

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

JESUS FLORES VILLEGAS,

Petitioner,

v.

RAYMOND THOMPSON, Warden, *et al.*,

Respondents.

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Case No. 4:25-cv-05428

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS
AND MOTION FOR SUMMARY JUDGMENT**

Petitioner, Jesus Flores Villegas, submits this response and opposition to Respondents' motion to dismiss and for summary judgment. ECF No. 10. Respondents' motion argues that Petitioner should be denied relief for failure to exhaust administrative remedies, that his detention is proper under 8 U.S.C. § 1225(b), and that Petitioner has not suffered a due process violation. None of these arguments are convincing and this Court, like many others around the country and in this very district, should reject them. Petitioner's detention violates the law, and this Court should deny Respondents' motion and the writ of habeas corpus should issue.

I. Nature and Stage of the Proceedings

This matter involves a petition for habeas corpus filed by a noncitizen detainee, being held in mandatory custody based on an erroneous interpretation of the law and a sudden policy change by Respondents. Petitioner, a person who entered unlawfully but has resided in the U.S. for 27 years, was arrested and placed in removal proceedings. ECF No. 10 at 7. He has a pending application for lawful status, filed well before his current detention, and had a valid employment authorization document at the time of his arrest. ECF No. 1 at Exh. 4-5. Petitioner was denied a bond hearing and release from immigration custody based on a finding that the immigration court

did not have jurisdiction to grant his bond under binding administrative precedent from the Board of Immigration Appeals. ECF No. 1 at Exh. 3.

Petitioner sought relief in this Court via a petition for habeas corpus, arguing that his detention is contrary to law and asking this Court to order that he have a bond hearing or be released from custody. ECF No. 1. Respondents have since submitted their motion to dismiss or alternatively grant summary judgement and Petitioner now makes this reply.

II. Issues Before the Court

The issues before the court are (1) whether Petitioner was required to exhaust administrative remedies, (2) whether Petitioner's detention is governed by 8 U.S.C. 1225(b) or 8 U.S.C. § 1226(a), and (3) whether Petitioner's detention violates due process.

III. Argument

The Court should deny Respondents' motion to dismiss as Petitioner was not required to exhaust his administrative remedies and, to the extent that prudential exhaustion applies, it should be waived under these circumstances. Mandatory detention under 8 U.S.C. § 1225 is inapplicable to Petitioner's detention as he entered the United States many years ago and was not detained at entry. Rather, he is subject only to discretionary detention under 8 U.S.C. § 1226 and should have been given the opportunity to seek a bond and release from custody under that statute. Finally, Petitioner's detention with no hope of release violates due process and examination of the relevant factors weighs heavily in his favor. The motions for dismissal and for summary judgment should be denied and Petitioner should be granted the relief requested in his petition.

a. Exhaustion is not Required or Should be Excused

Respondents argue that the habeas petition should be dismissed outright for failure to exhaust administrative remedies, pointing to the "general rule" requiring administrative exhaustion

before seeking judicial relief against a federal agency. ECF No. 10 at 12. However, 28 U.S.C. § 2241 has no exhaustion requirement. *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025). Exhaustion of remedies is only required in the immigration context when appealing a final order of removal. *Hniguira v. Mayorkas*, No. CV H-23-3314, 2024 WL 1201634, at *6 (S.D. Tex. Mar. 20, 2024). When exhaustion is not required by statute, whether to apply prudential exhaustion is left to the discretion of the courts. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Additionally, the Fifth Circuit has held that claims of due process violations, except for procedural errors that are correctable by the BIA, are generally not subject to the exhaustion requirement. *Anwar v. INS*, 116 F.3d 140, 144 n. 4 (5th Cir.1997).

The Respondents' reliance on *Gallegos-Hernandez* is misplaced as that petitioner was *not* required to exhaust since doing so would have been futile. *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012)(citing to *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) for the proposition that exceptions to exhaustion requirements are appropriate where exhaustion would be a patently futile course of action). Respondents' additional authorities are equally unavailing. *Hinojosa* involved passport denials for which there was in fact a valid administrative remedy and petitioners failed to demonstrate that pursuing it would be futile. *Hinojosa v. Horn*, 896 F.3d 305, 315 (5th Cir. 2018). In *U.S. v. Cleto* the exhaustion issue was waived by the government's failure to brief it. *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992). None of these authorities support Respondents' argument.

Here, as in *Gallegos*, it would be futile to seek an administrative remedy as the issue of which statute governs Petitioner's detention is plainly foreclosed by binding precedent issued the very same administrative body to which Petitioner would have to appeal. *See Gallegos*, 688 F.3d 194 (finding futility in seeking relief from the same administrative agency charged to enforce the

challenged regulation); *see also Taylor v. United States Treasury Dept.*, 127 F.3d 470, 477 (5th Cir.1997) (noting exhaustion not required where the agency would clearly reject the claim).

If prudential exhaustion applies to Petitioner's claims, it should be waived. Petitioner presents a purely legal question, squarely within the purview of this Court. *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025). As noted in *Buenrostro-Mendez*, when a "'legal question is fit for resolution and delay means hardship,' a court may choose to decide the issues itself." *Id.* (citing to *Pizarro Reyes*, No. 25-cv-12546, 2025 WL 2609425, at *3 (quoting *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000))). Any delay in securing a bond hearing and potential release from custody is obviously a hardship to Petitioner as he continues to be detained day after day. Courts considering this issue have found that "preventing six months or more of unlawful 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." *Id.* Waiting an indefinite amount of time for a ruling on an administrative appeal only worsens the injury to Petitioner and thus waiver of any prudential exhaustion requirement is appropriate. *Lopez-Arevalo v. Ripa*, No. EP-25-cv-337, 2025 WL 2691828, at *6 (W.D. Tex. Sep. 22, 2025).¹

b. Petitioner's Detention is Governed by 8 U.S.C. § 1226(a)

Respondents argue that Petitioner is not eligible for bond and is instead subject to mandatory detention under 8 U.S.C. § 1225. ECF No. 10 at 14-21. In support, they put forth the

¹ *See also Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025) (citing to *Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1245 (W.D. Wash. 2025))("Because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition."); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025) ("the Court requires administrative exhaustion, Pizarro Reyes faces not only more, potentially unnecessary, months in prison, but also harm to his ability to mount a successful case against his removal. As a result, the Court will waive administrative exhaustion."); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *6-7 (D. Mass. Sept. 9, 2025) (holding that because "the policy concerns animating the common-law exhaustion" are absent, "waiver of exhaustion is warranted").

same arguments so many courts have already found unconvincing. In denying Respondents' motion, this Court should rule that Petitioner's detention and bond eligibility are governed by § 1226(a). The Supreme Court has already had occasion to review the statutes at issue here, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). The Court explained that § 1225(b) "applies primarily to aliens seeking entry into the United States." *Id.* at 297. The Court further noted that § 1226 "applies to aliens already present in the United States." *Id.* at 303. Their view reflected the decades-long understanding and practice that § 1225 applied to noncitizens seeking admission into the country while § 1226 applied to those already present. *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (citing *Jennings*, 583 U.S. at 288-89). Prior to the government's sudden policy change, noncitizens arrested in the interior of the country were routinely detained but still considered eligible for bond under § 1226. *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *3 (D.N.J. Sept. 26, 2025) (noting that "up until July 8 the predominant form of detention authority for petitioner and other noncitizens arrested in the interior of the United States was § 1226(a).").

To be subject to mandatory detention under § 1225(b)(2)(A), the plain text requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The second element of § 1225(b)(2)(A)—which requires that an applicant be seeking admission—is not met in the case of noncitizens who entered without permission and are found miles away from the border, years after their entry. Respondents aver that Petitioner conceded he is an applicant for admission and thus subject to mandatory detention but that is simply untrue as Petitioner has made clear that while he may be deemed an applicant for admission,

he is not seeking admission and thus not subject to mandatory detention. *Compare* ECF No. 10 at 14 *With* ECF No. 1 at 12 ¶ 29.

The statutory use of the present and present progressive tenses—“is an applicant for admission” and “seeking admission”—excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *3–4 (S.D. Tex. Oct. 8, 2025). (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior and also noting); *see also United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”). Respondents argue that the phrases “applicant for admission” and “seeking admission” are synonymous, but when two different phrases are used in the same statute, “a variation in terms suggests a variation in meaning” and a “noncitizen must be *both* an ‘applicant for admission’ and one who is ‘seeking admission’” in order to be subject to mandatory detention under § 1225(b)(2). *Id.* (emphasis added)(citing to A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012)). “If the two phrases were actually synonymous, the phrase ‘seeking admission,’ although different from ‘applicant for admission’ and appearing in the same sentence of the statute, would be rendered superfluous.” *Cruz Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at *4 (S.D. Tex. Nov. 14, 2025).

Reading § 1225(b)(2) to require the detention of all noncitizens present without admission is contrary to the overall statutory structure and renders other portions of the statutory scheme superfluous. Congress recently amended the detention statute when they passed the Laken Riley Act, which added a new category of noncitizens subject to mandatory detention under § 1226(c)—those unlawfully present in the United States who have also been arrested, charged with, or

convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). If these unlawfully present individuals were already subject to mandatory detention under § 1225 the amendment would be utterly redundant and have no real or substantive effect. We must presume that Congress would not have made such an amendment if doing so had no effect. *Van Buren v. United States*, 593 U.S. 374, 393 (2021). The statutory language, history, and overall structure are clear that Petitioner’s detention is governed by § 1226 and he is eligible to seek a discretionary bond. *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *4–5 (D. Nev. Sept. 17, 2025)(discussing the statutory scheme, legislative history, and historical agency practices). Additionally, the BIA decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is neither binding on this Court nor persuasive. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024).

Respondents cite to a handful of cases that agree with their reading of the law while “acknowledg[ing] that there are district court decisions that hold to the contrary.” ECF No. 10 at 19. Their acknowledgement notwithstanding, Respondents gloss over the *overwhelming* authority against their position.² Nearly every district court—including most others in this district—to

² See, e.g., *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *3–4 (S.D. Tex. Oct. 8, 2025); *Cruz Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at *6 (S.D. Tex. Nov. 14, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Lopez Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Soto v. Soto, et al.*, No. 25-cv-16200, 2025 WL 2976572, at *5 (D.N.J. Oct. 22, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Savane v. Francis*, No. 25-cv-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Zumba*, 2025 WL 2753496; *Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lepe v. Andrews*, No. 25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. 25-cv-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-0096, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, No. 25-cv-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Vazquez*, 2025 WL 2676082; *Garcia Cortes v. Noem*, No. 25-cv-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Perez v. Kramer*, No. 25-cv-3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-7559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *J.O.E. v. Bondi*, No. 25-cv-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-*

decide this issue has decided that 8 U.S.C. § 1226(a) applies to the detention and bond of persons unlawfully present in the United States. *Padron Covarrubias*, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025); *see also Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *2 (S.D. Tex. Nov. 24, 2025)(collecting cases in this district where § 1226(a) was found to apply to petitioners' detention). The authority offered by Respondents is neither binding nor persuasive and their motion should be denied.

Finally, Petitioner is a class member in the *Bautista* litigation as he (1) entered the United States without inspection; (2) was not apprehended upon arrival; and (3) was not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security made their initial custody determination. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The district court in that matter has since issued a final order, granting class-wide relief and declaring that class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2). *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025). Some courts have adopted the *Bautista* court orders as binding in granting habeas relief for petitioners who qualified as class members. *Morales-Flores v. Lyons*, No. 1:25-CV-1640, 2025 WL 3552841, at *3 (E.D. Cal. Dec. 11, 2025); *Mendes v. Hyde*, Civ. A. No. 25-CV-627, 2025 WL 3496546, at *3 (D.R.I. Dec. 5, 2025). There has not yet emerged a clear consensus as only one court appears to have considered the issue since the December 18, 2025 final judgment. *See Lopez v. Lyons*, No. 1:25-CV-226-H, 2025 WL 3683918, at *4-5 (N.D. Tex. Dec. 19, 2025)(noting differing treatment of the *Bautista* orders in subsequent habeas proceedings

Hernandez v. Noem, No. 25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos v. Raycroft*, No. 25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).

before determining the court was not bound by the orders). This Court should find the *Bautista* judgment persuasive if not preclusive and order similar relief for Petitioner in this matter.

c. Petitioner Has Been Denied Due Process

Petitioner has argued alternatively that his detention is a violation of due process and that he is entitled to relief on that basis. ECF No. 1 at 9, 17-19. As noted in the petition, to determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). The *Mathews* factors weigh heavily in favor of Petitioner. His arguments regarding those factors were well developed in the initial petition and need not be reiterated but rather incorporated here. ECF No. 1 at ¶ 38-43.

Respondents argue that the first factor, Petitioner’s liberty interest, is “tempered by his alien status.” ECF No. 10 at 22. But, as noted elsewhere, Petitioner has resided in this country for many years and has a pending application for lawful status. His liberty interest—the interest in remaining free from unlawful detention—is not diminished or tempered here as he is not a new arrival to our country but a long-time resident. In other cases involving similarly situated petitioners, courts have repeatedly found their detention without a bond hearing to be a due process violation. *Gonzalez Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *5 (W.D. Tex. Oct. 21, 2025)(finding a due process violation and noting two prior decisions of the court with the same result); *Vieira v. Anda-Ybarra*, --- F. Supp. 3d ----, 2025 WL 2937880, at *5 (W.D. Tex. Oct. 16, 2025).

Moreover, when assessing the private interest, courts consider the conditions of confinement, specifically, “whether a detainee is held in conditions indistinguishable from criminal incarceration.” *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154,

at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)). Petitioner is being held in conditions indistinguishable from criminal incarceration and “experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement.” *Id.* This factor clearly weighs in Petitioner’s favor.

Under the second factor, courts must “assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Id.* at *8. Petitioner here is detained solely because of a sudden policy change which instantly stripped he and thousands of others of relief they had been accorded for decades—the ability to request a bond. Significantly, a bond hearing before a neutral adjudicator in accordance with § 1226(a), like the ones that took place prior to July 2025, is exactly the place for any claimed interest the government has in detaining Petitioner (e.g. assuring appearance at hearings and public safety) to be heard and ultimately ruled on by a neutral adjudicator. This *Matthews* factor weighs in favor of Petitioner as well.

Finally, Petitioner does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws. Granting him a bond and subjecting him to appropriate bond provisions is—as it has been for decades—a more than adequate remedy to ensure appearance at future hearings and for removal. The third factor weighs in Petitioner’s favor and, upon review of all three factors, this Court should find he has been deprived of procedural due process. Further, Petitioner has been deprived of substantive due process as his detention is predicated on an erroneous and unlawful legal theory and he has been deprived of liberty without

sufficient purpose and in the absence of any special interest or compelling justification which would outweigh his liberty interest.

IV. Conclusion

Based on the foregoing, Petitioner asks this Court to deny the Respondents' motion and issue an order for him to be scheduled for a bond hearing immediately or, if a bond hearing is not scheduled promptly, that he be released from custody without further delay.

Respectfully submitted,

Date: December 23, 2025

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Reply was duly served upon opposing counsel electronically via the CM/ECF system on December 23, 2025.

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