IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GRACIELA ESTHER GUTIERREZ-FONSECA	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil No. 4:25-cv-05229
	§	
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, *et al.,*	§	
	§	
	§	
Respondents.	§	

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Respectfully submitted,

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COMES NOW, Petitioner, by and through undersigned counsel submit this Response in Opposition to the Federal Respondents' Motion to Dismiss Petitioner's Writ of Habeas Corpus. (*Dkt. 6*) The facts in this case are not in dispute: the Petitioner entered the United States without inspection and was arrested and transferred to Immigration and Customs Enforcement (ICE) Custody, where she remains. Additionally, both the Petitioner and Respondents agree that an Immigration Judge (IJ) is unable to consider bond for the Petitioner per *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025).

The primary contention in this case is which statute governs the detention of the Petitioner. The government erroneously contends that the Petitioner is subject to mandatory detention under 8 U.S.C. Section 1225(b)(2). This provision, however, does not apply to individuals like the Petitioner who had already entered and were residing in the United States at the time they were apprehended. Instead, 8 U.S.C. Section 1226(a) applies to noncitizens who were not apprehended upon their arrival to the United States. Therefore, applying the mandatory detention provision of 8 U.S.C. Section 1225(b)(2) to the Petitioner is unlawful.

ARGUMENT

I. Because the Petitioner was apprehended after residing in the United States, not upon his arrival, he is therefore not subject to mandatory detention under 8 U.S.C. Section 1225(b)(2).

This case turns on which of two sections of the Immigration and Nationality Act (INA) applies to the Petitioner. The Federal Respondents contend that the Petitioner is subject to mandatory detention under the plaint text of the INA, 8 U.S.C. § 1225(b)(2)(A). This contention is based not on precedent or the text of the statute, but on a July 8, 2025, ICE policy entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," which was inapposite to decades of well-established practice. Under ICE guidance all persons who entered the U.S. without inspection are subject to mandatory detention under § 1225(b)(2)(A), regardless of whether the person was apprehended at the border, or after living in the U.S. for months or years. This policy was adopted by the BIA in *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (2025).

Federal courts have continuously rejected this interpretation of the INA's detention authority, as well as the holding in *Yajure Hurtado.* Regulations drafted by the Executive Office of Immigration Reform (EIOR) stated that generally, individuals who entered the country without inspection are not considered detained under § 1225 and instead fall under the purview of § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Ref. 10312, 10323 (Mar. 6, 1997). Courts followed this guidance for nearly thirty years, prior to ICE's 2025 guidance. As such, many federal judges find ICE's new interpretation of Sections 1225 and 1226 to be inaccurate, specifically because such interpretation of Section 1225 would "render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1258 (W.D. Wash. 2025); *see also Torres v. Barr*, 976 F.3d 918, 930 (9th Cir. 2020)

(noting in the context of interpreting inadmissibility grounds "that a contrary reading would render other provisions of the immigration code superfluous"). This holding has been adopted by courts across the country[1], including the Southern District of Texas. A memorandum and order from Judge Saldaña of the Laredo Division is illustrative:

> As almost every district court that has taken up this issue has concluded, including courts in this district, "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" clearly support the finding that 1226 is the applicable statute, not §1225. *See Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (quoting *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025) and *citing Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025)*); Rodriguez, 2025 WL 2782499*, at *1 & n.3 (collecting cases); *Belsai D.S. v. Bondi*, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025)). "In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect." *Lopez-Arevelo*, 2025 WL 2691828, at *7.

Fuentes v. Lyons, No. 5:25-cv-00153, Memorandum & Order (S.D. Tex. Oct. 16, 2025). Within the Houston Division of the Southern District, nine similar holdings have been made. *Rivera-Henriquez v. Tate*, 4:25-CV-045436, (S.D. Tex. Sep. 26, 2025) (J. Hoyt); *Buenrostro Mendez v. Bondi*, 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025) (J. Rosenthal); *Ortega-Aguirre v. Noem*, 4:25-cv-

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[1] See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

04332 (S.D. Tex. Oct. 10, 2025) (J. Bennett); *Ascencio-Merino v. Dickey*, 4:25-cv-00490 (S.D. Tex. Oct. 21, 2025) (J. Bennett); *Reyes-Lopez v. Warden of MPC*, 4:25-cv-04629 (Oct. 21, 2025) (Magistrate J. Palermo); *Aslamov v. Warden Bryan Uhls*, 4:25-cv-04299 (S.D. Tex. Oct. 22, 2025) (J. Hanks); *Mejia Juarez v. Bondi*, 4:25-cv-03937, (S.D. Tex. Oct. 27, 2025) (J. Hoyt); *Mendez Velazquez v. Noem*, 4:25-cv-04527 (S.D. Tex. Oct. 30, 2025) (J. Ellison); *Torres-Rodriguez v. Noem*, 4:25-cv-5036, (S.D. Tex. Nov. 3, 2025) (J. Rosenthal). The Respondents cite a single holding to the contrary, *Cabanas v. Bondi,* No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025). This holding, however, is incongruent with plethora of holdings already cited herein.

Finally, Respondents cite *Carlson v. Landon*, 342 U.S. 524, 538 (1952) for the proposition that "[d]ention is necessarily a part of *this* deportation procedure" (emphasis added). This statement, however, is not applicable to the present case as the petitioners in *Carlson* were charged as members of the Communist Party in violation of the Subversive Activities Control Act of 1950. *Carlson* refers specifically to aliens who may seek "to hurt the United States during the pendency of deportation proceedings," which is not applicable to this Petitioner. *Id.* Further, even within the context of the Subversive Activities Control Act, the "purpose to injure could not be imputed generally to all aliens subject to deportation, so discretion was placed" into the Act to allow for bond. *Id.* No where in the INA is detention named as a prerequisite for removal or deportation.

a. While the Immigration Judge does not have the authority to issue bond for individuals subject to mandatory detention under 8 U.S.C. Section 1225(b), IJs retain authority to issue bond hearings under 8 U.S.C. Section 1226.

The Petitioner does not dispute that Immigration Judges do not have authority to grant bond to individuals who are subject to mandatory detention under 8 U.S.C. section 1225(b). *Yajure Hurtado,* 29 I. & N. at 220. Instead, for the reasons asserted, *supra,* the Petitioner contends that Section 1226 not 1225 controls his case, and he is therefore not subject to mandatory detention.

As such, the Petitioner's request for bond is pursuant to Section 1226(a), and the holding in *Yajure Hurtado* does not control.

Instead, the Petitioner is eligible for bond under 8 U.S.C. section 1226(a)(2). The text of Section 1226 explicitly applies to individuals charged as inadmissible, including those who entered without inspection, such as the Petitioner. *See* 8 U.S.C. § 1226(c)(1)(E). Moreover, "when Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez*, 779 F. Supp. 3d at 1256-57; *citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400, (2010). Thus, this subsection makes clear that individuals whose immigration status is governed by this section are, by default, afforded a bond hearing under subsection (a).

b. Judicial Review of the Petitioner's removal proceeding is available under 28 U.S.C. § 2241.

The Petitioner is not seeking judicial review of his removal proceeding determinations, as the Respondents claim. Instead, the Petitioner contends that his detention under 8 U.S.C. § 1225(b)(2)(A) is in violation of the plain language of the INA. The Petitioner, who previously entered and was residing in the United States, is subject instead to 8 U.S.C. § 1226(a), which allows for conditional parole or bond. Thus, the Petition for Writ of Habeas Corpus challenges the Petitioner's unlawful detention, not the validity of his removal proceedings.

Federal courts retain jurisdiction to review statutory and constitutional challenges to immigration detention under 28 U.S.C. § 2241, provided that administrative remedies have been exhausted. *Zadvydas v. Davis,* 533 U.S. 678 (2001). Here, the Petitioner has no administrative remedies to pursue as there is no administrative remedy to unlawful detention.

II. The Petitioner's due process claim is valid.

The Petitioner's interest that is at stake in this case "is fundamental to any democratic society: the right to freedom from arbitrary detention." *Gashaj v. Garcia*, 234 F. Supp. 2d 661, 670 (W.D. Tex. 2002). Here, the Petitioner is entitled to a bond hearing to determine whether he is a flight risk or danger to others. The Supreme Court has repeatedly held that "statutes may create liberty interests that are entitled to the procedural protections of the Due Process Clause" *Vitek v. Jones*, 445 U.S. 480, 488 (1980). Section 1226 creates such a right to a bond hearing. Without being afforded this hearing, the government's detention of the Petitioner violates his due process rights, as "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas,* 533 U.S. at 690. Moreover, a "fundamental requirement of due process is 'the opportunity to be heard' .... at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965). For these reasons, the right to freedom from unlawful detention is a fundamental constitutional right, such that its denial is a due process violation, without requiring the analysis of whether such detention can "be said to shock the contemporary conscience," as the Respondents assert. *Cnty. Of Sacramento v. Lewis,* 533, 847 n. 8 (1998).

As the Petitioner's continued detention is unlikely to further any of the asserted purposes behind 8 U.S.C. § 1226, "the risk of an erroneous deprivation" of his liberty interest is acute. *Gashaj,* 234 F. Supp. 2d at 670. Furthermore,

> Respondents could easily avoid these problems by affording [the Petitioner] an individualized bond hearing. The additional burden of such a hearing to the overall deportation process--a process that may take months or even years--is slight compared to the rights at stake. Indeed, release on bond may actually serve the Government's interest by freeing up unnecessarily occupied detention space.

Id. As 8 U.S.C. § 1226 applies to the petitioner, and not Section 1225, the Petitioner is not subject to mandatory detention. At minimum, under Section 1226, the Petitioner is entitled to a bond

hearing to determine if he is a flight risk or risk to others. Thus, his indefinite detention pending removal proceedings is indeed a due process violation.

CONCLUSION TO

The section of the INA that applies to the Petitioner is Section 1226 and not 1225. Pursuant to that section, the Petitioner requests a writ of habeas corpus directing the Respondent to immediately release the Petitioner from detention, or in the alternative, provide the Petitioner with a bond hearing within seven days.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2025, the foregoing pleading was filed with the Court through the Court's CM/ECF system on all parties and counsel register with the Court CM/ECF system.

/s/ Javier Rivera
Javier Rivera
Attorney for Petitioner