IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

ALVARO ORTEGA GUZMAN,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondent.

Civil Action No. 1:25-CV-00202-H

REPLY TO RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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I. Introduction

Mr. Alvaro Ortega Guzman filed a Petition for Writ of Habeas Corpus before this Court on October 6, 2026. The Petitioner is challenging his current detention by Immigration and Customs Enforcement ("ICE"), without the opportunity to seek bond. The Petitioner asserts that he has a clear statutory right to a custody hearing before an Immigration Judge under 8 U.S.C. § 1226(a)(2). The Petitioner argues that the Respondents are detaining him in direct violation of § 1226(a)(2), which expressly provides individuals in his circumstances the opportunity to seek release on bond before an Immigration Judge.

The Respondents filed a Response in Opposition to the Petition on October 24, 2025, asserting that the Petitioner's detention is mandatory and lawful. The Respondents incorrectly contend that the Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2). The Respondents further argue that the Petitioner is bound by *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

However, the application of *Matter of Yajure-Hurtado* to the Petitioner contradicts decades of statutory authority and longstanding administrative precedent, under which individuals in the Petitioner's position were detained pursuant to § 1226(a)(2) and were entitled to a bond hearing before an Immigration Judge. The Petitioner further raises that Respondents are violating his constitutional 5th Amendment substantive and procedural due process rights.

II. Arguments and Authorities

A. Petitioner has exhausted administrative remedies.

Despite an April 2025 ruling from the District Court in the Western District of Washington rejecting Respondents' argument that noncitizens who entered the United States

without admission or parole were ineligible for bond hearings. ICE released its memorandum in July of 2025 instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents. *See Rodriguez v. Bostock*, No. 3:24-CV-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

Following suit, the Board of Immigration Appeals reversed decades of practice and issued its erroneous ruling in *Yajure Hurtado*, holding that all noncitizens who entered the United States without admission or parole are subject to detention under §1226(b)(2)(A) and are ineligible for a bond redetermination hearing. 29 I&N Dec. at 216.

In light of *Yajure Hurtado*, the Board's stance is clear. Any appeal to the Board is futile, inadequate, and would cause irreparable harm. The administrative process before the Board is incapable of granting the relief sought and will result in Petitioner's prolonged detention.

B. Petitioner is detained pursuant to § 1226(a), not § 1225(b)

The detention provisions at § 1226(a) and § 1225(b)(2) 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 earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and were instead detained under § 1226(a). *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).

In the decades that followed, individuals who entered without inspection—absent being subject to some other detention authorization—received bond hearings. That practice was consistent with many more decades of prior practice in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *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)).

Respondents' new policy overturns decades of well-established practice and violates the statutory scheme. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to individuals such as the Petitioner. Section 1226(a) applies by default to all persons "pending a decision on whether the alien is to be removed from the United States". These removal hearings are held under § 1229a, which "decid[e] the inadmissibility or deportability of an alien."

The text of § 1226 explicitly applies to individuals charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c))(1)(E). Subparagraph (E)'s reference to such individuals makes clear that, by default, such individuals are afforded a bond hearing under subsection (a). Section 1226 therefore undoubtedly applies to individuals who face charges of being inadmissible to the United States, including those who are present without admission or parole.

By contrast, § 1225(b) applies to individuals arriving at U.S. ports of entry or who recently entered the United States. The statue's entire framework is premised on inspections at the border of individuals who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to individuals, like the Petitioner, who are alleged to have entered the United States without admission or parole.

1. By DHS's own admission, Petitioner is subject to § 1226(a)

Petitioner is charged by DHS in the Notice to Appear under INA § 212(a)(6)(A)(i) with having entered the United States without inspection and being present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i); § 1182(a)(7)(A)(i). By DHS's own admission, the Petitioner is subject to § 1226(a) and is therefore not an arriving alien. Moreover, the "arriving alien" classification was ***not*** selected on Petitioner's Notice to Appear, further proving beyond a doubt that DHS does not consider the Petitioner to be an arriving alien.

2. Congressional intent is clear that Petitioner is not seeking admission.

Section 1226(c) requires mandatory detention for specifically enumerated categories of noncitizens who have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D). In January of 2025, Congress enacted the Laken Riley Act (LRA) to expand this list to require mandatory detention for individuals who are (1) inadmissible under §§ 1182(a)(6)(A), (C), or (7) and (2) who have been charged with, arrested for, or convicted of certain crimes. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

The enactment of the LRA confirms that Congress did not intend for noncitizens who entered the country unlawfully and are found within the interior of the United States to be subject to mandatory detention under 8 U.S.C. § 1226(b)(2). The LRA reflects Congress's understanding

that not all noncitizens who entered the country illegally are subject to mandatory detention, or the LRA would have been an entirely unnecessary and needless bill.

3. Supreme Court authority supports that Petitioner is not an applicant for admission.

In *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1182(d)(5) the description of § 1225 as a statute that applies "at the Nation's borders and ports of entry," 583 U.S. at 287, the rest of § 1225 also reflects that its scope is limited. For example, the title explains that the statute concerns the "inspection" and the "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. Similarly, paragraph (b)(1) encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible" for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. Id. § 1225(b)(1). Likewise, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e., "the case of [a noncitizen] . . . who is arriving on land." 8 U.S.C. § 1225(b)(2)(C). Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," id. § 1225(b)(2)(A), (b)(4), and sets out procedures for "[i]nspection[s]" of people "arriving in the United States," id. § 1225(a)(3), (b)(1), (b)(2), (d).

In sum, the plain text of § 1226 and § 1225, the statute's structure, the legislative history, and the historical application of § 1226(a) to individuals such as Petitioners all demonstrate that they are entitled to consideration for release on bond.

C. Jurisdiction is proper.

This Court has subject matter jurisdiction over the present petition pursuant to 28 U.S.C. § 2241 (habeas corpus) and § 1331 (federal question). Respondents conflate removal and detention. Here, the Petitioner is not seeking review of a removal order, nor is the Petitioner challenging the commencement of his removal proceedings nor the adjudication of an application for relief before the immigration judge. To the contrary, the present matter raises a claim by a noncitizen challenging the lawfulness and constitutionality of his detention by ICE; the very heart of a habeas corpus claim with jurisdiction resting squarely with the District Court. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Hyung Joon Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

D. The automatic stay is ultra vires and violates due process.

By allowing DHS to unilaterally impose an automatic stay and prolong a noncitizens' detention, the regulation improperly extends authority beyond what Congress delegated to the Attorney General rendering it invalid. *See Anicasio*, 2025 WL 2374224 at *5 ("Agency actions beyond delegated authority are 'ultra vires,' and courts must invalidate them.") (citing *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998)).

Pursuant to 8 U.S.C. § 1226; 28 U.S.C. § 510, Congress gave the Attorney General authority to release an alien on bond or conditional parole. Under 8 U.S.C. § 1226(a), the Attorney General has the authority to detain or release noncitizens on bond. Congress also permits the Attorney General to delegate this authority to "any other officer, employee, or agency of the Department of Justice." *See* 28 U.S.C. § 510. Immigration Judges, as appointed administrative judges within EOIR, properly exercise this delegated authority. On the other hand,

DHS is not within the Department of Justice but is a separate executive department. *See* 6 U.S.C. § 111. DHS's actions thus exceed the statutory authority authorized by Congress.

Pursuant to *Matthews v. Eldridge*, 424 U.S. 319, (1976), the Petitioner has significant interests at stake. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfield*, 542 U.S. 507, 529 (2004). He cannot maintain employment and is separated from his family. After a netural decision maker found that his release was warranted as he was not a flight risk nor danger to the community, the government has been allowed to unilaterally deprive him of his liberty without having to consider nor demonstrate any individualized facts nor show a likelihood of success on the merits. *See* 8 C.F.R. § 1003.19(i)(2). Thus, the automatic stay jeopardizes Petitioner's procedural due process rights.

Moreover, Respondents cannot show a compelling governmental interest which would outweigh Petitioner's constitutional liberty. The government's interest in continued detention of individuals already determined not to be a danger to the community does not outweigh the liberty interests at stake. Thus, invocation of the automatic stay additionally violates Petitioner's substantive due process rights.

III. Conclusion

For the foregoing reasons, Petitioners respectfully request that the Court grant his petition for writ of habeas corpus. The Petitioner respectfully asks the Court to order his release on bond or in the alternative receive a bond hearing under § 1226(a) within four (4) days.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

On November 4, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Respectfully Submitted,

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