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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

DECHANG YANG,

Petitioner,

v.

THOMAS BERGAMI, Warden of the
Prairieland Detention Facility; TODD
LYONS, Acting Director of Immigration and
Customs Enforcement; KRISTI NOEM,
Secretary of the U.S. Department of
Homeland Security; PAMELA BONDI,
Attorney General of the United States.

Respondents.

Docket No. 3:25-cv-02877-B-BT

**REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS
CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER**

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INTRODUCTION

Petitioner respectfully submits this Reply to Respondents' ("Government") Opposition to the Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order (ECF No. 12). Since the Court has consolidated the consideration of the Petition and the TRO in this action, Petitioner focuses this reply on the crux of the legal issue in this matter—which is whether Petitioner is detained pursuant to 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)(2). For the reasons set forth below, the Court should find that Petitioner is subject to discretionary detention under section 1226(a) and order Petitioner released from detention (or in the alternative direct that the Immigration Judge ("IJ") promptly hold a constitutionally adequate bond hearing).

First, there are no exhaustion concerns that prevent this Court from hearing this matter. The Government contends that the Petitioner should have exhausted his administrative remedies by seeking a bond hearing before an IJ, but it is undisputed that the immigration court is bound by the Board of Immigration Appeals ("BIA") decision in *Matter of Yajure Hurtado*, and therefore such an administrative appeal process is futile. Many other courts have found that there is no exhaustion requirement in this habeas context, and that prudential exhaustion is not warranted. Second, Petitioner is clearly not subject to mandatory detention under section 1225(b)(2). Instead, Petitioner's detention is governed by discretionary detention under section 1226(a).

This Court should join the chorus of courts around the country finding that habeas relief is warranted. With respect to the form of relief, the Court should order Petitioner released from detention, as many other courts have found to be appropriate. Alternatively, if the Court is not inclined to release Petitioner, it should direct that an IJ promptly hold a bond hearing at which

time the burden of proof for continued detention would be on the Government by clear and convincing evidence.

ARGUMENTS

I. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS FUTILE AND NOT REQUIRED

The Government contends that the “Petitioner has not yet attempted to obtain bond from an Immigration Judge, and so any request at this time to order a bond hearing via a writ of habeas corpus is premature, at best.” ECF No. 12 at p. 2. However, the Government does not dispute that the BIA’s published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is binding on all immigration judges and forecloses bond at the administrative level. Therefore, filing a bond request before an IJ would be completely futile.¹ Numerous courts addressing this issue have held similarly. “First, exhaustion does not bar this court’s review because it is not a statutory requirement in these circumstances.” *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 LX 438445, at *5 (S.D. Tex. Oct. 7, 2025). When a “‘legal question is fit for resolution and delay means hardship,’ a court may choose to decide the issues itself.” *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) (quoting *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000)). As a court in the Southern District of Texas recently found, “[t]he issue here largely ‘boils down to a matter of statutory interpretation,’ which ‘belong[s] historically within the province of the courts.’ . . . Other courts faced with similar issues have found that preventing six months or more of unlawful

¹ The Government states that “[s]ubsequent developments may moot the issues Petitioner is complaining about in this proceeding or cause his cases to develop in other ways that obviate the need for any decision by this Court,” but the Government does not explain how this is possible in Petitioner’s case, particularly when the BIA’s decision in *Matter of Yajure Hurtado* forecloses this possibility.

detention (bond determinations typically take six months or more) outweighs the BIA's interest in detaining an individual while his or her bond determination is resolved on appeal.”

Buenrostro-Mendez, 2025 LX 438445, at *5-6. This Court should adopt the same finding in this matter.

II. THE COURT SHOULD GRANT HABEAS RELIEF BECAUSE PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b)(2)

The Government agrees that the crux of this matter comes down to whether Petitioner is detained under section 1226(a) or 1225(b)(2). *See* ECF No. 12 at p. 3 (noting that this case “turns on which of two separate statutory detention provisions can apply to aliens like Petitioner . . .”). As noted in the Petition and Motion for TRO, for nearly 30 years, DHS and the BIA considered noncitizens like Petitioner subject to detention under 1226(a), and therefore eligible for bond. But starting on July 8, 2025, DHS radically changed its position regarding the statutory interpretation of these two statutes and now considers all noncitizens—except those who were admitted to the United States—to be ineligible for bond. The BIA adopted that position in its September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This has left millions of noncitizens who were previously eligible for bond now subject to mandatory detention. The Government’s contention that DHS’ newfound interpretation of section 1225(b)(2) governs is incorrect for the following reasons.

A. 8 U.S.C. § 1225(b)(2) Does Not Concern Noncitizens like Petitioner

The Government’s position is essentially that every noncitizen is an “applicant for admission” subject to mandatory detention, except for those who were admitted. However, “for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Martinez*

v. Hyde, Civil Action No. 25-11613-BEM, 2025 LX 284582, at *6 (D. Mass. July 24, 2025).

However, the Government makes no distinction between an applicant for admission and “seeking admission.” *See id.* at *11 (noting that the Government is “apparently treating it as mere surplusage of the ‘applicant’ requirement.”). The phrase “seeking admission” is undefined but “necessarily implies some sort of present-tense action.” *Id.* Here, there is no present action. “To be sure, the line between when a person is ‘seeking admission’ as opposed to being ‘already in the country’ is not necessarily obvious. For instance, someone who has just crossed the border may technically be ‘in’ the country but is still treated as ‘an alien seeking initial entry.’” *Benitez v. Francis*, 2025 LX 337407, at *10 (S.D.N.Y. Aug. 8, 2025). So therefore, it is important to look to how Petitioner was treated upon entry in the United States. As set forth in the Petition, Petitioner entered the United States on or about September 15, 2023 and was briefly detained for one day, and then released after being served with a Notice to Appear (“NTA”). The NTA itself designated Petitioner as “an alien present in the United States who has not been admitted or paroled” and charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) as an “alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” Therefore, “it is indisputable that Respondents have consistently treated [Petitioner] as subject to § 1226.” *Benitez*, 2025 LX 337407, at *13. “These facts, taken together, can support only one conclusion—that [Petitioner] was not mandatorily detained as a noncitizen ‘seeking admission’ under § 1225(b), but rather as someone ‘already in the country,’ *Jennings*, 583 U.S. at 288-89, pursuant to Respondents’ discretionary authority under § 1226(a)” *Id.* Therefore, “[i]t is inconsistent with the plain, ordinary meaning of the phrase ‘seeking admission’ to apply this section to all noncitizens already present

and residing in the U.S., regardless of whether they are taking any affirmative acts that constitute ‘seeking admission.’” *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at *37 (D. Nev. Sep. 17, 2025).

There was also no examination by an immigration officer, as required by the statute. The Government’s opposition makes no meaningful attempt to address this requirement and concedes that Petitioner entered the United States without inspection or parole.²

As noted in the Motion for TRO, the Court should consider “whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). But crucially, a statute “cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012) (quoting *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989)). Here, the context is clear that “detention authority in § 1225 is exercised at or near the port of entry; and detention authority arises from § 1226 when a noncitizen is arrested in the interior of the United States.” *Zumba*, 2025 LX 482036, at *19. Indeed, “[t]he line historically drawn between these two sections, making sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the country.’” *Martinez*, 2025 LX 284582, at *18. In other words, the text and context of section 1225(b)(2) indicates that it applies to noncitizens entering, or attempting to enter, or who have

² The recent issuance of the NTA is not an examination by an immigration officer, and the Government cannot present any legal authority in support of its position. *See Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *24 (D.N.J. Sep. 26, 2025) (noting that this argument “is an awkward fit and unpersuasive” and that the government fails to “provide textual or legal support for this contention”).

recently entered the U.S. It does not include noncitizens “who entered long ago, are not taking affirmative steps that could be characterized as ‘seeking admission,’ and have been residing in the U.S. for years.” *Vazquez*, 2025 LX 460110, at *39. This is also further supported by the very title of section 1225. “The titles and headings of § 1225 repeatedly cabin its application to ‘Inspections,’ which, as petitioner convincingly argues, occur at ports of entry, their functional equivalent, or near the border.” *Zumba*, 2025 LX 482036, at *23. While not binding, “[titles and headings of a statute] are instructive and provide the Court with the necessary assurance that it is at least applying the right part of the statute in a given circumstance.” *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102, at *15 (E.D. Mich. Aug. 29, 2025). Therefore, “1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country.” *Id.* at *18.

B. 8 U.S.C. § 1226(a) Clearly Applies to Petitioner and the Government’s Contentions Otherwise Are Unpersuasive

Section 1226(a), on the other hand, concerns all noncitizens who are not subject to section 1225 and 1231 (which concerns those with final orders of removal). *See Benitez*, 2025 LX 337407, *3 (holding that § 1225 did not apply because the “plain text, overall structure, and uniform case law interpreting” the statutory provision compels the conclusion). “As almost every district court to consider this issue has concluded, ‘the statutory text, the statute’s history, Congress’ intent, and § 1226(a)’s application for the past three decades’ support finding that § 1226 applies to these circumstances.” *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 LX 438445, at *6 (S.D. Tex. Oct. 7, 2025); *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 LX 467042, at *14 (W.D. Tex. Sep. 21, 2025).

The Government contends that the Supreme Court decision in *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) supports its position. However, *Jennings* merely reiterates the limited

applicability of 1225(b)(2) and the general applicability of section 1226(a). The Government also suggests that Petitioner is arguing that 1225(b)(2) only applies to arriving aliens. *See* ECF No. 12 at p. 6 (arguing that “there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens.”). Petitioner does not make that argument because arriving aliens are clearly a distinct class of noncitizens covered by section 1225(a)(1). Instead, the issue here is whether section 1225(b)(2) applies—like Petitioner contends—to those who are seeking admission at or near the border, or if it applies to *every noncitizen* (other than those admitted), even if they entered the U.S. years or decades ago without ever being inspected, like the Government contends. For the reasons set forth in Arguments Section I A and B, section 1225(b)(2) clearly does not apply to noncitizens like Petitioner.

C. The Government’s Policy Arguments are Without Basis

The Government acknowledges that the Court does not need to consider Congressional intent if it is able to determine the statutory intent from the plain reading and context of the statutes in question. Petitioner agrees and submits that the Court should find that the statutory framework supports Petitioner’s reading of the statutory framework. However, even if the Court were to consider Congressional intent, the legislative history clearly supports Petitioner’s reading. As the court in *dos Santos* summarized:

The plain text of Section 1226(a)—which provides that, following a noncitizen’s arrest on a warrant, the Attorney General “may” detain the noncitizen, “may” release him on bond, or “may” release him on conditional parole, 8 U.S.C. §§ 1226(a)(1)-(2)—indicates Congress’s intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant And while Section 1226(a) expressly carves out certain “criminal” noncitizens from its discretionary framework, it does not similarly carve out noncitizens who would be subject to mandatory detention under Section 1225(b)(2). *See* 8 U.S.C. § 1226(a) (“Except as provided in subsection (c) . . . , the Attorney General . . . may” (emphases added)). “That express exception” to Section 1226(a)’s discretionary framework “implies that there are no other circumstances under which” detention is mandated for noncitizens, like [Petitioner], who are subject to Section 1226(a).

dos Santos v. Noem, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488 *17, 2025 WL 2370988 (D. Mass. Aug. 14, 2025).

The 2024 Laken Riley Act amendment to section 1226(c) further supports Petitioner's arguments. As another court succinctly put it:

If Congress had intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from the discretionary bond framework. The Laken Riley Act added a subsection to Section 1226 that specifically mandated detention for noncitizens who are inadmissible under Sections 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like [petitioner]), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E). Respondents' interpretation of the statutes would render this recently amended section superfluous.

Lopez-Campos v. Raycraft, No. 2:25-cv-12486, 2025 LX 315102, at *21-22 (E.D. Mich. Aug. 29, 2025).

The Government does not even discuss the Laken Riley Act. "If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." *Id.* (quoting *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 237441, *12 (D. Minn. Aug. 15, 2025)). The Government conveniently ignores the implications of the Laken Riley Act and instead claims that Congress intended to deprive noncitizens like Petitioner of a bond hearing because "the INA, as amended by the IIRIRA, defines all those who have not been admitted to the United States as 'applicants for admission.' IIRIRA § 302, 110 Stat. 3009-579." ECF No. 12 at p. 11. But that is not accurate. As one court recently observed, "[w]hen the Department of Justice issued implementing regulations months after passage of IIRIRA, the agency explained that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.' Inspection and Expedited

Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).” *Orellana v. Moniz*, Civil Action No. 25-cv-12664-PBS, 2025 LX 461679, at *21-22 (D. Mass. Oct. 3, 2025). This was in fact the Government’s position until its sudden policy reversal on July 8, 2025.³

D. If the Court finds that Section 1226(a) Applies to Petitioner, It Should Order His Release From Detention, or at the Very Least Direct That An IJ to Conduct a Bond Hearing At Which the Government Bears the Burden of Proof By Clear and Convincing Evidence

The Government’s contends that Petitioner is not entitled to any due process rights, but their arguments are entirely based on the mistaken assumption that Petitioner is subject to detention under 1225(b)(2). For the reasons set forth above, the Government is wrong and Petitioner is subject to detention under section 1226(a). As such, his continued detention is clearly unconstitutional. As the vast majority of courts have held, habeas relief is warranted in such circumstances. For the reasons set forth in greater detail in Petitioner’s Motion for TRO, the constitutional violation requires immediate release, or in the alternative a bond hearing at which the Government bears the burden by clear and convincing evidence.

CONCLUSION

For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from detention.

Respectfully submitted on 13th day of November 2025

³ The Government’s longstanding agency practice is not dispositive of this issue in this case, but “the longstanding practice of the government” that § 1226 governs the detention of noncitizens in Petitioner’s position “can inform a court’s determination of what the law is.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). Furthermore, *Loper Bright* makes it clear that no deference is warranted to administrative agency decisions like the BIA’s decision in *Matter of Yajure Hurtado*.

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Dated: November 13, 2025

CERTIFICATE OF SERVICE

On November 13, 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).

/s/ Enes Hajdarpasic

Enes Hajdarpasic

