IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Murod Alievich Sadikov, Petitioner, v. KEVIN RAYCRAFT[1], Field Office Acting Director of Enforcement and Removal Operations Detroit, United States Immigration and Customs Enforcement, Department of Homeland Security, *et al.*, Respondents.	Case No. 1:25-cv-826 Judge Jeffrey P. Hopkins Magistrate Judge Kimberly A Jolson

PETITIONER'S RESPONSE TO RESPONDENTS' RETURN OF WRIT

Respondents' return of Petitioner's petition for a writ of habeas corpus attempts to persuade that this honorable Court does not have jurisdiction to decide the legality Petitioner's detention and that administrative exhaustion is required before this Court can determine the legality of Petitioner's detention, neither of which are correct considering the long-established jurisprudence of habeas corpus. However, the majority of the argument of Respondent's return is a rehashing of the reasoning supporting the novel holding of the Board of Immigration Appeals in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), incorrectly arguing that the mandatory detention provisions of 8 U.S.C. § 1225, which is the expedited removal statute, apply to individuals who are not in expedited removal proceedings, like Petitioner. Each of these arguments shall be addressed in reverse order.

[1] Robert K. Lynch is no longer the Field Office Director for ERO, ICE. Kevin Raycraft is currently the Acting Field Office Director for ERO, ICE.

I. 8 U.S.C. § 1225 DOES NOT APPLY TO PETITIONER.

Respondents' misguided conclusion that Petitioner is subject to 8 U.S.C. § 1225(b)(2) detention rests entirely upon the incorrect premise that Petitioner is an applicant for admission to the United States and that *Matter of Yajure Hurtado* applies to foreign nationals who are already long-term residents of the United States prior to their detention by ICE.

A. § 1225(b)(2) Does Not Apply to Petitioner Because He Is Neither an "Applicant for Admission" Nor "Seeking Admission" to the United States.

Respondents do not dispute that Petitioner entered the United States without inspection in September of 2023, and is not in the expedited removal process of § 1225. It is similarly undisputed that Petitioner is in removal proceedings under 8 U.S.C. § 1229a. Yet, despite Petitioner's continuous residency of over two years in the interior of the United States, Respondents attempt to equate Petitioner to the same legal footing as an arriving alien to the United States, who is seeking entry to this country at this time. Tellingly, Respondents cannot cite to any district court or court of appeals case law to support this twisted interpretation of the Immigration and Nationality Act.

Petitioner denies that he is an "applicant for admission" to the United States and that he is "seeking admission" to the United States. Numerous federal district courts have considered this exact same issue, whether someone already residing in the United States and not subject to expedited removal is an "applicant for admission" and/or "seeking admission" to the United States, and the courts have come to the same conclusion as Petitioner: No, foreign nationals who are not recently arrived to the United States and who are not asking immigration officials to let them enter the United States are *not* applicants for admission seeking admission to the United States, as these terms are used in the Immigration and Nationality Act.

Respondents rely upon § 1225(a)(1) to give authority to their supposition that Petitioner is an applicant for admission to the United States, even though he has already been here for over two years; however, Respondents are incorrect that § 1225 applies to Petitioner. Section 1225 is entitled

"Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing." The Supreme Court of the United States has held that a statute's "title is especially valuable [where] it reinforces what the text's nouns and verbs independently suggest." *Yates v. United States,* 574 U.S. 528, 552 (Alito, J., concurring in judgment), *cited in Beltran Barrera v. Tindall,* No. 3:25-cv-541-RGJ (W.D. Ky. Sep. 19, 2025), *Cf. Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (relying on section title to help construe statute). The inclusion of the word "arriving aliens" in the title of the statute means that this statue is limited to "arriving aliens," not those already present. *Beltran Barrera, supra, concurring with Pizarro Reyes v. Raycraft,* 2025 WL 2609425 at *5 (E.D. Mich. Sep. 9, 2025).

"Arriving alien" is defined by regulation at 8 C.F.R. § 1.2 to be "an applicant for admission **coming or attempting to come into the United States** at a point of entry, or **an alien seeking transit through the United States** at a port of entry, or an alien indicted in international or U.S. waters and brought into the US by any means, whether or not to a designated port of entry and regardless of the means of transport." It is beyond a doubt that Petition is not an arriving alien to the United States. The present tense of the verbs "coming, attempting to come, and seeking" from 8 C.F.R. § 1.2 clearly limit the meaning of "arriving alien" to foreign nationals who have just arrived to the United States and are seeking to enter this country or travel through it, not someone like Petitioner who already entered this country without inspection over two years ago. It is factually undisputed that Petitioner has been residing in the interior of the United States since he entered without inspection on or about September 10, 2023.

Moreover, the remainder of the statutory text of § 1225 also supports the interpretation that this statute only applies to foreign nationals who have just arrived to the United States and are seeking entry to this country. The plain text of § 1225 shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)– (b), (d). That section repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4);

sets out procedures for "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); and discusses "stowaways, "crewm[e]n," and noncitizens "arriving from contiguous territory." *Id.*§ 1225(a)(2), (b)(2)(B), (b)(2)(C). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the United States border, and not Petitioner who has resided here for over two years until he was suddenly detained at a routine check-in appointment with ICE, even though his circumstances have not changed.

Additionally, the Supreme Court of the United States has already spoken to this issue and made clear that § 1225 does not apply to immigrants who already reside in the United States, such as Petitioner. *Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018). In *Jennings,* the Court unequivocally stated the following:

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens **already in the country** pending the outcome of removal proceedings under §§ 1226(a) and (c). *Id.* [emphasis added].

Respondent's return of writ cites to *Jennings* in its long, tortured analysis attempting support the Department of Homeland Security's and Department of Justice's new interpretation of §§1225 and 1226 contained in *Yajure Hurtado.* Yet, the plain language of the Supreme Court cannot be ignored. Since Petitioner has resided in the United States for many years prior to his detention by ICE, § 1226(a) and not §1225(b) apply to Petitioner.

Moreover, Congress has recently verified through its passage of the Laken Riley Act that §1226 bond proceedings apply to foreign nationals already residing in the United States prior to their detention. Respondents, in their return of writ, tellingly avoid any mention whatsoever of the Laken Riley Act, Pub. L. No. 119-1, §2, 139 Stat. 2 (2025). This extremely recent amendment of §1226 further clearly demonstrates that foreign nationals such as Petitioner, who are already residing in the United States, are *not* subject to §1225(b)(2) mandatory detention. The Laken Riley Act added additional provisions to §1226(c)(1). *See §1226(c)(1)(E)(i)-(ii).* Specifically, the newly codified

§1226(c)(1)(E) provides that the Attorney General shall detain any alien who is inadmissible to the United States under 8 U.S.C. §1182(6)(A) who is also charged with or guilty of certain crimes. *Id.*

The mere existence of the Riley Laken Act resolves the issue before this Court in Petitioner's writ of habeas corpus. It is undisputed that Petitioner is inadmissible to the United States per §1182(6)(A) for having entered the United States without inspection. If foreign nationals who entered the United States without inspection were already subject to the mandatory detention scheme of §1225(b)(2), there would have been no need for Congress to enact the Riley Laken Act to protect United States citizens from the foreign nationals who have entered this country without inspection and have committed certain crimes. Resolving Petitioner's issue here does not require going back to the intent of the 1996 Congress in passing IIRARA. This very same year Congress considered the issue of the detention of foreign nationals who entered without inspection and have committed certain crimes. If detention of these individuals was already required under §1225(b)(2), there would have been no need for Congress to pass the Riley Laken Act. Quite obviously, Petitioner is not subject to the mandatory detention provisions of §1225(b)(2), and per §1226 the Immigration Judge has full legal authority to order Petitioner released from detention on bond.

B. Petitioner's Detention Violates Due Process.

As set forth above, the Immigration Judge's decision in this case that she does not have the legal authority to determine bond in Petitioner's case is clearly unlawful and violates Petitioner's fundamental due process right. The Due Process Clause extends to Petitioner even though he does not presently have a lawful status in the United States. *A.A.R.P. v. Trump,* 605 U.S. 91, 94 (2025), *cited in Morales Chavez v. Director of Detroit Field Office, et al.,* No. 4:25-cv-02061-SL (N.D. of Ohio, Oct. 20, 2025). Petitioner's status as removable from the United States per §§1182(6)(A) and 1227(a)(1) does not outweigh his constitutionally protected interest in his personal liberty. *Rosales-Garcia v. Holland,* 322 F.3d 386, 408 (6th Cir. 2003), *cited in Morales Chavez, supra.* The process due here is

governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Petitioner is limited to ensuring his appearance at future immigration proceedings and preventing danger to the community.

When Petitioner entered the United States in 2023, he was encountered by immigration officials, released on his own recognizance, placed into §1229a removal proceedings, and placed under an Order of Supervision with ICE. Petitioner's fact-specific circumstances have only decreased his likelihood of being a danger to community or a flight risk since then. As already demonstrated in Petitioner's exhibits attached to his writ of habeas corpus, Petitioner is neither a flight risk, nor a danger to community. Petitioner has an established residence in Ohio, where he resides with his United States citizen wife and their United States citizen child. Yet, over two years after Petitioner's entry to the United States and his family unit here and lack of criminality, the United States government has reversed their earlier custody decision and their legal precedence of the past thirty years and alleges mandatory detention applies.

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT APPLICABLE TO UNLAWFUL DETENTION.

Requiring Petitioner to file to the Board of Immigration Appeals an appeal of the Immigration Judge denial of his bond would be futile. The Immigration Judge denied bond stating that she does not have authority to determine bond per *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision was made despite the fact that Petitioner's bond hearing took place after the decision was issued in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL [MSJ Order] (C.D. Cal. Nov. 20, 2025), whereby the Court certified a nationwide class and expressly extended its prior declaratory relief to all class members, which should include Petitioner.

The Board of Immigration Appeals has made its position clear through its precedential decision in *Matter of Yajure Hurtado*, which holds that noncitizens who entered without inspection are subject to mandatory detention under § 1225(b)(2)(A). The Board of Immigration Appeals cannot be expected to reverse its own precedential decision, particularly when the agency coordinated with the Department of Homeland Security in establishing this novel policy of depriving foreign nationals who entered without inspection of their right to a bond proceeding.

Cases before the BIA often languish for years. At the end of Fiscal Year 2024, there were 50,419 appeals filed, only 44,785 appeals completed, leaving 138,680 appeals pending before the Board. As of the third quarter of Fiscal Year 2025, there were 72,200 appeals filed, only 23,889 appeals completed, and 186,473 appeals pending.[1] This massive backlog was exacerbated by the administration's recent downsizing of the Board from 28 to only 15 members by interim final rule published on and effective as of April 15, 2025 (90 FR 15525, 4/14/25).

Courts have recognized that exhaustion may be waived when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Furthermore, exhaustion may be waived when "the legal question is fit for resolution and delay means hardship." *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000), *cited in Singh v. Lewis, et al,* No. 4:25-cv-96-RGJ (W.D. Ky, Sep. 22, 2025). Prudential exhaustion may be required by the Court if 1) agency expertise is necessary to generate a record; 2) not requiring exhaustion would incentivize bypassing the administrative scheme; and 3) administrative renew would likely preclude the necessity of judicial review as the agency could correct its own errors. *Lopez-Campos v. Raycraft,* 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025), *cited in Singh v. Lewis, et al,* No. 4:25-cv-96-RGJ (W.D. Ky, Sep. 22, 2025).

Here, as in *Singh, supra,* the record in the case clearly indicates that prudential exhaustion is not required. The issue before the Court is whether §1225 or 1226 controls Petitioner's ability to be considered released on bond. No further development of the record is needed, as this is solely a legal issue of statutory interpretation. *Id.* Moreover, the violation of Petitioner's due process is a constitutional question that the Board of Immigration Appeals does not have the authority to decide, and the Sixth Circuit has thus held that exhaustion is not necessary in this context. *Sterkaj v. Gonzalez,* 439 F.3d 273, 279 (6th Cir. 2006), *cited in Singh, supra.* Finally, as set forth above, exhaustion would be futile because the Board of Immigration Appeals would follow its own newly issued, binding precedent of *Yajure Hurtado.* The federal district courts within the Sixth Circuit that have already considered this exact same issue have held that exhaustion is not required, and the same should be held here.

III. THIS COURT HAS JURISDICTION OVER PETITIONER'S PETITION FOR A WRIT OF HABEAS CORPUS.

While this Court would not have jurisdiction to review Petitioner's removability from the United States, there is no doubt that jurisdiction is proper over Petitioner's petition for writ of habeas corpus to determine the legality of his detention by ICE. *See Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 117 (2020). (Habeas corpus is the correct remedy to determine whether a foreign national's detention is lawful).

IV. CONCLUSION

Petitioner is being detained unlawfully by ICE under an unlawful interpretation of the Immigration and Nationality Act, in clear violation of Congressional intent. 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner, and the Immigration Judge does have authority to release him on bond per § 1226. This Court has jurisdiction over Petitioner's habeas corpus case,

and administrative exhaustion should not be required considering its futility in this unique situation, as well as the fundamental due process liberty interest at stake.

DATED this 12th day of December of 2025.

Respectfully Submitted,

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