

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

Angie Maralene Gonzales Lopez

Petitioner,

-against-

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; **PATRICIA HYDE**, IN HER OFFICIAL CAPACITY AS ACTING BOSTON FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; **DAVID W. JOHNSTON**, VERMONT SUB-OFFICE DIRECTOR OF IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; **TODD M. LYONS**, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; **PETE R. FLORES**, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER FOR U.S. CUSTOMS AND BORDER PROTECTIONS; **KRISTI NOEM**, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; **MARCO RUBIO**, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; **PAMELA BONDI**, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL; AND **JONATHAN TUREK**, SUPERINTENDENT, CHITTENDEN REGIONAL CORRECTIONAL FACILITY.

Respondents.

Case No.
2:25-cv-00863

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR
HABEAS CORPUS**

INTRODUCTION

This case presents a constitutional challenge to the government’s continued detention of Petitioner, Miss Angie Maralene Gonzales Lopez (“Petitioner” or “Miss Gonzales Lopez”). The government wrongfully contends that Miss Gonzales Lopez’s detention is now governed by 8 U.S.C. § 1225(b)(2), after having initially detained and subsequently granted her bond under 8 U.S.C. § 1226(a). Miss Gonzales Lopez has accordingly suffered a loss of personal liberty in a manner that amounts to a violation of her right to due process. The Government’s arbitrary misapplication of the pertinent detention statutes relative to Miss Gonzales Lopez’s custody ultimately deprives her with the opportunity for any meaningful individualized review of her detention, thus violating the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

I. The Government’s Attempt to Apply § 1225 to a Noncitizen Inside the Country and Not Subject to § 1226(c) Exclusionary Criminal Conduct is Contrary to Congressional Design

Under the system that Congress created, two statutes establish and govern the detention of noncitizens pending removal proceedings – namely, 8 U.S.C. § 1225 and 8 U.S.C. § 1226. 8 U.S.C. § 1226 further provides for both a framework for discretionary release under § 1226(a) and exclusionary crimes mandating detention under § 1226(c).

If the government were correct that every noncitizen “present in the U.S. without admission” is subject to § 1225(b)(2), then § 1226 would have no meaningful application to hundreds of thousands of noncitizens arrested within the United States. Courts have repeatedly rejected the government’s expansive new reading of § 1225 — particularly where the noncitizen has been processed into full removal proceedings governed by Sections 236 and 240 of the Immigration and Nationality Act. In *Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 U.S. Dist. LEXIS 157214

(S.D.N.Y. Aug. 8, 2025), the Southern District of New York rejected the Government’s reliance on § 1225 as applied to a noncitizen who had previously resided in the United States, only later to be re-detained after attending their scheduled court appearance. *Id.* The Court in *Benitez* found that the Department’s prior discretionary release undercut its claim that the petitioner remained subject to mandatory detention under § 1225(b). *Id.* at 7–8. Instead, the Court held that § 1226 governed his detention, as he was no longer “seeking admission” at the time of arrest. *Id.* The court in *Benitez* found that when Congress uses different terms such as “applicant for admission” and “alien seeking admission” in the same statute, it intends different meanings. *Id.* at 19–20. Accordingly, not all “arriving aliens” or “applicants for admission” are properly subject to § 1225(b)’s mandatory detention.

Further, the statutory construction of § 1226(a) taken in conjunction with § 1226(c) makes it even more apparent that § 1225(b)’s mandatory detention cannot apply to all “arriving aliens” or “applicants for admission”, or it would render § 1226(c) meaningless. As the court found in *Sampiao v. Hyde*, 1:25-cv-11981, (D. Mass., 2025):

“[i]f the government were correct that such noncitizens are subject to mandatory detention under Section 1225(b)(2) as applicants for admission, there would have been no need for Congress to specify in Section 1226(c)(1)(E) that such citizens are subject to mandatory detention when they are present in the United States without being admitted or paroled and when they satisfy the separate criminal conduct criterion. Such an interpretation, which would nullify the criminal conduct provision of a statute Congress enacted this very year, must be rejected. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”). The Court therefore concludes that the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States. *See Jennings*, 583 U.S. at 302-03, 138 S.Ct. 830 (Section “1226 applies to aliens already present in the United States” and “authorizes detention only ‘[o]n a warrant issued’ by the Attorney General leading to the alien’s arrest” (quoting 8 U.S.C. § 1226(a))).”

If, as the government is arguing, §1225(b)(2) should now be applied to Miss Gonzales Lopez, who was initially detained and released under § 1226(a), was re-detained while living within the United States as an applicant for admission with a pending asylum application, and who is subject to no § 1226(c)(1)(E) crimes mandating detention, § 1226(c) becomes entirely meaningless. Thus, it would fly in the face of Congressional intent as demonstrated through statutory construction to hold that §1225(b)(2) could properly govern the detention of an individual like Miss Gonzales Lopez.

The government further argues that applying § 1225 to Miss Gonzalez Lopez is proper, rather than § 1226(a), as applying § 1226(a) would “restore” a pre-IIRIRA disparity and create “preferential treatment.” But IIRIRA preserved the fundamental statutory distinction between arriving aliens subject to expedited removal proceedings, governed by § 1225, and noncitizens inside the U.S. in § 1229a proceedings, governed by § 1226. Congress did combine “exclusionary and deportation proceedings” but it did not collapse them into a single detention scheme. The fact that § 1226(a) continues to exist providing bond authority for the vast majority of noncitizens in regular removal proceedings clearly demonstrates that Congress did not mandate detention for all “arriving aliens” or “applicants for admission” waiting on adjudication of their pending applications who are subject to removal proceedings.

This Court has held that the legislative history behind IIRIRA does not suggest congressional intent to subject all noncitizens who enter the United States without inspection to mandatory detention during their removal proceedings. *Piedrahita-Sanchez v. Turek*, No. 25-cv-875, at *12 (D.VT. November 2025) (citing, *inter alia*, *Romero v. Hyde*, No. 25-11631-BEM, ___ F. Supp. 3d ___, 2025 WL 2403827, at *29 (D. Mass. Aug. 19, 2025) (Congressional intent was not expressed as to detention pending the outcome of the immigration proceedings, and “[r]ealistically

speaking, if Congress's intention was so clear, why did it take thirty years to notice?"). Thus, the Government fails in their argument that Congressional intent, either in the US. Code or text of IIRIRA, demonstrates that Miss Gonzales Lopez as a noncitizen currently within the country, and subject from her initial detention to 240 proceedings rather than expedited removal proceedings, would suddenly be subject to § 1225 rather than § 1226 under which she was initially held and released.

a. Miss Gonzales Lopez's Detention Has Been, and Continues to be, Governed By 8 U.S.C. § 1226

Miss Gonzales Lopez was previously detained under the discretionary provisions set forth in Section §1226. The Department now improperly seeks to retroactively reclassify her detention as mandatory under Section 1225, pursuant to the Board of Immigration Appeal's posture in *Matter of Yajure Hurtado*, 29 I&N Dec. 225 (BIA 2025).

The Department's own position that Miss Gonzales Lopez's prior detention upon arriving in the United States was governed under Section 1226 supports this notion. The Department simply cannot now posit that Miss Gonzales Lopez's detention, whilst previously discretionary, is now mandatory and governed under 8 U.S.C. § 1225(b)(2). Such a notion is constitutionally fragile, insofar as it effectively denies her liberty without providing an individualized review of her custody, in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

The Department initially treated Miss Gonzales Lopez as subject to § 1226(a) and released her on bond. *See Deputy Chief Sarah Lapointe's Declaration* ¶ 10. This matters for two reasons: (1) DHS chose the statutory track, and that election governs the detention authority; and (2) DHS cannot retroactively claim that Petitioner *was always* subject to mandatory detention under §

1225(b)(2)—especially after having deemed her eligible for bond and supervised release. It is clear that Petitioner was always subject to discretionary, not mandatory, detention given the steps taken by DHS when they released Miss Gonzalez Lopez to her family members on bond in October 2022. Specifically, § 1226(a) states that in cases of those subject to the discretionary detention framework, the Attorney General -

(1) may continue to detain the arrested alien; and

(2) may release the alien on-

a. bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General...

with the exception being those prohibited by Section 1226(c), which “prohibits certain noncitizens who are inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) by virtue of their presence in the country without being admitted (like Petitioner) from being released on bond, *but only if* the noncitizen has also been:

charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

8 U.S.C. § 1226(c)(1)(E). Relevant here, noncitizens arrested and detained under § 1226 have the right to request a custody redetermination (i.e., a bond hearing) before an Immigration Judge, regardless of their criminal history. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1).” *Pacheco Mayen*, at 7-8.

Here, Miss Gonzalez Lopez was found eligible to request a redetermination of her custody after entering the United States. Her Notice of Custody Redetermination clearly states that she is being released “[p]ursuant to the authority contained in section 236 of the Immigration and Nationality

Act and part 263 of title 8, Code of Federal Regulations.” Exh. 1, Notice of Custody Redetermination Dated October 13, 2022 (noting this is codified as 8 U.S.C. § 1226(a)). The way in which her custody was handled, with a discretionary redetermination made by a Deportation Officer and subject to a \$3,000 bond, further emphasizes that the Department applied § 1226(a) to Miss Gonzalez Lopez’s case. Petitioner acknowledges that, for purposes of the immigration laws, as an individual in the United States seeking asylum, she is considered an applicant for admission. Counsel notes that an inadvertent typo in the initial briefing stated otherwise and apologizes for that error. However, Petitioner maintains that she is not an applicant for admission within the meaning of 8 U.S.C. § 1225 as she was initially detained under 8 U.S.C. § 1226(a) and then detained again after being physically present in the United States for several years.

The Government now posits a novel reinterpretation of the statutory framework governing detention to reflect the administration’s change in immigration policy, by and through the Board’s recent decision in *Yajure Hurtado*. Section 1225(b)(2)(A) is now a more favorable authority for the Government, as it results in mandatory detention for most unadmitted noncitizens in the United States. While the Attorney General is granted broad authority to set and review immigration policy, such policy must still ultimately comply with constitutional requirements. The Department’s detention authority is not unfettered, and it cannot whimsically “cherry-pick” a detention authority depending on their litigation posture. Miss Gonzales Lopez cannot be detained without meaningful opportunity for individualized review of her custody, nor can detention be maintained if such review is not rationally related to a legitimate governmental interest.

The doctrine of Constitutional avoidance lends additional favor to applying § 1226 in the instant matter. If the Government’s interpretation is accepted, then: Any noncitizen present without admission could be mandatorily detained for years whilst awaiting backlogged immigration court

proceedings, with no bond hearing or individualized review of their custody. This raises serious due process questions, which the Court should avoid, by adopting the narrower yet widely accepted interpretation under § 1226. Courts routinely apply constitutional avoidance in immigration detention cases, and such application is proper here.

II. PETITIONER'S DETENTION WITHOUT OPPORTUNITY FOR INDIVIDUALIZED REVIEW VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

“Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Due Process Clause “applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693. Due process protections inherently include the right to be free from arbitrary civil immigration detention. *Id.* at 721 (recognizing that “both removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary and capricious”)(Kennedy, J., dissenting).

Detention during deportation proceedings cannot be arbitrary and must be rationally related to a legitimate governmental interest. The Supreme Court has made clear that detention incidental to removal proceedings has only two legitimate regulatory goals – namely, “ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 690; *see also Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (when determining whether to release a noncitizen from detention, an Immigration Judge considers whether the individual “is a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk”); *see also Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v. Salerno*, 480 U.S. 739, 755 (1987).

Miss Gonzales Lopez's arbitrary detention violates the Due Process Clause of the Fifth Amendment by denying her any meaningful individualized review relative to her custody. "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Salerno*, 480 U.S. 739, 755 (1987). Here, Miss Gonzales Lopez has been charged, though notably not convicted, with her first offense of a crime. On the basis of that charge, Miss Gonzales Lopez has been subject to the Government's unlawful application of mandatory detention without review or trial relative to either charged crime or her application for asylum. The Department thus violates Miss Gonzales Lopez's constitutionally protected right to due process in a manner that is specific and unique to her as a noncitizen. That is to say, Miss Gonzales Lopez's rights are being violated on the very basis that she is noncitizen.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976) puts forth a three-prong test applied by the Second Circuit when determining adequacy of process relative to civil immigration detention. *Piedrahita-Sanchez v. Turek*, No. 25-cv-875, at *12 (D.VT. November 2025) (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2nd Cir. 2020)). Under *Mathews*, the Court considered: "[f]irst, the private interest that will be affected by the official action, second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

As to the first prong, Miss Gonzales Lopez's private interest in "freedom from imprisonment" must be given due accord. See *Velasco Lopez*, 978 F.3d at 851 ("the most significant liberty interest there is-the interest in being free from imprisonment." (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004))). The second prong strongly weighs in Miss Gonzales Lopez's

favor as well, as “[t]he purpose of the bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people [who] are ultimately detained.” *Id.* The BIA’s decision in *Yajure Hurtado*, however, strips immigration courts of the authority to hear custody redeterminations for citizens situated similarly to Miss Gonzales Lopez, erroneously subjecting her to mandatory detention and thus denying her due process protections, demonstrating the lack of procedural safeguards available for her through administrative channels. For Miss Gonzales Lopez, due process simply is not available under the Government’s novel interpretation of the law, demonstrating a lack of procedure which ultimately suggests an increased risk of erroneous deprivation of her private liberty interest. The third prong must weigh whether the Government has a significant interest in Miss Gonzales Lopez’s continued detention. The Government’s failure to conduct any semblance of individualized review relative to Miss Gonzales Lopez’s custody suggests that the Government in fact has neither legitimate purpose nor interest in her continued detention. Simply put, if the Government cannot articulate a legitimate governmental interest in detaining Miss Gonzales Lopez, its interests – notably, the public’s interests – are better served by releasing Miss Gonzalez Lopez, thereby redressing the constitutional harm caused to her thus far whilst simultaneously saving taxpayer revenue by not expending it arbitrarily.

III. Administrative Exhaustion is Not Required

Respondents wrongly suggest Miss Gonzales Lopez must wait for an Immigration Court to deny her relief before seeking habeas. “Where Congress specifically mandates, exhaustion is required.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1991). But when it is not mandated, the decision to require exhaustion is within the sound discretion of the court. *Id.*; see also *Shearson v.*

Holder, 725 F.3d 588, 593 (6th Cir. 2013). “Prudential exhaustion is a judge-made doctrine that enables courts to require administrative exhaustion even when the statute or regulations do not.” *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 747 (6th Cir. 2019). Courts apply a three-pronged analysis in determining when to apply prudential exhaustion, weighing whether: (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. *United States v. California Care Corp.*, 709 F.2d 1241, 1248 (9th Cir. 1983).

Here, the Court’s authority to prudentially waive administrative exhaustion is proper as the issues raised in Miss Gonzales Lopez’s petition: (1) are purely legal in nature and do not require the agency to develop a record; (2) include a due process claim, rendering the administrative scheme futile; and (3) are unlikely to yield administrative relief due to Respondent’s unlawful interpretation of the INA.

Administrative remedies are unavailable for Miss Gonzales Lopez due to the BIA’s recent decision in *Yajure Hurtado*. She is unlikely to obtain relief from her continued detention sans individualized review accordingly. *Yajure Hurtado* strips Immigration Judges of jurisdiction over custody redeterminations for noncitizens who entered without inspection and have not subsequently obtained lawful status. As such, noncitizens, situated like Miss Gonzales Lopez, who would otherwise be eligible for bond under the Government’s long-standing interpretation of Sections 1225 and 1226, are instead being unlawfully denied any meaningful individualized review of their custody. This notion is constitutionally fragile insofar as detention that bears no rational relation to a legitimate governmental interest violates the Due Process clause of the Fifth

Amendment. *Addington*, 441 U.S. at 425 (1979) (noting that “[t]he Supreme Court has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection” including an individualized detention hearing); *Salerno*, 480 U.S. at 755.

The Board’s decision in *Yajure Hurtado* is binding upon the agency and the immigration courts alike, rendering the administrative process a futile means by which to seek the relief that Miss Gonzales Lopez now petitions this Court for – namely, her immediate release from detention, or in the alternative, an individualized hearing relative to her custody, wherein only factors bearing a rational relation to legitimate government interests be considered in any determination relative to her custody. This Court should exercise its inherent authority to prudentially waive exhaustion in the instant matter. Such waiver is particularly appropriate here as Miss Gonzales Lopez’s interest weighs heavily against requiring administrative exhaustion due to its current futility and inability to afford her the relief that she seeks. *See McCarthy*, 503 U.S. at 145. Exhaustion is excused where delay caused by it results in hardship. *See Shalala v. Illinois Council*, 529 U.S. 1, 13 (2000). Requiring Miss Gonzalez Lopez to exhaust a demonstrably futile remedy only serves to delay the relief that she now seeks before this Court, leaving her without recourse and thereby furthering the harm that she suffers through an erroneous deprivation of liberty without judicial review.

The absence of an IJ bond hearing is not due to Miss Gonzales Lopez’s failure to ask; it is due to DHS’s statutory designation, which she challenges *here and now*. That is precisely the role of Habeas. Courts routinely hear *and grant* habeas petitions challenging the legal basis of detention before the agency has provided any hearing, because Miss Gonzales Lopez’s core complaint is the absence of a hearing itself.

IV. Conclusion

Miss Gonzales Lopez is, demonstrably, detained pursuant to § 1226(a), not § 1225. Thus, her detention without the opportunity for meaningful individualized review is inherently violative of her right to due process under the Fifth Amendment. The Constitution demands that Miss Gonzales Lopez be afforded this review with consideration paid to rational governmental interests pertaining to her continued custody. The Court should exercise its inherent authority to grant bail, or in the alternative, order a bond hearing be conducted by an immigration judge with appropriate safeguards to protect against improper adherence to *Yajure Hurtado*.

DATED this 14th day of November, 2025
Respectfully submitted,

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