

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT, MICHIGAN

OSCAR ARNOLD RIVERA ESPERANZA,

Petitioner,

Case No. 25-cv-08727

v.

Hon. Judge: Ronnie Abrams

LADEON FRANCIS, Acting Field Office
Director, New York Immigration and
Customs Enforcement KRISTI NOEM,
Secretary, U.S. Department of Homeland
Security; PAM BONDI, U.S. Attorney
General, U.S. Department of Justice,
Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE IN
OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

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I. Introduction

Petitioner is unlawfully detained under §1225(b)(2), though any detention authority, if applicable, lies under §1226(a). Respondents submitted a Warrant for Arrest of Alien under INA §236 (8 U.S.C. §1226(a)) specifically showing that Petitioner was detained pursuant to that section on October 21, 2025. ECMF 19-5. Therefore, Esperanza is entitled to immediate release because he has not been provided a bond hearing and there is no reason to have the Petitioner detained since nothing has changed since he was released in December 2023.

II. Petitioner Is Detained Under § 1226(a), not § 1225(b)

Respondents rely on the July 8, 2025 DHS/DOJ Guidance and *Matter of Yajure-Hurtado*, asserting that § 1225(b)(2) applies to all “applicants for admission,” including those already in the U.S. This interpretation contradicts the INA’s text and structure. As the Supreme Court held in *Jennings v. Rodriguez*, 58 U.S. 221 (2018), § 1226(a) governs detention of noncitizens “already in the country” pending removal, while § 1225(b)(2) applies only to those “seeking to enter” at the border.

Respondents’ shift departs from decades of applying § 1226(a) to interior arrests, rendering § 1226—and the 2025 Laken Riley Act amendments (§ 1226(c)(1)(E))—superfluous. Section 1225(b)(2) targets noncitizens “seeking

admission” at ports of entry; it does not apply to Petitioner, detained at a USCIS interview while residing in the U.S. and in ongoing removal proceedings. Filing for asylum or permanent residence is not a request for border inspection.

Respondents’ argument that all “applicants for admission” are automatically “seeking admission” ignores statutory text and the surplusage canon. Applying their reading would eliminate § 1226(a) entirely and nullify congressional amendments, which must have a “real and substantial effect.” See *Ross v. Blake*, 578 U.S. 632, 642 (2016). Statutory interpretation is a judicial, not agency, function. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). Policy arguments that § 1226(a) grants interior detainees an advantage over border arrivals are irrelevant. Congress intended § 1226(a) to govern noncitizens apprehended within the U.S., preserving authority to arrest, detain, and release on bond those not lawfully present. H.R. Rep. No. 104-469, pt. 1, at 229 (1996). Cases addressing immediate post-entry detention, including *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), do not apply. Petitioner has resided in the United States for over two years.

Extending § 1225(b)(2) to all noncitizens not formally admitted disregards statutory limits and Supreme Court guidance, while undermining Congress’s distinction between noncitizens “seeking admission” and those “already in the country.” See *Bufkin v. Collins*, 604 U.S. 369, 386 (2025).

III. Respondents' Interpretation Conflicts with Nearly Every Federal Decision to Address the Issue

Nearly every court reviewing the July 2025 DHS/DOJ Guidance has rejected it. ECF No. 18 pp. 14-16. These courts, including decisions in this District, have held that 8 U.S.C. § 1226(a) governs detention of noncitizens already present in the U.S. See, *Lopez Benitez v. Francis*, No. 25 CIV 5937 (DEH) 2025 WL 2371588 (SDNY August 13, 2025) (Here Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a). The warrants for Mr. Lopez Benitez's respective arrests in 2023 and 2025 explicitly authorized those arrests pursuant to "section 236 of the Immigration and Nationality Act"—i.e., § 1226.); *Samb v. Joyce*, No. 25 CIV 6373(DEH) 2025 WL 2398831 (SDNY August 19, 2025) (Respondents' concession that Lopez Benitez controls the result in this case)

IV. Exhaustion of Administrative Remedies would be futile and exacerbate the harm in this case.

Exhaustion is not statutorily required and is wholly within the Court's prudential discretion. Indeed, courts in this Circuit may excuse exhaustion where certain exceptions apply, including when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and

(4) in certain instances a plaintiff has raised a substantial constitutional question.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003), as amended (July 24, 2003). Presenting a due process claim to the agency would be futile, as the agency is entrenched in its position that § 1225(b) applies. Another court in this district found that a bond hearing in cases such as this would be inadequate to address the due process violation that occurred when a person was detained by ICE without deliberation as to why he/she should be stripped of their freedom from detention. “Accordingly, “[s]uch a hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause” *Chipantiza-Sisalema v. Francis, et.al*, 25 CIV 05528, 2025 WL 1927931 (SDNY July 13, 2025)(citing 8 C.F.R. § 236.1(d)(1)) (emphasis in original) Bond appeals would likewise be ineffective given the agency’s precedential decision. See, *Matter of Q.Li.*, 29 I&N Dec. 66, 2025 WL 1442892 (BIA 2025) In this case there is no available administrative remedy that would provide adequate relief for the Petitioner. Without this Court’s intervention, the unlawful detention of Esperanza would continue and the irreparable injury already suffered by him would be prolonged.

V. Petitioner’s Detention under 8 U.S.C. §1225 is unconstitutional as applied to him because it violates due process.

The Fifth Amendment’s Due Process Clause prohibits depriving any person of

liberty without due process, applying to noncitizens “whether lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). As the Supreme Court recognized, “freedom from imprisonment...lies at the heart of the liberty [the Due Process] Clause protects.” *Id.* at 690. Esperanza’s liberty is at stake. The Respondents have not demonstrated a significant interest in the continued detention of Esperanza who is married to a U.S. citizen, has a stable home and employment, no criminal record and has several applications pending in immigration court. Petitioner has been detained for 74 days solely due to Respondents’ arbitrary application of detention statutes, without regard to statutory text, interpretive principles or documentary evidence (i.e. warrant). Based on the evidence in this case and the pertinent statutes, detention without a bond hearing under §1225(b)(2) is unlawful. Esperanza is detained pursuant to §1226(a) and merits immediate release or in the alternative a bond hearing.

Respectfully submitted:

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Dated: November 11, 2025

CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2025, I filed the foregoing paper with the Clerk of the Court through the ECMF system which will notify all counsel of record.

/S/Caridad Pastor
Caridad Pastor
Attorney for the Petitioner