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

Benjamin Garcia Hernandez,	§	
	§	
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;	§	Civil Case No. 1:25-cv-1621-ADA-DH
	§	
Respondents.		

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR A PRELIMINARY INJUNCTIVE RELIEF

1. Petitioner Benjamin Garcia Hernandez respectfully submits this reply to the respondent's response to the motion for preliminary injunctive relief. Respondents' opposition (ECF No. 9) fails to undermine the four factors under *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), which strongly favor injunctive relief. Recent decisions from the Western and Southern Districts of Texas—directly analogous to this case—confirm that Petitioner is likely to succeed on the merits, that he faces irreparable harm from continued detention, and that the equities and public interest tip decisively in his favor. See *Gonzalez-Guerrero v. Noem*, No. 1:25-CV-1334-RP (W.D. Tex. Oct. 27, 2025); *Hernandez-Ramiro v. Bondi,* No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112 (S.D. Tex. Oct. 8, 2025); and *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025). This Court should grant the motion, enjoin Petitioner's detention under § 1225(b), and order the release of the Petitioner on a $5000 bond, or direct the BIA to adjudicate the pending bond appeal consistent with § 1226(a).

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

2. Respondents argue that the Petitioner is unlikely to succeed on the merits. They claim that the respondent is an applicant for admission subject to mandatory detention under § 1225(b), because he entered without inspection more than 25 years ago, and that § 1226(a) only applies to aliens who were once admitted and are now removable.

3. 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 Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025, WL 2371588 at *8 (S.D.N.Y. Aug. 13, 2025).

4. 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.

5. Section § 1225(b) applies to noncitizens "seeking admission" who are not "clearly and beyond a doubt entitled to be admitted." Multiple courts construed this language 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. *Gonzalez-Guerrero v. Noem*, No. 1:25-CV-1334-RP at *4 (W.D. Tex. Oct 27, 2025) (citing *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025, WL 2371588 at *8 (S.D.N.Y. Aug. 13, 2025) and *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025)). Petitioner, a Mexican citizen residing in the U.S. for over 25 years with a U.S. citizen wife and stepchildren, and stable employment, was apprehended in the interior—not while "seeking admission."

6. In *Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018), 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). 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. Pet. at 7. The Respondent's novel interpretation departs from long-standing precedent and practice.

7. The Respondents argue that the Laken Riley Act would not be superfluous simply because it is redundant. However, multiple federal district courts nationwide, including in this Western District of Texas, 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. *Gonzalez-Guerrero v. Noem*, No. 1:25-CV-1334-RP at *6 (W.D. Tex. Oct 27, 2025).

8. 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.

9. Additionally, Respondents argue that this Court lacks jurisdiction under 8 U.S.C. §§ 1252(g), 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 7-8). 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.

10. 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, 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.

11. § 1252(g) does not bar review. That statute prescribes that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien." That is not an issue in this case. Here, the claim is whether the Petitioner is being detained under § 1226(a) or § 1225(b), and whether he is entitled to a bond hearing. The Petitioner is not arguing against the commencement of proceedings, adjudication of his case, or the execution of a removal order (no removal order in this case).

12. § 1226(e) also 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 25 years ago. This is a question of law, not discretion.

13. 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"—the provision does not divest district courts of habeas jurisdiction over pure legal questions. 28 U.S.C. § 2241(c)(3)

14. § 1252(b)(9) also 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, 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.

15. Lastly, the Petitioner is entitled to appropriate BIA review of his bond determination by the IJ. On July 10, 2025, the IJ denied the Petitioner's bond request because of danger to the community and flight risk after finding he had jurisdiction to hear a bond redetermination request. The Petitioner appealed to the BIA on July 16, 2025, and it is currently pending. On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which interprets § 1225(b) to mandate detention for all "applicants for admission," including long-term residents apprehended in the interior, thereby asserting that the IJ and BIA lack jurisdiction over bond requests for such individuals. Therefore, the BIA will dismiss the appeal, claiming no jurisdiction.

16. The Petitioner requests this Court to order the release of the Petitioner or to direct the BIA to adjudicate the pending appeal consistent with § 1226(a) and enjoin from claiming lack of jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

II. REMAINING FACTORS

17. Federal courts have held that the ongoing confinement of noncitizens under DHS and BIA's novel interpretation of § 1225(b)(2) is irreparable harm resulting only from confinement without likely statutory or constitutional authority. *Gonzalez-Guerrero v. Noem*, No. 1:25-CV-1334-RP at *10 (W.D. Tex. Oct 27, 2025) (citing *Kostak v. Trump,* No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. LA. Aug. 27, 2025).

18. Respondents argue that the government and the public at large have an interest in enforcing immigration laws. But, as stated, Petitioner is being confined under what is likely an

unsound interpretation of the INA. *Gonzalez-Guerrero v. Noem*, No. 1:25-CV-1334-RP at *10 (W.D. Tex. Oct 27, 2025). The Respondent's interest in enforcing that interpretation is not persuasive. *Id.*

III. CONCLUSION

19. Injunctive relief should be granted in the form of immediate release on bond set by this Court, or by directing the BIA to adjudicate the pending appeal consistent with § 1226(a) and enjoin from claiming lack of jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Respectfully submitted, November 3, 2025.

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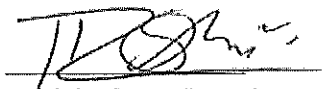
CERTIFICATE OF SERVICE

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 4, 2025



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