

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

ERIC VINICIUS SILVA OLIVEIRA,

Petitioner,

- Versus -

BRYAN PATTERSON, *Warden*, Pine Prairie ICE)

Processing Center;

BRIAN ACUNA, Acting ICE New Orleans Field)

Office Director;

TODD M. LYONS, Acting Director, U.S.)

Immigration and Customs Enforcement;

SIRCE OWEN, Acting Director, Executive Office)

For Immigration Review;

KRISTI NOEM, Secretary of the U.S.)

Department of Homeland Security; and)

PAMELA BONDI, Attorney General of the)

United States in their official capacities,)

Respondents.

)
) NUMBER: 6:25-cv-01463
)
) JUDGE: Hon.David C. Joseph
)
) MAG. JUDGE: David J. Ayo

PETITIONER'S REPLY BRIEF
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND
ORDER TO SHOW CAUSE

I. ARGUMENT

A. Plain Language of 8 U.S.C. § 1226(a), INA § 236(a) Allows For Discretionary Release From Custody and a Bond Hearing Like Noncitizen Petitioner, Not Mandatory Detention Without Bond or Custody Redetermination Pursuant to 8 U.S.C. § 1225(b)(2), INA § 235(b)(2)

1. Respondents' reliance on *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that individuals who entered without inspection are "seeking admission" no matter how long they have been living in the United States and thus categorically subject to mandatory detention without bond eligibility under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), *see* Dkt. No. 14, is misplaced.

2. The U.S. Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 830 (2018), discussed the interplay between 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) relied upon by Respondents and 8 U.S.C. § 1226(a), INA § 236(a) relied upon by Petitioner.

3. The Court in *Jennings* found that the plain text in 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), which Respondents rely on for Petitioner's mandatory detention, applies to those entrants mainly "seeking admission" to the United States, during an inspection process, at the border or its functional equivalent; in contrast, the Court found that together with the structure of the larger statutory scheme the clear, unambiguous plain text of 8 U.S.C. § 1226(a), INA § 236(a) indicates that it applies mainly to noncitizen entrants, who are already present in the U.S. *See Id.*

4. Thus, Respondents' argument that INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) applies to detainees such as the Petitioner, who has already been present in the United States for over nine years, since 2016, is ineligible for release on bond, is misplaced.

5. Petitioner cannot be "seeking admission" into the United States during an inspection

process at or near the border, as alleged by Respondents pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), when he last entered the United States in 2016, as sixteen year old, granted humanitarian parole, and has been living in the United States since then, until he was arrested and detained by ICE in the interior of the United States, in August 2025.

6. Petitioner is not “seeking admission” into the United States, nor was he detained at the border or its functional equivalent. He was detained in Hartford, CT. Thus, he is not subject to detention pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) as DHS itself has acknowledged in the NTA issued on October 9, 2025, charging Petitioner under INA § 212(a)(6)(A)(i) that “you are an alien *present* in the United States” without being admitted or paroled (**Exhibit “A”**).

7. Thus, by Respondents’ own acknowledgment and admission, Petitioner is “present” in the United States and is not “seeking admission” into the United States at the border or its functional equivalent. Therefore, the mandatory detention authority under INA § 235(b)(2), 8 U.S.C. § 1235(b)(2) that mainly applies to entrants primarily “seeking admission” to the United States, during an inspection process, upon arrival into the United States, does *not* apply to the Petitioner who is “already present” and has been residing in the United States since 2016 until he was arrested and detained in the interior of the United States, in Hartford, CT, in August 2025.

8. Petitioner argues that he is instead eligible for release and a discretionary bond hearing pursuant to 8 U.S.C. § 1226(a), INA § 236(a) because he has already been present in the United States for over nine years, since he entered into the United States in 2016, when he was sixteen years old, granted humanitarian parole and was detained and arrested by ICE in the interior of the United States, in Hartford, CT in August 2025 and was *not* arrested at the border or its functional equivalent. *See* Dkt. No. 1.

9. Because Petitioner has already been present in the United States when he was detained and arrested in Hartford, CT, in 2025, under the plain, unambiguous and clear language of the statute, he is subject to the detention authority under 8 U.S.C. § 1226(a), INA § 236(a) and not under 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) and is subject to a discretionary release from detention and a bond hearing.

10. In addition, in *Kostak v. Trump*, No. 3:25-cv-0`092-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025), a similar case to Petitioner's case where the government Respondents argued that Petitioner – a noncitizen who entered the U.S. without inspection and was subsequently detained and arrested years later was “seeking admission”.

11. However, the Court held that the Petitioner was not “seeking admission” pursuant to 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) because he was already present in the United States and subject to 8 U.S.C. § 1226(a), INA § 236(a) and therefore entitled to a bond hearing.

12. Nor is *Matter of Yajure Hurtado* binding on this Court. Pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which ended the “Chevron deference doctrine” federal courts are required to use their “independent judgment” and no longer have to defer to administrative agencies’ – like the BIA (Board of Immigration Appeals), interpretation of ambiguous laws that they enforce.

13. Consequently, Respondents' reliance on the holding in *Yajure Hurtado* which denied bond eligibility to individuals, who entered without inspection, and are categorically subject to mandatory detention without bond under 8 U.S.C. § 1225(b)(2), INA § 235(b), is misplaced.

14. Courts are required to exercise their “independent judgment” and no longer have to defer to agency expertise in interpreting ambiguous statutes in the context of a larger statutory scheme. The Court in *Jennings* discussed the interplay between 8 U.S.C. § 1225(b)(2), INA §

235(b)(2) and 8 U.S.C. 1226(a), INA 236(a) and found that 8 U.S.C. § 1235(b)(2) mainly applies to noncitizens who arrive at the border, or its functional equivalent and are inspected, whereas 8 U.S.C. § 1226(a), INA § 235(a) applies mainly to noncitizens “already present” in the United States.

15. Moreover, more recently in the Laken Riley Act Public Law 119-1 enacted by Congress in 2025, amended 8 U.S.C. § 1226(c), INA § 236(c) to expand mandatory detention for certain noncitizens - including those arrested and charged or convicted of theft and related offenses, such as burglary, larceny or shoplifting or assault on a law enforcement officer.

16. Its placement in INA § 236(c), 8 U.S.C. § 1226(c) which governs mandatory detention of certain noncitizens who *are already present in the United States*.

17. It *does not apply* to those noncitizens “seeking admission” into the United States, upon arrival, or inspection at the border or its functional equivalent, which would have been placed in INA § 235(b), 8 U.S.C. § 1235(b).

18. The fact that Congress chose to place the provisions of the Laken Riley Act in that section which applies mainly to aliens already present in the United States, under 8 U.S.C. § 1226(a), INA § 236(a) and not in INA § 235(b), indicates Congress intended to expand mandatory detention to those noncitizens already present in the interior of the United States and not apply them to recent border arrivals. Thus, 8 U.S.C. § 1226(a), INA § 236(a) allows for discretionary release from custody and a bond hearing, like Petitioner.

19. The government’s theory also ignores the settled constitutional principle that meaningful review and an individualized determination of flight risk and danger are required for civil detention. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018). While *Jennings* upheld the

statutory bar on periodic bond hearings, it expressly left open the constitutional arguments for due process relief.

20. The Supreme Court and lower courts have emphasized that “prolonged detention without an individualized bond hearing raises substantial constitutional concerns.” *Jennings*, 583 U.S. 281 (2018); *see also Zadvydas v. Davis*, 533 U.S. 678 (2001).

B. 8 U.S.C. § 1226(a), INA § 236(a) Is the Correct Application of the Law to Petitioner’s Case, Not INA § 235(b)(2), 8 U.S.C. §1225(b)(2) As Respondents Argue and INA § 235(b)(2) Should Not Be Retroactively Applied to a Longstanding Resident Who Should Be Immediately Released or Afforded a Bond Hearing

21. Petitioner’s previous status as a humanitarian parolee, a minor upon entry, and a long-term resident since 2016, demonstrates substantial ties to the United States.

22. Application of expedited removal and mandatory detention under INA § 235(b), 8 U.S.C. § 1125(b) to individuals with strong equities and prior parole unjustly deprives them of the protections of discretionary custody under INA § 236(a), 8 U.S.C. § 1226(a) including the opportunity for bond.

23. The BIA’s approach in *Matter of Yajure-Hurtado* ignores legislative history and the “admission” distinction contained in INA § 101(a)(13)(A), which does not extend expedited removal authority to *all* noncitizens arrested in the interior of the country years after entry. *Matter of Lemus-Losa*, 25 I&N Dec. 734 (BIA 2012), is inapposite as it involves adjustment of status and how unlawful presence bars affect admissibility. Whereas, *Jennings* analyzed the interpretation of detention authority under both 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) and 8 U.S.C. § 236(a), 8 U.S.C. § 1226(a) that directly impact whether detained noncitizens such as Petitioner is entitled to periodic bond hearings. Moreover, Respondents’ reference to *Vargas-*

Lopez v. Trump, Exhibit #4 - Response in Opposition to Petition for Writ of Habeas Corpus, Dkt. No. 14, and dismissal of Petitioner's Writ of Habeas Corpus was largely due to mistakes in Petitioner's exhibits which were not attached and failure to meet his burden. The court did not undertake a detailed analysis of the interplay of 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) and 8 U.S.C. § 1226(a), INA § 236(a), unlike the Court in *Jennings*.

1. Respondents' Assertion That *Jennings* Is Inapplicable to Petitioner's Case Conflicts With Circuit Precedent and U.S. Supreme Court Decision In *Jennings* and *Loper Bright*

24. Numerous federal district courts have questioned the overexpansive use of INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) to deny bond eligibility for persons not apprehended at the border, or its functional equivalent, especially those with humanitarian parole or prior lawful status, including in this jurisdiction. *See Kostak v. Trump*, No. 3:25-cv-01092-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) and the great majority of courts have decided that 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) does not apply to noncitizens who have lived for many years in the U.S. and are subsequently arrested and detained in the interior of the country without an opportunity for bond hearing. *See Survey of Favorable 1226(a) v. 1225(b)(2)(A) Caselaw*, compiled by University of Iowa attached as **Exhibit "C"**.

25. Petitioner is not an "arriving alien" in any meaningful sense, and indefinite detention under INA § 235(b), 8 U.S.C. § 1125(b) is not authorized for individuals who, like Petitioner, have established residence and applied for asylum and cancellation of removal.

26. Respondents offer no justification for denial of a constitutionally adequate bond hearing or individualized review of flight risk and dangerousness.

2. *Jennings* Appropriately Analyzed the Clear and Unambiguous Interplay Between 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) and 8 U.S.C. § 1226(a), INA § 236(a) and Indicated that Noncitizens Like the Petitioner Who Entered The U.S. Without Inspection and Are “Already Present” In the United States Are Not Applicants “Seeking Admission” Pursuant to 8 U.S.C. § 1225(b)(2) But Instead Are “Already Present” Pursuant to 8 U.S.C. § 1226(a), INA § 236(a) and Entitled to a Discretionary Bond Hearing

27. Petitioner was denied a bond hearing pursuant to the Immigration Judge’s decision dated September 8, 2025, because Petitioner was subject to mandatory detention, pursuant to INA § 235(b)(2). Petitioner filed an appeal to the BIA on October 8, 2025 on the grounds that his appropriate detention authority falls under INA § 236(a), 8 U.S.C. § 1236(a) not INA § 235(b)(2), 8 U.S.C. § 1235(b)(2). Petitioner’s removal hearing was rescheduled to November 12, 2025.

28. The Court in *Jennings* correctly analyzed the plain meaning of the statutory text and found that “seeking admission” to the United States applies to noncitizens under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2).

3. Congress Did Not Intend to Mandate Detention for All Applicants Seeking Admission Under 8 U.S.C. § 1225

29. Nothing in the plain, clear and unambiguous text of the statutory language in 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) or 8 U.S.C. § 1226(a), INA § 236(a) indicates that Congress intended that mandatory detention is the norm rather than the exception, as alleged in Respondents’ Response. *See* Dkt. No. 14, at 14.

30. In fact, it has been the common practice of DHS to apply 8 U.S.C. § 1226(a) not 8 U.S.C. § 1225(b)(2) to noncitizens entering the United States for the past several decades. *See* Todd M. Lyons memo dated July 8, 2025 abruptly changing the past common practice of

applying 8 U.S.C. § 1226(a), INA § 236(a) to mandatory detention under INA § 235(b), 8 U.S.C. § 1235(b)(2) attached hereto as **Exhibit D**.

31. If mandatory detention under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) was the norm rather than rule as Respondents allege, particularly after the legislative changes in the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (“IRRIRA”), which was legislation enacted to correct injustices in the past, as alleged by Respondents, then why has it been the norm and past practice of applying 8 U.S.C. § 1226(a) for releasing those entrants on bond pending their immigration hearings. *See* Todd M. Memo dated July 8, 2025, abruptly changing past practice of applying 8 U.S.C. § 1226(a), INA § 326(a) to 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) attached as **Exhibit D**.

32. In fact, the legislative history of 8 U.S.C. § 1226(a), INA § 326(a) release on bond pending removal hearings has been the historical norm and still is until the Todd M. Lyons, July 8, 2025 memo.

33. The predecessor statute to 8 U.S. C. § 1226(a) before IIRIRA was passed, was governed by 8 U.S.C. § 1252(a)(1)(1994) of all deportation proceedings - “Pending a determination of deportability... any [noncitizen] ...may, upon warrant of the Attorney General, be arrested and taken into custody.”; *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999)(“A deportation hearing was the ‘usual means of proceeding against a [noncitizen] already physically present in the United States[.]’”).

34. This predecessor statute, like 8 U.S.C. § 1226(a) included discretionary release on bond. *See* § 1252(a)(1)(1994)(“[A]ny such [noncitizen] taken into custody may, in the discretion of the Attorney General... be continued in custody...[or] be released under bond[.]”).

35. Upon passing IIRIRA, Congress declared that the new Section 1226(a) “restates the

current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond a [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt.1, at 229; *see also* H.R. Rep. No. 104-828, at 210 (same). Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)’s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports Petitioner’s position that he too, is subject to discretionary detention.

4. Immediate TRO is Justified to Prevent Irreparable Harm

36. Petitioner faces imminent removal, which constitutes irreparable harm before meaningful judicial review can be effected.

37. In the absence of a preliminary injunction and in the context of the futility of obtaining relief on the basis of the Immigration Judge’s September 8, 2025 Order denying Petitioner a bond hearing based on lack of jurisdiction pursuant to *Matter of Yajure Hurtado*, Petitioner “suffers potentially irreparable harm every day that he remains in custody without a hearing, which could ultimately result in his release from detention.” *Cortez v. Sessions*, 318 F.Supp.3d 1134 (N.D. Cal. 2018).

38. This is further exemplified by the Ninth Circuit’s recognition that irreparable harm is present when “at least some individuals who would be detained if not provided a bond hearing will be granted conditional release under [the proposed] injunction.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1134 (9th Cir. 2013).

39. The record reflects that Petitioner is very likely to be granted conditional release if afforded a bond hearing. Petitioner is married has one young daughter, is gainfully employed, has paid his taxes, has no criminal history, has been attending his hearings (the Immigration Judge has rescheduled Petitioner’s hearing to November 12, 2025, Pine Prairie, Louisiana, at

9:30 a.m.), has strong family ties, is not a national security threat or a threat to the community. *See*, Dkt. No. 1.

40. The remaining two factors for a preliminary injunction – balance of the equities and public interest – “merge” when the government is the opposing party. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). When the “impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir 2017).

41. “In addition to evaluating the potential hardships facing Plaintiff, in the absence of the injunction, the court may consider ... the indirect hardship to their friends and family members.” *Id.* Finally, the Ninth Circuit has recognized that “neither equity nor the public’s interest are furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022)(holding that the district court did not abuse its discretion that the balance of hardships weighed in favor of plaintiffs who credibly alleged that the government was violating the INA).

42. The hardships and the equities overwhelmingly favor maintaining the status quo and enjoining DHS/ICE from removing Petitioner until the constitutional Due Process claims are adjudicated on the merits,

II. CONCLUSION

The Court should grant the writ of habeas corpus, immediately order Petitioner’s release from custody, and issue a temporary restraining order enjoining Respondents from removing

Petitioner pending final resolution of these constitutional and statutory claims.

Respectfully submitted,

Dated: 10/27/2025
New York, NY

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