UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Fernando Gonzalez Guerrero, Petitioner, V. KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA BONDI, United States Attorney General; MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Respondents.	§ § § § § § § § § § § § § § § § § § § §	Civil Case No. 1:25-cv-1334-RP

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Fernando Gonzalez Guerrero, through counsel, respectfully submits this reply to Federal Respondents' Response to his Second Amended Petition for Writ of Habeas Corpus (Dkt. 21, filed October 29, 2025). Respondents' arguments largely rehash positions already rejected by this Court in its October 27, 2025, Order granting Petitioner's Motion for a Preliminary Injunction (Dkt. 20) ("PI Order"). The PI Order found that Petitioner's detention is governed by the discretionary provisions of 8 U.S.C. § 1226(a), not the mandatory detention provisions of 8 U.S.C. § 1225(b), and that the Board of Immigration Appeals' ("BIA") September 29, 2025, decision vacating the Immigration Judge's ("IJ") bond order—relying on the erroneous interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—violates the Immigration and Nationality Act ("INA").

2. Respondents' Response fails to undermine these findings or the arguments in Petitioner's Second Amended Petition (Dkt. 12) ("Petition"). To the contrary, the PI Order's analysis supports granting the Petition in full: vacating the BIA's decision, reinstating the IJ's July 23, 2025, bond order granting release on a $5,000 bond, and ordering Petitioner's immediate release upon posting bond. This Court should deny the Respondents' request to dissolve the Preliminary Injunction and grant the Petition without an evidentiary hearing.

I. FACTS

3. Petitioner is a native and citizen of Mexico who has lived in the U.S. for over twenty years. Petitioner was placed into removal proceedings after being released to ICE after a criminal arrest in Travis County, Texas, was dismissed. During those removal proceedings, Petitioner was granted bond by an immigration judge, but the order was vacated by the BIA under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

4. On October 27, 2025, this District Court granted a preliminary injunction ordering the Respondents to release the Petitioner under the $5,000 bond issued by the Immigration Judge on July 23, 2025. On October 31, 2025, the Petitioner was released by the Respondents. Upon release, the Petitioner was transferred to the Immigration Court's non-detained docket. Petitioner is scheduled for a Master Calendar Hearing in San Antonio, Texas, on July 13, 2026.

II. POTENTIAL LAWFUL STATUS

5. The Respondents claim that the petitioner has no claim to any lawful status in the U.S. that would permit him to reside lawfully in this country. Dkt. 21, at 4. However, the Petitioner has a viable path to lawful permanent residence through his pending VAWA Self-Petition and Adjustment of Status applications with USCIS. The Petitioner was subject to extreme cruelty and battery by his U.S. citizen stepson. The Petitioner sent an I-360 and I-485 concurrent forms to USCIS on August 25, 2025, and they are currently pending with the Service. His applications are likely to be approved, as his wife was also subject to similar bouts of extreme cruelty and battery by the same U.S. citizen son, and she was issued a *prima facie* determination by the Service, on November 25, 2024. Therefore, the Petitioner has a claim to lawful status in the U.S.

III. PETITIONER'S DETENTION VIOLATES THE INA, AS THIS COURT FOUND IN THE PI ORDER

6. Respondents maintain that Petitioner was lawfully detained under § 1225(b) as an "applicant for admission" pending "full" removal proceedings. Dkt. 21, at 4-10. This repeats DHS's flawed argument before the BIA, which relied on *Matter of Yajure Hurtado* to interpret § 1225(b) as mandating detention for all "applicants for admission," including long-term interior

residents like Petitioner. But as this Court held in the PI Order, Petitioner's detention is governed by § 1226(a)'s discretionary provisions, not § 1225(b)'s mandatory ones. The BIA's interpretation violates the INA's plain text.

7. Section § 1226(a) does not apply only to aliens who were admitted to the U.S. and then placed in removal proceedings. There is no indication that Congress intended § 1226 to be limited to visa overstays or deportable permanent residents, "And there is nothing in the history or application of § 1226 to even remotely suggest that it was intended to have such a narrow reach." *Lopez Benitex v. Francis*, No. 25 CIV. 5937 (DEH), 2025, WL 2371588 at 8.

8. The Respondents cite *Martinez v. Mukasey*, 519 F. 3d 532, 541–42 (5th Cir. 2008) to argue that "admission" is a lawful entry into the U.S. after inspection by an immigration officer. However, again, that is not relevant, and there is no indication that § 1226(a) only applies to "admitted" aliens. There is no practice indication in the last 30 years that § 1226(a) only applies in such a narrow way.

9. Section § 1225(b) applies to noncitizens "seeking admission" who are not "clearly and beyond a doubt entitled to be admitted." This has been construed as aliens who have recently arrived in the U.S. and are actively *seeking admission*, not a citizen who has been residing in the country for years. (PI Order at 4; 8 U.S.C. § 1225(b)(2)). Petitioner, a Mexican citizen residing in the U.S. for over 20 years with U.S. citizen children, stable employment, and no criminal convictions, was apprehended in the interior after a dismissed assault charge—not while "seeking admission." He was arrested on a Warrant for Arrest of Alien, triggering § 1226(a), which allows release on bond after a hearing finding no flight risk or danger—as the IJ did here.

10. The PI Order correctly rejected Respondents' broad reading of "applicant for admission," noting that § 1226(a) provides procedural protections (e.g., bond hearings) not available under § 1225(b), and that § 1226(a) applies to long-term EWIs. *Matter of Yajure Hurtado*'s expansion of § 1225(b) to interior apprehensions contravenes the statute and Supreme Court precedent. (Pet. at 7; PI Order at 6, citing *Jennings*, 583 U.S. at 288). Indeed, in *Jennings,* the High Court determined that U.S. immigration law authorizes the government to detain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c). *Id.* In that case, the U.S. Solicitor General answered in oral arguments that an alien who takes up residence 50 miles from the border is held under § 1226(a) and is entitled to a bond hearing. Sec. Amnd. Pet. at 7. The Respondent's novel interpretation departs from long-standing precedent and practice.

11. The Respondents argue that the Laken Riley Act would not be superfluous with this novel interpretation. However, multiple federal district courts nationwide, including this Court, have determined that the amendment would make no sense because all aliens who entered without inspection would be subject to mandatory detention, and there was no need to add the criminal aliens subcategories in the amendment. PI Order at 6.

12. Consequently, the Petitioner falls under § 1226(a) and the Respondents are violating the INA, long-standing agency practice, and regulations. This Court should grant the Petitioner's writ for habeas corpus.

IV. THIS COURT HAS JURISDICTION TO REVIEW THE PETITIONER'S CLAIMS

13. Respondents argue that this Court lacks jurisdiction under 8 U.S.C. §§ 1226(e), 1225(b)(4), and 1252(b)(9), asserting that Petitioner's claims challenge a discretionary bond

decision or must be channeled to the circuit court after a final order of removal. (Resp. at 11). These arguments are unavailing. The Petition raises pure questions of law—whether Petitioner's detention is governed by § 1226(a) or § 1225(b)—and constitutional claims under the Fifth Amendment, over which this Court has habeas jurisdiction under 28 U.S.C. § 2241.

14. Under 28 U.S.C. § 2241(c)(3), a writ for habeas corpus shall not extend to a prisoner unless he is in custody in violation of the Constitution or *laws* of the United States. Here, as explained above and in the PI order, the Petitioner is being detained in violation of the INA because his detention is governed by § 1226(a), not § 1225(b). Therefore, the Court has jurisdiction to grant a writ for habeas corpus because the Petitioner's detention is in violation of the INA.

15. Additionally, § 1226(e) does not bar review. That provision precludes review of discretionary bond decisions, but the Petition challenges the BIA's legal interpretation that mandatory detention under § 1225(b) applies to long-term residents like Petitioner, apprehended in the interior after entering without inspection over 20 years ago. This is a question of law, not discretion.

16. Moreover, § 1225(b)(4) does not mandate channeling claims to removal proceedings. Respondents mischaracterize the Petition as challenging DHS's "initial decision to detain" Petitioner as an "applicant for admission." But the Petition contests the BIA's erroneous application of § 1225(b) to vacate the IJ's bond order, not the initial detention. Even if § 1225(b)(4) applied—which it does not, as Petitioner is not "seeking admission" (PI Order at 3-11)—the provision does not divest district courts of habeas jurisdiction over pure legal questions. 28 U.S.C. § 2241(c)(3)

17. § 1252(b)(9) does not bar review. That channeling provision applies to claims arising from a final order of removal, but Petitioner's detention claim is independent and seeks immediate relief from unlawful custody. Habeas jurisdiction exists for as-applied constitutional challenges and questions of law, even if facial challenges to § 1225(b) fail. Respondents concede that as-applied challenges may be brought in district court "under certain circumstances" (Resp. at 14), yet fail to explain why those circumstances are absent here, where Petitioner's detention without bond violates due process, and a writ for habeas corpus may be issued where detention is in violation of U.S. laws.

V. PETITIONER'S DETENTION ALSO VIOLATES DUE PROCESS AND BOND REGULATIONS

18. Although the statutory violation suffices to grant the Petition, Respondents' Response also fails to rebut Petitioner's constitutional and regulatory claims. The BIA's application of § 1225(b) deprives Petitioner of liberty without due process, as had been detained since July 17, 2025, without a meaningful bond hearing. Respondents argue no "as-applied" violation because detention is neither "prolonged nor indefinite," but this ignores that mandatory detention under an erroneous interpretation is inherently unconstitutional as applied to interior residents like Petitioner. The PI Order's finding of likely statutory success implies a due process violation, as § 1226(a) affords protections § 1225(b) does not.

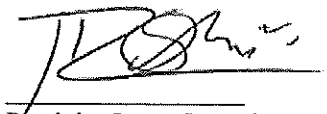
VI. PETITIONER IS ENTITLED TO RELIEF, INCLUDING ATTORNEY'S FEES

19. Respondents deny entitlement to relief, including fees under the Equal Access to Justice Act ("EAJA"). Petitioner is likely to prevail on the merits. The Court should grant the Petition, vacate the BIA's decision, reinstate the IJ's bond order, and order immediate release

upon posting $5,000 bond. An evidentiary hearing is unnecessary, as the facts are undisputed.

Fees are warranted, as Respondents' position lacks substantial justification.

Respectfully submitted, November 3, 2025.



Patricio Garza Izaguirre
Attorney for the Petitioner

Garza & Narvaez, PLLC
7600 Chevy Chase Dr - STE 118
Austin, TX 78752

TX SBN 24087568

CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date a true and correct copy of this **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**, and all the attached documents described in the index above, were served to the following by the CM/ECF system:

1. KRISTI NOEM, Secretary of the United States Department of Homeland Security;
2. PAMELA BONDI, United States Attorney General;
3. MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
4. CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas;
5. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
6. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;
7. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

On November 3, 2025

Patricio Garza Izaguirre
Attorney for the Petitioner

Garza & Narvaez, PLLC
7600 Chevy Chase Dr - STE 118
Austin, TX 78752

TX SBN 24087568