IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERNESTO PU SACVIN

Petitioner,

v. No. 2:25-cv-01031-KG-JFR

MARY DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW and DORA CASTRO, Warden of the Otero County Processing Center,

Respondents.

RESPONSE TO PETITIONER'S WRIT OF HABEAS CORPUS (DOC. 1)

INTRODUCTION

Respondents, Immigration and Customs Enforcement ("ICE") and the Department of Homeland Security ("DHS") (collectively "Respondents"),[1] hereby submit this Response to Petitioner's Writ of Habeas Corpus (Doc. 1).

Petitioner is a noncitizen of the United States and national of Guatemala, who asks this Court for release from custody or, in the alternative, to order Respondents to provide a bond review hearing within seven days. *See* Doc. 1 at 12. Petitioner is currently detained pending removal

[1] The undersigned does not represent Dora Castro, Warden, Otero County Processing Center, as that is a private facility, and Warden Castro is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to Warden Castro, as she is detaining the Petitioner at the request of the United States.

proceedings before the U.S. Immigration Court. Petitioner alleges that his mandatory detention pursuant to Immigration and Nationality Act ("INA") § 235(b) violates both the INA itself and Fifth Amendment due process protections. *Id.* at 11; *See also* 8 U.S.C. § 1225(b). Petitioner argues his appropriate classification falls under INA § 236, which would entitle Petitioner to a bond review proceeding. *See generally* 8 U.S.C. § 1226.

Respondents request the Court deny or dismiss the petition (Doc. 1) as Petitioner is appropriately classified under §1225(b)(1) per guidance from the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*. *See* 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Further, Petitioner has never requested a bond review (or reclassification under §1226) from the U.S. Immigration Court and therefore has not exhausted his administrative remedies. Alternatively, should the Court find § 1226 applies to Petitioner, the appropriate relief would be a bond review as there is no legal basis for immediate release.

FACTUAL BACKGROUND[2]

Petitioner entered the United States unlawfully, without admission or parole, at a time and place unknown to Respondents. On May 12, 2022, Petitioner's Lawful Permanent Resident ("LPR") wife filed an I-130 Petition for Alien Relative with U.S. Citizenship and Immigration Services ("USCIS"). On December 4, 2023, USCIS approved the I-130[3]. On February 2, 2024, Petitioner filed an I-601A Application for Provisional Unlawful Presence Waiver with USCIS[4].

[2] Respondents submit this section upon information and belief and under expedited briefing requirements. To the extent this narrative may be disputed, Respondents respectfully request the opportunity to supplement this briefing with a declaration or additional documents.

[3] Importantly, an approved I-130 does not provide any immediate immigration benefit. It only serves as notice of an approved relationship and makes a visa available to the applicable beneficiary *should they adjust status*. However, Petitioner is presently ineligible to apply for such an adjustment of status due to his unlawful entry pursuant to INA § 245. *See* 8 U.S.C. § 1255.

[4] This application remains pending. Should the application be approved, Petitioner would then be permitted to depart the United States and begin the consular process of a I-485 Adjustment of Status Application based upon an approved I-130 and I-601A. However, USCIS will not adjudicate a I-601A waiver while removal proceedings are pending.

On or about September 9, 2025, Petitioner was encountered at a traffic stop and determined to be without lawful status in the United States. Petitioner was found in violation of INA § 212(a)(6)(A)(i) as well as INA § 212(a)(7)(a)(i) and detained. On September 10, 2025, Petitioner was taken into ICE custody and served with a Notice to Appear ("NTA") initiating removal proceedings.

On October 23, 2025, Petitioner appeared before the U.S. Immigration Court, admitted to the allegations and charges of removability, and submitted a 42B Cancellation of Removal Application for Relief. Petitioner is currently scheduled for a final merits hearing on November 21, 2025.

LEGAL BACKGROUND

I. Detention of "Arriving Aliens" Under §1225 vs. §1226

Generally, when a noncitizen arrives in the United States they are "an applicant for admission," who must "be inspected by immigration officers" to ensure that they may be admitted into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as "arriving aliens" and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; *See also* 8 U.S.C. § 1225(b)(1)(A)(i). Aliens who enter illegally, but are detained shortly after unlawful entry, cannot be said to have "effected an entry" and remain, similar to an alien detained at a port of entry, "on the threshold" and subject to §1225. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). These arriving aliens can be subject to an expeditious process to remove them from the United States. 8 U.S.C. § 1225(b)(1). Under this process, known as expedited removal, arriving aliens who entered illegally, lack valid entry documentation or make material misrepresentations shall be "order[ed]...removed from the United States without further hearing or review unless the alien indicates either an intention to

apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). Even if an arriving alien is not determined to be inadmissible pursuant to §1225(b)(1), they may still be subject to mandatory detention. *See e.g.*, 8 U.S.C. § 1225(b)(2)(A). An applicant who is not determined to be inadmissible nonetheless "shall be detained for a [removal] proceeding" unless the examining immigration officer determines that the noncitizen is "clearly and beyond a doubt entitled to be admitted." *Id.* In comparison, when a noncitizen is charged as removable *from within the United States*, traditionally §1226 "generally govern[ed] the process of arresting and detaining...aliens pending their removal." 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under §1226(a), "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

The difference between these noncitizens is significant for due process purposes. *Thuraissigiam*, 591 U.S. at 106–07, 138–40; *See also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the "unique constitutional status of arriving aliens with no ties to the United States"). For example, the Supreme Court considered whether §1225(b) imposes a time limit on the length of detention and whether such noncitizens detained under this authority have a statutory right to a bond hearing. *Jennings*, at 296–303 (The Supreme Court held that "nothing in the statutory text [of §1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings.") The sole means of release for noncitizens detained pursuant to §1225(b) is temporary parole *at the discretion of DHS* under 8 U.S.C. § 1182(d)(5). *Id.* at 300.

For "more than a century" the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Thuraissigiam*, 591 U.S. at 131; *See also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien

seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (an alien on the threshold of initial entry stands on a different footing: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned").

Thuraissigiam dealt with a habeas action involving a noncitizen detained under §1225(b) who raised Fifth Amendment challenges. *Thuraissigiam*, 591 U.S. at 106–07. The Supreme Court reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 107 (a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"). Accordingly, Congress may authorize detention, even for prolonged periods of time, and such detention does not deprive §1225(b) aliens "of any statutory or constitutional right." *Id*. An alien who enters the country illegally is treated as an "applicant for admission" and has only those rights that Congress has provided by statute. *Thuraissigiam,* 591 U.S. at 140. The due process clause requires nothing more. *Id*.

II. *Matter of Yajure Hurtado*

On September 5, 2025, the Board of Immigration Appeals ("BIA") published a precedential opinion, *Matter of Yajure Hurtado*, clarifying that aliens apprehended in the interior of the United States, even after prolonged presence in the United States, are also considered to be "arriving aliens" and are properly detained under 8 U.S.C. § 1225(b)(2). 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure Hurtado*, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission

as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220.

The BIA concluded that arriving aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the argument that "because [petitioner] has been residing in the interior of the United States for almost 3 years...he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* Specifically, if the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). The BIA further rejected arguments that: (1) the immigration judge's interpretation of § 1225(b)(2)(A) would render superfluous § 1226(c)(1)(A); (2) the relevant legislative history of the INA supports an interpretation that would permit bond hearings for individuals present in the United States without admission; (3) DHS's "longstanding practice" indicates that aliens present without admission are entitled to bond hearings; and (4) *Matter of Q. Li*, 29 I. & N. 66 (BIA 2025), supports a conclusion that aliens detained with a warrant of arrest are detained under § 1226(a). *Id.* at 221–27.

III. Burden of Proof Under §1225 and §1226.

In an immigration context, under both §1225 and §1226, it is generally the petitioner's burden to show that he or she is eligible for release or bond. *See e.g.*, 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien . . .

provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding."); *See also Matter of Adeniji*, 22 I. & N. Dec. 1102, 1102 (BIA 1999). This principle is well established in immigration law, even in cases where additional due process and individualized procedures are applicable. *See, e.g., Demore v. Kim*, 538 U.S. 510, 532, (2003) (Justice Kennedy concurring and citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("the permissibility of continued detention pending deportation proceedings turns solely upon the *alien's ability to satisfy the ordinary bond procedures* – namely, whether if released the alien would pose a risk of flight or danger to the community)) (emphasis added).

Similarly, it is also the petitioner's burden to show entitlement to relief from removal on the merits. *See, e.g.*, 8 U.S.C. § 1229a(c)(2) (outlining the burden of proof in removal proceedings: "the alien has the burden of establishing . . . that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible . . . or by clear and convincing evidence that the alien is lawfully present); *see also* 8 U.S.C. § 1229a(c)(4)(B) (when considering applications for relief from removal "the immigration judge will determine whether or not . . . the applicant has satisfied the applicant's burden of proof"); *Matter of Gabriel Almanza-Arenas*, 24 I. & N. Dec. 771, 774-776 (BIA 2009) (in determination of whether the immigration judge improperly applied the REAL ID Act to petitioner's case, the BIA found that "respondent is seeking discretionary relief from removal, so he bears the burden of proof").

IV. Administrative Exhaustion

Petitioners may seek habeas relief to challenge his detention as unconstitutional or unauthorized by statute. *See, e.g., Demore*, 538 U.S. at 517 (2003). However, "[a] habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention." *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y. 2018). "The exhaustion requirement is

prudential, rather than jurisdictional, for habeas claims." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Administrative exhaustion may be waived if petitioner can demonstrate that exhausting administrative remedies is "futile". *See, e.g., Garza v. Davis,* 596 F.3d 1198, 1203 (10th Cir. 2010).

ARGUMENT

I. Petitioner is Appropriately Classified under § 1225 per *Hurtado*

Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a." 8 U.S.C. § 1225(b)(2)(A). Petitioner, under the *Hurtado* view, falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. Petitioner would be an "applicant for admission" to the United States, i.e., an alien present in the United States who has not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress's broad language here is intentional, an undocumented alien is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Petitioner is "deemed" an applicant for admission based on 1) the undocumented status and 2) that Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," making detention mandatory under §1225. *See* 8 U.S.C. § 1225(b)(2)(A).

At least three courts have adopted this general interpretation in recent months. *See Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an "applicant for admission" upon the straightforward application of the statute); *Vargas Lopez v. Trump* No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Court finding that § 1225(b) applied despite alien's presence in the country for over ten years, noting

"overlap" between §1225 and §1226 authorities); *Chavez v. Noem* No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding the *Hurtado* decision supported by the plain language of the statute, and that such an interpretation does not render § 1226, nor additions thereto by the Laken Riley Act, superfluous). Respondents acknowledge that a number of other courts have reached different results on this emergent issue. *See, e.g.,* Doc. 1 at 7.

As Petitioner is properly classified under §1225 per the BIA guidance in *Hurtado*, there can be no Fifth Amendment violation as Petitioner would have only those rights that Congress has specifically provided by statute. *Thuraissigiam,* 591 U.S. at 140; *Jennings*, at 296–303; *See also* 8 U.S.C. § 1182(d)(5). The Court should therefore deny or dismiss the petition (Doc. 1).

II. Petitioner has Failed to Exhaust Administrative Remedies

Petitioner never requested a bond redetermination or review of the §1225 classification before the U.S. Immigration Court. The Court should not allow Petitioner to essentially circumvent the U.S. Immigration Court in this way, seeking relief directly from the federal court without first raising the issue before the applicable administrative body.

Two recent cases in the Southern District of New York were dismissed without prejudice because the petitioner failed to meet the prudential exhaustion requirement. *See Castillo Lachapel v. Joyce*, 786 F. Supp. 3d 860, 865 (S.D.N.Y. June 16, 2025) (noting that petitioner may refile the habeas petition if he remains detained after a "potential" bond hearing and any appeal to the BIA); *Guzman v. Joyce*, 786 F. Supp. 3d 865, 870 (S.D.N.Y. June 17, 2025) (noting administrative remedies available to petitioner that could provide him the relief he seeks, including a motion for bond in immigration court").

For this reason, Petitioner has failed to exhaust available administrative remedies, and the Court should deny or dismiss the petition (Doc. 1).

III. Should §1226 Apply, Bond Review is Only Appropriate Remedy

Should the Court agree with Petitioner's primary contention that classification under §1226, rather than §1225, is appropriate, Petitioner has provided no legal support that immediate release is warranted. The appropriate relief, if any, would be to return Petitioner to his requested status: classification under §1226 with eligibility for a bond review in the normal course. Petitioner does not cite a single case which entitles him to further relief. *See generally* Doc. 1.

This position is further supported by the jurisdictional bar of 8 U.S.C. § 1226(e), which strips the Court of jurisdiction to review "discretionary judgment[s] regarding the application of [§1226]. *See* 8 U.S.C. § 1226(e). Section 1226(e) further directs that "[n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the revocation or denial of bond or parole." *Id.* Should Respondents classify Petitioner as eligible for bond review under §1226, the result of that bond review would not be subject to judicial review. It would therefore make little sense for the Court to impose its own judgement on bond (or release) upon the U.S. Immigration Court. The appropriate remedy would be to remand the case back to the U.S. Immigration Court to conduct an evidentiary bond hearing under §1226.

CONCLUSION

The Court should deny or dismiss Petitioner's Writ of Habeas Corpus (Doc. 1) as Petitioner is appropriately classified under §1225 pursuant to BIA guidance in *Hurtado*; and Petitioner's due process rights as a §1225 "arriving alien" have been met as a matter of law. Further, Petitioner has failed to exhaust available administrative remedies. For these reasons the Court should deny or dismiss the petition (Doc. 1). Should the Court agree with Petitioner that §1226 applies, the only appropriate remedy is to remand the matter for a §1226 bond proceeding before the U.S. Immigration Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 4, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey
RYAN M. POSEY
Assistant United States Attorney