



U.S. Department of Justice

United States Attorney
Southern District of New York

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November 13, 2025

VIA ECF

Hon. Gregory H. Woods
United States District Judge
United States District Court
500 Pearl Street
New York, New York 10007

Re: *Wu v. Almodovar, et al.* 25 Civ. 8968 (GHW)

Dear Judge Woods:

This Office represents the government in the above-referenced immigration habeas corpus action, brought by Petitioner Jiandong Wu (“Wu” or “Petitioner”), an alien in removal proceedings, challenging his detention by U.S. Immigration and Customs Enforcement (“ICE”). The legal issues presented concern whether Petitioner’s detention violates his due process protections, the statutory authority for ICE’s detention of Petitioner, and whether Petitioner is entitled to a bond hearing. Petitioner, principally, seeks an order from this Court directing ICE to release Petitioner from detention “immediately.” While reserving all rights, including the right to appeal, the government submits this letter in lieu of a formal responsive memorandum of law to conserve judicial and party resources, and to expedite the Court’s consideration of this case in light of this Court’s decision on the principal legal issues in *Savane v. Francis*, No. 25 Civ. 6666 (GHW), 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025), as discussed below.

Relevant Underlying Facts

Petitioner is a Chinese national and applicant for admission to the United States. On or about September 21, 2023, the United States Customs and Border Protection (“CBP”) encountered Petitioner in or near Otay Mesa, California and determined that he had unlawfully entered the United States on or around the same date. *See* Declaration of Deportation Officer Sarwar Hussain (“Hussain Decl.”) ¶ 4. On September 22, 2023, Petitioner was arrested and served with a Warrant for Arrest of Alien. *Id.* That same day, CBP served Petitioner with a Notice to Appear (“NTA”), charging him with removability under INA § 212(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled. *Id.* Pursuant to the NTA, Petitioner was ordered to appear before an immigration judge at 26 Federal Plaza, New York, NY (“26 Federal Plaza”) on May 1, 2024. *Id.* ¶¶ 4, 6. Petitioner was then released pursuant to an Order of Release on Recognizance, referencing 8 U.S.C. § 1226. *Id.* ¶ 5.

On March 28, 2024, the NTA was served on the Executive Office for Immigration Review, thereby commencing removal proceedings against Wu. *Id.* ¶ 6. On April 25, 2024, Wu’s previously scheduled May 1, 2024, immigration hearing was cancelled and rescheduled to February 9, 2026. *Id.* ¶ 7. On August 12, 2024, Petitioner filed an application for relief from removal. *Id.* ¶ 8.

On September 30, 2024, Wu was told to report to ICE in-person on October 29, 2025, at

8:00 AM. *Id.* ¶ 9. On October 29, 2025, Wu reported to ICE at 26 Federal Plaza for his scheduled check-in and, at the check-in, ICE reviewed the status of Wu's removal proceedings, served him with a Warrant for Arrest of Alien along with a form entitled "Important Information about Section 236(a) Initial Detention Decisions," a copy of the Online detainee Locator System Privacy Notice and a list of pro bono legal service providers, and took him into custody. *Id.* ¶ 10. The following day, on October 30, 2025, ICE transferred Petitioner to the Elizabeth Contract Detention Facility in Elizabeth, New Jersey, due to space limitations, where he remains detained pursuant to INA § 235(b), 8 U.S.C. § 1225(b), pending resolution of his removal proceedings. *Id.* ¶ 11.

Habeas Petition

On October 29, 2025, a Petition for Writ of Habeas Corpus (the "Petition" or "Pet.") was filed commencing this action. ECF No. 1. On October 30, 2025, the Court ordered respondents to file their opposition to the Petition by November 13, 2025. ECF No. 3. Petitioner asserts that his detention violates: the INA, Pet., ¶¶ 51-53, applicable bond regulations, *id.* ¶¶ 54-57, and his due process rights under the Fifth Amendment, *id.* ¶¶ 58-61. As ultimate relief, Petitioner requests that the Court enjoin the government from transferring him away from this district pending these proceedings,¹ order the government to release him from custody or provide the Petitioner with a bond hearing, declare Petitioner's detention unlawful, and award attorney's fees and costs. *Id.*, Prayer for Relief.

Savane v. Francis

On September 28, 2025, the Court issued a written decision on the principal legal question presented in this action in a similar habeas case challenging an alien's re-detention after prior release on an order of recognizance. *See Savane*, 2025 WL 2774452. In *Savane*, the petitioner was initially detained at the border in 2023, served with an arrest warrant referencing 8 U.S.C. § 1226, released on an order of recognizance that also referenced § 1226, and was arrested again—pursuant to either § 1225 or § 1226²—in August 2025, following an immigration court appearance. *Savane*, 2025 WL 2774452 at *2.

The Court declined to resolve whether the petitioner was detained pursuant to § 1225 or § 1226. *Id.* at *6. Instead, the Court held that even if petitioner was detained under § 1225—which, for purposes of the opinion, the Court concluded he was—petitioner's due process rights were nevertheless violated because petitioner was not afforded any process or notice prior to the revocation of his parole and subsequent detention. *Id.* at *6-*7. The Court then conducted the three-part due process analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), and concluded that the petitioner was entitled to more process than he received because "Petitioner here was not afforded any process." *See Savane*, 2025 WL 2774452 at *9-*10. The Court did not determine "exactly what 'additional or substitute' process" the petitioner was entitled to prior to the revocation of his parole and directed the government to immediately release the petitioner.

¹ This requested relief is moot, as Petitioner has already been transferred out of this District.

² As reflected in the Court's opinion, the arrest warrant was unsigned and not part of the administrative record in *Savane*. *See*, 2025 WL 2774452 at *2.

Discussion

Due Process

Petitioner alleges that his detention violates his due process rights. As noted, this Court has already resolved nearly identical due process claims in a prior case, holding that ICE violated the due process rights of an alien in Petitioner's position, irrespective of whether that individual was detained under section 1225 or 1226. While the government respectfully disagrees with the Court's decision in *Savane*, the government acknowledges that the decision would control the result in this case if the Court adheres to that decision, as the facts of this case are materially indistinguishable from those of *Savane*; thus, to conserve judicial resources and to expedite the Court's consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Savane*, and the Court can decide this matter without further briefing and without reaching the remaining arguments. However, should the Court prefer to receive a formal opposition brief in this matter, we will file such a brief upon the Court's request.

Further, notwithstanding its submission of this letter in lieu of a formal brief, the government reserves all rights, including the right to appeal. Accordingly, for the reasons set forth in the government's brief in *Savane*, the government respectfully requests that the Court deny this habeas petition.³

Petitioner's INA claim

Given the Court's holding in *Savane*, whether Petitioner falls within the ambit of section 1226(a) or section 1225(b) is not dispositive of Petitioner's primary prayer for relief—an order compelling his immediate release from custody. Nevertheless, the government contends that Petitioner falls within section 1225(b)(2)(A)'s mandatory detention requirement. First, by statute, Petitioner is an “applicant for admission” to the United States because he is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Second, because Petitioner has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted,” his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Petitioner cannot demonstrate that he is “clearly and beyond a doubt entitled to be admitted” because, as charged in his removal proceedings, he is present in the United States without being admitted or paroled, or arrived in the United States at a time and place other than as designated by the Attorney General and he is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he “shall be” detained pending removal proceedings.

This reasoning comports with Supreme Court precedent.⁴ As explained in *Jennings v.*

³ The government incorporates by reference all arguments raised in its opposition brief in *Savane*.

⁴ It is also consistent with the changes to the INA after the enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Prior to 1996, the INA treated aliens differently based on whether the alien had *physically* “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251(a) (1994)); see *Judulang v. Holder*, 565 U.S. 42, 45–46 (2011) (“Before 1996, these two kinds of action occurred in different procedural settings, with an alien seeking entry (whether for the first time or upon return from a

Rodriguez, 583 U.S. 281 (2018), applicants for admission fall into one of two categories: those covered by section 1225(b)(1) and those covered by section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i), 8 U.S.C. § 1182(a)(6)(C). Section 1225(b)(2)—the provision relevant here—is “broader” and “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Jennings*, 583 U.S. at 287. And section 1225(b) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See id.* at 302 (“[Section] 1225(b)(2) mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”).

Petitioner argues that section 1226(a), rather than section 1225(b), applies, because he previously entered the country and is “now residing in the United States” and, therefore, he is entitled to be “release[d] on conditional parole or bond.”⁵ Pet. ¶ 5. However, “an alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry.’” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (citation omitted). Applicants for admission who are intercepted near the border at or near the time of their illegal entry, like Petitioner, are “treated, for constitutional purposes, as if stopped at the border,” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal quotation marks omitted), even if they are paroled into the United States for a limited

trip abroad) placed in an ‘exclusion proceeding’ and an alien already here channeled to a ‘deportation proceeding.’”) (citing *Landon v. Plasencia*, 459 U.S. 21, 25–26 (1982)). IIRIRA replaced the focus on physical “entry” with a focus on lawful “admission.” IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been *lawfully* admitted.” H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (emphasis added).

⁵ Some courts, including in this district, have endorsed this argument. *See, e.g., Gonzalez v. Joyce*, Case No. 25 Civ. 8250 (AT), ECF No. 20 (S.D.N.Y. Oct. 19, 2025) (granting habeas petition based on conclusion that petitioner’s detention was pursuant to 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b)(1) and therefore ICE was required to make an individualized determination as to whether detention was warranted); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (holding that 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b)(1) applied); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (same). ICE respectfully disagrees with those decisions, and notes that other courts have rejected the argument that section 1226(a) applies in this context. *See Vargas Lopez v. Trump*, No. 25 Civ. 526 (BCB), 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (rejecting petitioner’s assertion that he was detained pursuant to 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b)(2)); *Chavez v. Noem*, No. 25 Civ. 02325 (CAB) (SBC), 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (discussing interplay between sections 1225(b) and 1226(a) and denying application for temporary restraining order brought by aliens contending that they were entitled to a bond hearing pursuant to section 1226(a)).

purpose, *see United States ex rel. Kordic v. Esperdy*, 386 F.2d 232, 235 (2d Cir. 1967) (“A ‘parolee,’ even though physically in the country, is not regarded as having ‘entered’ and thus has not acquired the full protection of the Constitution.”).

Petitioner was detained near the border shortly after his unlawful entry in September 2023. Thus, he “cannot be said to have ‘effected an entry,’” *Thuraissigiam*, 591 U.S. at 140 (citation omitted), and by statute he is deemed an applicant for admission, 8 U.S.C. § 1225(a)(1), treated for constitutional purposes as if stopped at the border. Though Petitioner was released on his own recognizance after his arrest near Otay Mesa, California in September 2023, Hussain Decl. ¶ 5, his status as an applicant for admission has remained unchanged. Petitioner was arrested and detained on October 29, 2025. Because under BIA precedent that is binding on ICE, Petitioner is an applicant for admission, he was re-arrested and his detention is subject to section 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) (alien who entered without admission or inspection are applicants for admission subject to mandatory detention under § 1225(b)(2)(A) even if they “have been residing in the United States for years without lawful status”).⁶ Reading 8 U.S.C. § 1225(b)(2) to apply to any “applicant for admission” is in accordance with the plain meaning of the text. *See Vargas Lopez*, 2025 WL 2780351, at *9 (denying habeas petition and holding that petitioner was “an alien within the ‘catchall’ scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a”). This reading does not render section 1226 superfluous; section 1226 continues to apply, for example, to aliens who have been convicted of certain criminal offenses since admission. *See Chavez*, 2025 WL 2730228, at *5 (observing that “[h]eeding the plain language of the statute . . . does not contradict or render superfluous § 1226, as Petitioners urge,” explaining that “§ 1226 ‘generally governs the process of arresting and detaining’ certain aliens, namely ‘aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission’” (quoting *Jennings*, 583 U.S. at 288)).

Petitioner’s Demand for a Bond Hearing

While the government recognizes that the Court may not reach this issue and need not if it adheres to its prior decision in *Savane*, should this Court determine that Petitioner’s detention is governed by 8 U.S.C. § 1226 and not § 1225, ICE nevertheless has authority to detain Petitioner pursuant to section 1226(a), which “generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal.” *Jennings*, 583 U.S. at 288. Section 1226(a) provides that “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 Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that “subsection (a) creates authority for *anyone’s* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”).

An alien detained pursuant to Section 1226(a) may request a post-deprivation custody

⁶ BIA decisions are binding on ICE. *See* 8 C.F.R. § 1003.1(g)(1) (“Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.”).

redetermination hearing (*i.e.*, a “bond hearing”) before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors and a determination whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].”).

Thus, to the extent the Court determines that Petitioner’s current detention does not fall within the scope of section 1225, the government nevertheless has authority to detain Petitioner pursuant to section 1226(a), and Petitioner may be afforded his requested bond hearing for a determination whether he presents a danger to others or a risk of flight.⁷ *See* 8 C.F.R. § 1003.19. Such hearing would provide constitutionally sufficient process for Petitioner’s continued detention.⁸ *See Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).

* * *

⁷ To be clear, in light of the *Matter of Yajure Hurtado*, a holding from this Court in this individual case that Petitioner was detained under § 1226(a) would be required for Petitioner to then request and receive the bond hearing.

⁸ To the extent the Court determines that Petitioner is detained pursuant to section 1226(a), Petitioner should be required to exhaust his administrative remedies through a bond hearing before obtaining his requested relief of release from a federal court. While “[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court],” *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), “district courts in this Circuit have recognized such a requirement as a prudential matter,” *Castillo Lachapel v. Joyce*, 786 F.Supp.3d 860, 864 (S.D.N.Y. 2025) (internal quotation marks omitted) (requiring exhaustion for habeas petitioner detained under § 1226(a)). *See also Capunay Guzman v. Joyce*, 786 F. Supp. 3d 865, 869-71 (S.D.N.Y. 2025) (same); *Fontanelli ex rel. Bernal Garcia v. Francis*, No. 25 Civ. 7115 (JLR), 2025 WL 2773234, at *5-*8 (S.D.N.Y. Sept. 29, 2025) (same).

I thank the Court for its consideration of this matter.

Respectfully submitted,

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