIES

18. Petitioner is a forty-four-year-old citizen of Guatemala who has lived in the United States since 2005. Prior to his detention, he lived in Des Moines, Iowa and worked full-time in construction. He has been in immigration detention since December 03, 2025. *See* Ex. 2. After Petitioner was arrested in Polk County, Iowa, ICE did not set bond, and Petitioner requested review of his

custody by the IJ, *See* Ex. 5. Although Petitioner has resided in the United States for at least twenty years, Petitioner was denied bond by an IJ based on an incorrect interpretation of law. *See* Ex. 4.

19. Respondent Kristi Noem is the Secretary of DHS. They are responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"), and oversees ICE, which is responsible for Petitioner's detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in their official capacity.

20. Respondent Pamela Bondi is the Attorney General of the United States. They are responsible for the Department of Justice ("DOJ"), of which the Executive Office for Immigration Review ("EOIR") and the immigration court system it operates is a component agency. They are sued in their official capacity.

21. Respondent Todd M. Lyons is the Acting Director of ICE. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner. They are sued in their official capacity.

22. Respondent, David Easterwood is the Acting Director of the St. Paul Field Office of ICE's Enforcement and Removal Operations division. Acting Director Easterwood is a legal custodian of Petitioner. They are sued in their official capacity.

23. Respondents Secretary Noem, Attorney General Bondi, Acting Director Lyons, and Acting Director Easterwood shall be collectively referenced as the "Federal Respondents."

24. Respondent, Warden of the McCook Detention Center, is the custodian of the facility where Petitioner is detained. They have immediate physical custody of Petitioner. They are sued in their official capacity.

FACTS

25. Petitioner is a noncitizen resident of the United States since 2005. He is illegally detained by Respondents, based on their recent novel interpretation of longstanding immigration detention statutes, which Respondents hold precludes Petitioner from eligibility for bond under the INA, 8 U.S.C. § 1226(a), and for bond hearings under 8 C.F.R. §§ 1003.19(a), 1236.1(d). Respondents consider Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without the opportunity for release on bond during the pendency of his lengthy removal proceedings. *See* Ex. 1.

26. On January 15, 2026, the IJ denied Petitioner's bond request after finding that the immigration court "has no jurisdiction to issue a bond" under [8 U.S.C. 1225(b)(2)(A)] and *Matter of Yajure Hurtado*. *See* Ex. 4. Petitioner remains in the physical custody of Respondents at the ICE McCook Detention Center in McCook, Nebraska.

27. Petitioner is detained unlawfully because DHS has refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista* and have wrongly subjected Petitioner to mandatory detention and denied him a bond hearing under 8 U.S.C. § 1225(b)(2)(A) *See* Ex. 5.

28. On November 20, 2025, the district court in *Maldonado Bautista* granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, –F. Supp. 3d –, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, –F. Supp. 3d –, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

29. The declaratory judgment held that the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and thus must be considered for release on bond under § 1226(a)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

30. After apprehending Petitioner on December 03, 2025, DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), someone who entered the United States without inspection and 8 U.S.C. § 1182(a)(7)(A)(i)(I), someone who was not in possession of valid, unexpired immigration documents at the time of application for admission.

31. Petitioner has extremely limited criminal history, none of which removes him from the class or subjects him to mandatory detention. On October 1, 2017, in Polk County, Iowa, a group of men assaulted Petitioner in the bathroom of a nightclub. When a security guard intervened, he was reportedly struck by Petitioner's elbow as Petitioner was defending himself from the assault. Petitioner was originally charged with Assault under Iowa Code Section 708.2(6), a simple misdemeanor, although no injuries were observed by police. This charge resolved with a conviction for Disorderly Conduct under Iowa Code Section 723.4(1), a simple misdemeanor; Petitioner was sentenced to and paid a $65.00 fine. On November 25, 2025, Petitioner was arrested by law enforcement in Polk County, Iowa on a local warrant from April 04, 2021, for a charge of assault causing bodily injury. Petitioner unambiguously avers that he was not responsible for this offense, and the charge was quickly dismissed by the Iowa District Court for Polk County.

32. Petitioner has never been contacted by any immigration authorities prior to November 25, 2025, when ICE agents interviewed him at the Polk County Jail.

33. Petitioner's detention on the basis he is being removed under 8 U.S.C. § 1225 violates the plain language of the statute and its implementing regulations.

34. Petitioner seeks relief under 28 U.S.C. § 2241 and asks for his immediate release from detention.

35. IJs have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*. *See also* Ex. 5.

36. Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista.* Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his loved ones and community.

37. Any further argument for bond or appeal to the Board of Immigration Appeals ("BIA") is futile. The BIA has already adopted Respondents' flawed interpretation in *Matter of Yajure Hurtado*. DHS's new policy was issued "in coordination" with the DOJ. *See* Ex. 1. The EOIR—the immigration court system—is a component agency of DOJ. Finally, in other ongoing litigation with EOIR and the Attorney General, DOJ has affirmed its position that individuals like Petitioner are subject to detention under 8 U.S.C. § 1225(b)(2)(A).

LEGAL FRAMEWORK

Immigration and Nationality Act

38. Title 8 of the United States Code, Section 1221 *et seq*., controls the United States Government's authority to detain noncitizens during their removal proceedings.

39. The INA authorizes detention for noncitizens under four distinct provisions:

i. **Discretionary Detention**. **8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, it permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

ii. **Mandatory Detention of "Criminal" Noncitizens**. **8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

iii. **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for noncitizen applicants for admissions, such as those noncitizens arriving in the U.S. at a port of entry, border, or close in time and place to a border or port entry who have not been admitted or paroled into the U.S. and appear subject to removal from the U.S.

iv. **Detention Following Completion of Removal Proceedings**. **8 U.S.C. § 1231(a)** generally requires the detention for noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2), (6).

40. Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended last year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

41. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)("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***") (emphasis added).

42. In the decades that followed, most noncitizens who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

43. As discussed, Respondents have adopted an entirely new interpretation of the statute. *See* Ex. 1. The July 8, 2025 policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.* The policy applies regardless of when a person is apprehended and affects those who have resided in the United States regardless of length of time in the country.

44. This novel interpretation of the INA would require detention any time that immigration authorities arrest a noncitizen, impacting millions of immigrants residing in the United States who entered without inspection and who have not since been admitted or paroled.

45. IJs, having received directives to ignore *Madonado Bautista*, *see* Ex. 5, are now holding that they lack jurisdiction to determine bond for any person who has entered the United States without inspection, concluding such people are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), even if that person has resided here for months, years, or decades.

46. Contrarily, federal judges almost uniformly find that noncitizens who entered without inspection were properly detained under 8 U.S.C. §1226, with eligibility for release on bond. As it stands, "virtually every district court nationwide that has addressed these sections [has] found that § 1225 either does not or likely does not broadly apply to noncitizens already present within the United States." *S.D.B.B. v. Johnson,* 2025 WL 2845170, at *5 (M.D.N.C. 2025) (collecting cases).

> [T]he central issue in this case—the administration's new position that all noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* until their removal proceedings are completed—has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States.

Barco Mercado v. Francis, No. 25-cv-6582 (LAK), —F. Supp. 3d—, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (emphasis in original). *See also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

47. ICE cites 8 U.S.C. § 1225(a)(1) for the proposition that an applicant for admission is "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." *See* Ex. 1. ICE details its legal position as all noncitizens who have not been "admitted," regardless of how long they have been present in the United States, are subject to mandatory detention under 8 U.S.C. § 1225. This interpretation that all noncitizens who entered without inspection are subject to mandatory detention is simply incorrect when assessing the temporal tense of the language of the section. The phrase "seeking admission" describes a present

action taken by the noncitizens, rather than a status that all noncitizens who entered without inspection have and is most harmonious with the rest of the INA.

48. ICE's position requires a selective reading of 8 U.S.C. § 1225 regarding what constitutes an "applicant for admission" and when a noncitizen is "arriving in the United States." ICE's interpretation ignores the statute's "seeking admission" language, violating the rule against surplusage and negating the plain meaning of the statute. *See United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("'[E]very clause and word of a statute' should have meaning" (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)).

49. The BIA further attempts to justify a sleight of hand by saying an applicant must either have legal status or be "seeking admission." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221.

50. While the phrase "seeking admission" is undefined in 8 U.S.C. § 1225, it necessarily implies a present-tense action. *See Matter of M-D-C-V-*, 28 I.&N. Dec. 18, 23 (BIA 2020).

51. Under the regulations, an "arriving alien means an applicant for admission coming or attempting to come into the United States." 8 C.F.R. § 1.2. "In other words, an 'arriving alien' is an 'applicant' who is also doing something: 'coming or attempting to come into the United States.'" *Martinez v. Hyde*, 792 F.Supp.3d 211, 219 (D. Mass. 2025). This is the same as the text of 8 U.S.C. § 1225(b)(2)(A), "which applies where an individual is an 'applicant' who is also doing something: 'seeking admission.'" *Id.* "The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit." *M-D-C-V-*, 28 I.&N. Dec. at 23.

52. This interpretation is also most harmonious with other provisions of the INA. The phrase "seeking admission" is undefined in 8 U.S.C. § 1225 but necessarily implies a present-tense action. *See Matter of M-D-C-V-*, 28 I&N Dec. at 23. *See also Martinez v. Hyde*, 792 F.Supp.3d at 220.

53. The Federal Respondents have been arguing in the above cases that the phrase "applicant for admission" and "seeking admission" refer to the same thing, and that noncitizens "'seeking admission' is a broader class than those who are "applicants for admission.'" However, "[r]eading 'seeking admission' as a separate element from 'applicant for admission' comports with the plain language of § 1225." *Hernandez Marcelo v. Trump*, 801 F.Supp.3d 807, 820 (S.D. Iowa 2025). This is because "a noncitizen who is 'seeking admission' to the United States can be differentiated from a noncitizen who is already present in the United States. An 'applicant for admission' references to presence; 'seeking admission' refers to the present-tense action of seeking to be admitted." *Id.*

54. "Again, and importantly, [§ 1225] demonstrates that the categories 'applicants for admission' and 'seeking admission' are not coterminous." *Romero v. Hyde*, 795 F.Supp.3d 271, 284 (D. Mass. 2025). *See, e.g.*, *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 488 (S.D.N.Y. 2025) ("If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute."); *Martinez*, 792 F.Supp.3d at 220 (D. Mass. 2025) (Section 1225(b)(2)(A) "applies where an individual is an 'applicant' who is also doing something: 'seeking admission.' . . . [T]his interpretation has the added benefit of avoiding the presumptively suspect conclusion that the phrase 'seeking admission' has no separate meaning or effect at all.").

55. This interpretation avoids surplusage and is consistent with the plain language of the INA. The Federal Respondents' interpretation ignores the statute's distinct "seeking admission" language, violating the rule against surplusage and negating the plain meaning of the statute. *See Polansky*, 599 U.S. at 432 ("'[E]very clause and word of a statute' should have meaning" (*quoting Montclair*, 107 U.S. at 152).

56. The legislative history supports that noncitizens who entered without inspection are eligible for bond. The predecessor statute to 8 U.S.C. § 1226

governed deportation proceedings for all noncitizens arrested within the United States. *See* 8 U.S.C. § 1252(a)(1) (1994).

57. This predecessor statute, like 8 U.S.C. § 1226, included discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994) (stating a noncitizen in deportation proceedings may "be continued in custody [or] be released under bond[.]").

58. Upon passing 8 U.S.C. § 1226, Congress declared that the statute "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210 (same).

59. Congressional intent in passing the statute and in updating the predecessor statute show that the interpretation that best effectuates the statute's meaning is expressed in the plain language: that noncitizens who entered without inspection are eligible for bond and not subject to mandatory detention unless other conditions are met.

60. Respondents' argue, in other cases, that Congress must have intended all noncitizens who entered without inspection to be subject to mandatory detention based on a section of the House Report which explains a new distinction between "entry" and "admission" for the purpose of disallowing adjustment of status for noncitizens who entered without inspection. *Hurtado*, 29 I&N Dec. at 223-24 (BIA 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). This House Report section explains the application of 8 U.S.C. § 1255 and refers to the adjustment of an admitted noncitizen to lawful permanent residence status: *i.e.* an alien who was admitted with a tourist visa may adjust status to lawful permanent resident status while in the United States through marriage to a U.S. citizen. Contrarily, a noncitizen who enters without inspection and then marries a U.S. citizen cannot ask to adjust in the United States; they must adjust while outside of the United States. 8 U.S.C. § 1255 simply does not apply to application of mandatory detention.

61. The Federal Respondents are arguing for an executive policy goal which is not reflected in the actual law. Congress did not want noncitizens who entered without inspection to be able to adjust to lawful permanent resident status while in the United States. That does not mean Congress wanted them detained without bond. The Federal Respondents argument is "a policy argument, projected onto Congress." *Romero*, 795 F.Supp.3d at 287 (D. Mass. 2025).

62. "The correct distinction when assessing detention pending removal lies between those located in the United States and those located outside the United States." *Hernandez Marcelo*, 801 F.Supp.3d at 821. The reasoning is that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). The Federal Respondents' interpretation has major constitutional implications:

> Federal Respondents' argument as to congressional intent would allow anyone located in the United States to be examined by an immigration officer and detained without bond as if at the border, eschewing due process rights. Congressional intent does not point to this reading of the statute, nor can the Constitution tolerate such a reading.

Id.

63. The Federal Respondents' legislative intent argument also conflicts with the Conference Report for IIRIRA, which twice stated that section 1225 would apply to "aliens arriving in the United States." H.R. Conf. Rep. No. 104-828 at 208-09 (1996). The Conference Report further stated that noncitizens who were deemed inadmissible under section [1225(b)(2)] would be referred for a hearing before an IJ, *id.* at 210, but did *not* say that all noncitizens would be subject to mandatory detention during removal proceedings. By comparison, the Conference Report specifically stated that the newly enacted "section [1226(c)] provides that the Attorney General *must* detain an alien who is inadmissible under section [1182(a)(2)] or deportable under new section [1227(a)(2)]." *Id.* at

211 (emphasis added). The report also stated that the newly enacted "section [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and *release on bond* an alien who is not lawfully in the United States." *Id.* at 210 (emphasis added). The Conference Report does not support the policy argument that Congress intended all noncitizens who are entered without inspection to be subject to mandatory detention under section 1225(b)(2)(A).

64. The Respondents' interpretation of 8 U.S.C. § 1225 as requiring mandatory detention of all noncitizens who entered without inspection renders 8 U.S.C. § 1226 superfluous.

65. While 8 U.S.C. § 1226(a) "expressly carves out certain 'criminal' noncitizens from its discretionary framework" it does not carve out an exception for noncitizens who would be subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025). Because there is an "express exception" to the discretionary framework, the statute "implies that there are no other circumstances under which" detention is mandated for noncitizens. *Id.* (*citing Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)).

66. Interpreting 8 U.S.C. § 1225(b)(2) to mandate detention for a noncitizen who entered without inspection would contravene Congress's intent that the discretionary detention framework of 8 U.S.C. § 1226 would apply to all noncitizens arrested on a warrant except those subject to 8 U.S.C. § 1226(c)'s exceptions. *See Gomes*, 2025 WL 1869299, at *6 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) for the proposition "that Congress has created specific exceptions" to the applicability of a statute or rule "proves" that the statute or rule generally applies absent those exceptions).

67. Not only would ICE's interpretation of 8 U.S.C. § 1225(b)(2) make the exception to discretionary release superfluous, but it would also make the Laken Riley Act superfluous. *Gomes*, 2025 WL 1869299, at *6. The Laken Riley Act—which added 8 U.S.C. § 1226(c)(1)(E)—makes a noncitizen subject to mandatory

detention if he (i) is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) and (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes (the "criminal conduct criterion"). 8 U.S.C. § 1226. If 8 U.S.C. § 1225(b)(2) mandated detention of all noncitizens who entered without inspection, it would be completely unnecessary for Congress to also make them subject to mandatory detention if they had been arrested for specific crimes.

68. "[T]he canon against surplusage is strongest when an interpretation," such as Respondents' interpretation of 8 U.S.C. § 1225, "would render superfluous another part of the same statutory scheme." See *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013). It is the Court's "duty to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (cleaned up). Courts should be "reluctant to treat statutory terms as surplusage in any setting." *Id.* (cleaned up). The surplusage caused by the Laken Riley Act thus supports that Congress does not interpret the law in the same way as Federal Respondents and is not something to be brushed aside but rather a "cardinal principle of statutory construction." See *Williams v. Taylor*, 529 U.S. 362, 404 (2000). The Court presumes Congress wants to pass laws that will have effect and are not entirely superfluous. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995).

69. The tension between 8 U.S.C. §§ 1225 and 1226 compels the conclusion that they apply to different classes of noncitizens. The line historically drawn between these sections, consistent with the plain meaning of their text and the overall statutory scheme, is that § 1225 governs detention of non-citizens who are "seeking admission into the country," whereas § 1226 governs detention of non-citizens—like Petitioner—who are "already in the country." *See Jennings*, 583 U.S. at 289.

70. The Federal Respondents' "overlap" reasoning does not withstand scrutiny. Congress provided that noncitizens subject to section 1225(b)(2)(A) "shall be detained" during removal proceedings, while noncitizens subject to

section 1226(a) "may [be] release[d]" during such proceedings. Thus, as former Attorney General Barr explained, "section [1225] (under which detention is mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens." *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019). Presumably for this reason, the government has repeatedly conceded that sections 1225(b)(2)(A) and 1226(a) are "mutually exclusive." *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765, at *4 (E.D.N.Y. Sept. 29, 2025); *Lopez Benitez*, 795 F.Supp.3d at 485. It would make little sense and raise potential constitutional problems for Congress to let DHS simply choose whichever statute they prefer to detain a particular noncitizen.

71. The Federal Respondents' "overlap" argument that the executive can apply 8 U.S.C. § 1225 or 8 U.S.C. § 1226 in different circumstances as a matter of discretion, but that the Laken Riley Act removed Attorney General discretion is unavailing. Other district courts have found this analysis "misses the mark." *Pelico v. Kaiser*, No. 25-cv-072286-EMC, 2025 WL 2822876, at *14 (N.D. Cal. Oct. 3, 2025). Under the Respondents' interpretation of § 1225(b)(2), "there would already be automatic mandatory discretion for all of the non-citizens newly covered by 1226(c). In that case, there was no need to specifically provide for mandatory detention of those charged with certain crimes under Section 1226. The district court's reading does indeed render the Laken Riley amendment superfluous." *Id.* If all noncitizens present without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) regardless of criminal history, "there would have been no need for Congress to specify in [the Laken Riley Act] that such noncitizens are subject to mandatory detention under § 1226(c) when they met certain criminal conduct criteria." *Guerrero-Orellana v. Moniz*, 802 F.Supp.3d 297, 310 (D. Mass. 2025) (cleaned up).

72. Congress did not hide this important statutory provision for the Respondents to discover thirty years later. The Respondents' interpretation of 8 U.S.C. § 1225 and 8 U.S.C. § 1226 requires them to argue that almost all of the federal district courts deciding this issue are wrong, that the prior Attorneys

General, DHS, and BIA have been getting it wrong, and even they have been getting it wrong until a short time ago, when they *finally* discovered the true meaning of the statute. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, 802 F.Supp.3d 1297 (W.D. Wash 2025); *Flores v. Noem*, No. 5:25-cv-2490-AB-AJR, 2025 WL 3050062 (C.D. Cal. Sept. 29, 2025); *Mosqueda v. Noem*, No. 5:25-2304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 2670875 (C.D. Cal. July 28, 2025) (Federal Respondents were previously arguing "irreconcilable conflict" between sections 1225(b)(2)(A) and 1226(a) of the INA, and that the specific authority in section 1225(b)(2)(A) trumps the general authority of section 1226(a), rather than current "overlap" argument.).

73. The truth is far more mundane: everyone has been interpreting the statute correctly and Respondents want to make a new policy argument about what they believe the law should be by seizing upon one statutory provision (1225(b)(2)(A)) out of context. However, "Congress does not 'hide elephants in mouseholes' by 'alter[ing] the fundamental details of a regulatory scheme in vague terms or ancillary provisions." *Sackett v. EPA*, 598 U.S. 651, 677 (2023) (quoting *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001)).

74. As Respondents recognized in *Matter of Yajure Hurtado*, noncitizens who entered the country without being admitted were entitled to request release on bond prior to the passage of the IIRIRA. 29 I&N Dec. at 223 (citing INA § 242(a)(1) (1994), 8 C.F.R. § 242.2(c)(1) (1995)). If Congress intended to change the statute to make those millions of noncitizens subject to mandatory detention, it stands to reason that lawmakers would have done so directly. Congress did not, even as it enacted other provisions that expressly set forth categories of noncitizens subject to mandatory detention. *See, e.g.*, 8 U.S.C. §§ 1225(b)(1)(B)(ii), 1225(b)(1)(B)(iii)(IV), 1226(c) of the INA.

75. Adopting Respondents' position (*see* Exs. 1 & 5) of noncitizens already in the United States as "seeking admission" for the purposes of detention "would upend decades of practice." *Martinez*, 792 F.Supp.3d at 217 (D. Mass. 2025). "It

has been estimated that this interpretation would require the detention of millions of immigrants currently residing in the United States." *Id.*

76. This approach is so novel that it was not even contemplated by Congress when Congress passed the Laken Riley Act, which mandated detention for "non-citizens who meet certain criminal and inadmissibility criteria." *See id.* at 221. However, if "a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect. This is a presumptively dubious result." *Id.* (cleaned up). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone*, 514 U.S. at 397.

77. Although the court is not *bound* by agency interpretation of a statute, longstanding executive branch interpretation of a statute is an interpretive aid that can inform the court's understanding of the statute. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024). This is especially true when an interpretation was contemporaneous "with enactment of the statute and remained consistent over time," because the agency employees were often "masters of the subject," and they were frequently the ones who helped draft the laws they were called on to interpret. *Id.*

78. Respondents' interpretations defy the INA. As has been almost universally found, the plain text of the statutory provisions demonstrates that 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), applies to noncitizens who entered without inspection yet are living in the United States, like Petitioner.

79. 8 U.S.C. § 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a [noncitizen]."

80. The text of 8 U.S.C. § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).

81. By contrast, 8 U.S.C. § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Martinez*, 792 F.Supp.3d at 222.

82. This mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287.

83. Further, "[O]ur immigration laws have long made a 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).

Denial of Bond Eligible Class Membership under *Maldonado Bautista*

84. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

85. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

86. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a); Fed. R. Civ. P. 23(c)(3). *See Maldonado Bautista*, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

87. A federal court judgment binds those parties to the suit, 18A Wright & Miller § 4449, at 330, and a class action extends the relief granted to the named plaintiffs to the entire certified "class as a whole." Fed. R. Civ. P. 23(b)(2).

88. *Maldonado Bautista* held that Respondents Secretary Noem, Attorney General Bondi, Acting Director Lyons, and the local ICE Field Director and Detention Center Warden must release all members of the Bond Eligible Class

from custody or provide a bond redetermination hearing consistent with 8 U.S.C. § 1226(a). 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

89. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:
Petitioner is a member of the Bond Eligible Class and entitled to relief under *Maldonado Bautista*.

90. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

91. The *Maldonado Bautista* class is certified for all noncitizens in the United States without lawful status who:

i. have entered or will enter the United States without inspection;

ii. were not or will not be apprehended upon arrival; and

iii. are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

92. Petitioner satisfies all criteria for class membership:

i. Petitioner is a noncitizen in the United States without lawful status. Petitioner entered the United States without inspection in 2005.

ii. Petitioner was not apprehended upon arrival.

iii. Petitioner is not subject to detention under any applicable section:

a. Under 8 U.S.C. § 1226(c)(1)(A), Petitioner is not inadmissible by reason of having committed any offense covered in INA § 212(a)(2) ((A)(i)(I) (crimes involving moral turpitude("CIMT")); ((A)(i)(II) law relating to a controlled substance as defined in 802 of title 21); ((B) aggregate sentence

of 5 years or more); ((C) controlled substance traffickers); ((D) prostitution or commercialized vice)

b. Under 8 U.S.C. § 1226(c)(1)(B), Petitioner is not deportable by reason of having committed any offense covered in section 237(a)(2) (A)(ii) (multiple CIMTs); (A)(iii) (aggravated felony); (B) (controlled substances); (C) (firearms); (D) (miscellaneous but generally espionage and treason crimes).

c. Under 8 U.S.C. § 1226(c)(1)(C), Petitioner is not deportable under section 8 U.S.C. § 1227(a)(2)(A)(i) for having committed any CIMT where the term of imprisonment is at least one year. As discussed above, Petitioner has not committed a CIMT, and none of his offenses have resulted in a sentence of a term of imprisonment of at least 1 year.

d. Under 8 U.S.C. § 1226(c)(1)(D), Petitioner is not inadmissible under section 8 U.S.C. § 1182(a)(3)(B) or deportable under section 8 U.S.C. § 1227(a)(4)(B) because he is not a terrorist or a spy.

e. Under 8 U.S.C. § 1226(c)(1)(E), Petitioner has not been charged with, arrested for, convicted of, or admitted having committed 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.

f. Under 8 U.S.C. §1225(b)(1), Petitioner was not contacted at a port of entry or close in time or place thereto.

g. Under 8 U.S.C. § 1231(a), Petitioner is not the subject of a final removal order.

93. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

94. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

95. *Maldonado Bautista* held that Respondents Secretary Noem, Attorney General Bondi, Acting Director Lyons, and the local ICE Field Director and Detention Center Warden must release all members of the Bond Eligible Class, such as Petitioner, from custody or provide a bond redetermination hearing consistent with 8 U.S.C. § 1226(a). 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

96. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

SECOND CAUSE OF ACTION
Violation of Immigration and Nationality Act

97. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

98. The plain text of the INA requires that individuals detained under 8 U.S.C. § 1225(b)(2) be *seeking admission*. This requires a geographic, temporal, or both connection to the border and entry. As relevant here and explicated above, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings. Whereas 8 U.S.C. § 1226 does apply and allows individuals to be released on bond by an IJ.

99. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to Petitioner, who previously entered the country and has been residing in the United States for decades prior to being apprehended and placed in removal proceedings by Respondents.

100. The erroneous application of 8 U.S.C. § 1225(b) to Petitioner renders his continued detention unlawful and violates the INA.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue an order preventing Respondents from removing Petitioner from the jurisdiction;

c. Issue an order staying Petitioner's immigration removal case during the pendency of this proceeding;

d. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner;

e. Alternatively, issue a writ of habeas corpus ordering Respondents to provide a bond hearing under 8 U.S.C. § 1226(a) within seven days; and further that if no bond hearing is provided within seven days, ordering the immediate release of Petitioner;

f. Alternatively, issue order for Respondents to show cause as to why their detention of Petitioner is lawful;

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

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

	Dated: January 26, 2026 Respectfully submitted,
	CARLOS ROLDAN CHANG, Petitioner.
	By: */s/ Jamel J.W. Connor* Jamel J.W. Connor #27108 Grant L. Friedman, #27862 Jennifer M. Houlden, #23611 ACLU of Nebraska Foundation 134 S. 13th St. Ste. #1010 Lincoln, NE 68508 jconnor@aclunebraska.org gfriedman@aclunebraska.org jhoulden@aclunebraska.org (402) 476-8091 Attorneys for Petitioner

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing Complaint for Declaratory and Injunctive Relief; Petition for Habeas Corpus are true and correct.

Executed this 23rd day of January, 2026.

Carlos Chang