UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LUIS ALEJANDRO VEZGA LEON Petitioner, v. KRISTI NOEM, Secretary of Homeland Security, et al., Respondents.	Civil No. 4:25-CV-05521

PETITIONER'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, REQUEST FOR HEARING, AND INCORPORATED MEMORANDUM OF LAW

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner–Plaintiff LUIS ALEJANDRO VEZGA LEON ("Mr. Vezga") respectfully moves this Court to consider his instant Motion for a Temporary Restraining Order ("TRO"), based on the grounds raised in his Application for Preliminary Injunction (the "Application"), filed contemporaneously with his Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief on November 18, 2025 (ECF No. 1). For the reasons that follow, Petitioner also asks that that Court hold a hearing on this matter, be it telephonically or in person, so that the parties may address the factual and legal context of Mr. Vezga's TRO.

In accordance with the instructions Federal Rule of Civil Procedure 65(b)(3) and the local rules, Mr. Vezga now files these requests as an instrument separate from his complaint, and he asks that set the Court set the Application for oral argument at the earliest practicable time—ideally within forty-eight (48) hours—given the urgency of the issues presented.

Immediate judicial consideration is necessary because Mr. Vezga faces ongoing, irreparable harm: he is presently in civil immigration custody at the Joe Corley Processing Center in Conroe, Texas, and he is being denied an immigration bond hearing in violation of law, specifically, Section 236(a) of the Immigration and Nationality Act ("INA") [8 U.S.C. § 1226(a)]. The plain language of Section 236(a) explicitly provides that "the Attorney General (1) may continue to detain the arrested alien; and (2) may release the alien on . . . bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or . . . conditional parole . . ." unless they are subject to the mandatory detention provisions of Section 236(c). This means that noncitizens like Mr. Vezga, who has already lived in the United States for years, are eligible to apply for an immigration bond with the immigration court, and current BIA policy limiting the immigration courts from entertaining such bond requests is contrary to this statute.

Under Fed. R. Civ. P. 65(b)(3), the Court must set a hearing on a request for injunctive relief "at the earliest possible time," and the Supreme Court has emphasized that a TRO is a short-term measure designed only to preserve the status quo until a full hearing can be held. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974). Consistent with that mandate, courts in this Circuit set such matters swiftly where irreparable harm is imminent in order to "preserve the district court's power to render a meaningful decision after a trial on the merits." *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572-73 (5th Cir. 1974).

Counsel for Mr. Vezga has conferred via email with Ms. Nicole Robbins, an Assistant U.S. Attorney assigned to represent Respondents in habeas cases. As of the filing

of this motion, government counsel has not indicated whether the government opposes the request for an expedited hearing. The undersigned Counsel for Petitioner has also undertaken to contact Counsel for the Department of Homeland Security by emailing the Office of Principal Legal Advisor for Conroe, Texas, in a good faith effort to notify Respondents of Petitioner's intent to obtain a hearing on this TRO request as soon as practicable. Given the exigent circumstances, Mr. Vezga respectfully requests that the Court waive any further conference requirement under the local rules.

Mr. Vezga is prepared to present argument and evidence by in-person appearance or, if the Court prefers, by videoconference. Should the Court require live testimony, Petitioner requests that Respondents be directed to produce Mr. Vezga at the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Statutory and Regulatory Authority Confirms Bond Eligibility.

Congress expressly authorized release of noncitizens on bond during removal proceedings. Specifically, INA § 236(a), 8 U.S.C. § 1226(a), provides:

> "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) [mandatory detention], the Attorney General—(1) may continue to detain the arrested alien; and (2) may release the alien on—(A) bond … or (B) conditional parole."

The implementing regulation is equally clear: "Custody and bond determinations made by the Department of Homeland Security … may be reviewed by an Immigration Judge." 8 C.F.R. § 1003.19(a). *See also* 8 C.F.R. § 236.1(d)(1) (permitting requests for IJ bond redetermination).

Thus, as a matter of plain statutory and regulatory text, individuals detained in pending § 240 removal proceedings under § 1226(a) are bond-eligible before an immigration judge.

B. The Supreme Court Recognizes § 1226(a) as the Discretionary Bond Scheme.

The Supreme Court has squarely acknowledged that § 1226(a) creates a discretionary detention framework with bond authority, unlike the mandatory detention provisions of § 1226(c) or § 1225(b). In *Jennings v. Rodriguez*, 583 U.S. 281, 289–90 (2018), the Court explained that under § 1226(a), "the Attorney General may release the alien on bond" and that custody is therefore subject to individualized bond determinations.

The BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which reclassified long-term EWI respondents as § 1225(b) "applicants for admission" and thereby stripped IJs of bond jurisdiction, cannot be reconciled with the statutory structure recognized in *Jennings*. This Court is not bound to defer to an administrative interpretation that conflicts with the statute's text and with Supreme Court precedent.

C. Intra-Circuit Precedent Affirms Jurisdiction to Review Bond Determinations.

District courts within the Fifth Circuit have consistently recognized that individuals detained under § 1226(a) are bond-eligible. Most recently, in *Kostak v. Trump*, No. 3:25-1093, 2025 U.S. Dist. LEXIS 167280 (W.D. La. Aug. 27, 2025), the court granted a TRO ordering an individualized bond hearing under § 1226(a) where DHS had improperly asserted mandatory detention under § 1225(b). The court rejected the government's position as inconsistent with the statutory framework and the detainee's constitutional rights.

Likewise, in *Maldonado v. Macias*, 150 F. Supp. 3d 788 (W.D. Tex. 2015), the court carefully distinguished between detainees held under § 1225(b), who must rely solely on discretionary parole, and those detained under § 1226(a), who are entitled to seek bond before an IJ. Id. at 794–98. Maldonado emphasized that the absence of IJ review is precisely what makes § 1225(b) detention more constitutionally suspect — by contrast, § 1226(a) detainees have a recognized bond process.

Earlier, in *Kambo v. Poppell*, No. SA-07-CV-800-XR, 2007 U.S. Dist. LEXIS 77857, at *14–*18 (W.D. Tex. Oct. 18, 2007), the court explained that § 1226(a) governs discretionary detention and recognized the immigration judge's authority to adjudicate bond requests in that context. However, the Kambo court also concluded that nothing in Section 1226 or Section 1252 precluded the court from exercising jurisdiction over the habeas petition, though the court observed that it lacked "jurisdiction to review the decision to deny release on bond itself or the Attorney General's discretionary judgment regarding the application of Section 1226(a) . . . ." *Id.* at 35.

More recently, multiple federal district courts in Texas, and in other circuits, have echoed this reasoning. *See Fuentes v. Lyons*, No. 5:25-cv-00153, at *10 (S.D. Tex. Oct. 16, 2025). Indeed, 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. Thus, the Court may grant habeas relief where the government's attempted to circumvent that process. *See* App'x A, Recent Habeas Decisions from U.S. District Courts.

D. Persuasive Authorities from Other Circuits.

Courts across the country have long recognized that detention under § 1226(a) is distinct from mandatory detention under § 1225(b), and that the former scheme guarantees access to individualized bond determinations before an immigration judge. These decisions underscore the error in extending § 1225(b)'s no-bond regime to long-term residents like Mr. Vezga.

Circuit courts outside the Fifth Circuit, including the United States Court of Appeals for the Sixth Circuit in *Rosales-Garcia v. Holland*, 322 F.3d 386, 412 (6th Cir. 2003), have also held that the indefinite detention of inadmissible aliens raised the same constitutional concerns as did the indefinite detention of the removable resident aliens in *Zadvydas*. Essentially, *Rosales* supports the conclusion that the immigration judges have authority to consider bond requests under § 1226(a) where an inadmissible noncitizen, such as an arriving alien at the port of entry who is otherwise ineligible for bond, has reached the point of becoming seemingly indefinite.

For example, in *Prieto-Romero v. Clark*, 534 F.3d 1053, 1068 (9th Cir. 2008), the Ninth Circuit concluded that the petitioner had not been denied due process precisely because he received a bond hearing under § 1226(a). The court explained that such a

hearing "afforded him an individualized determination of the government's interest in his continued detention by a neutral decisionmaker." Similarly, in *Rodriguez v. Robbins* ("*Rodriguez II*"), 804 F.3d 1060, 1081–82 (9th Cir. 2015), the Ninth Circuit held that detention under § 1225(b) cannot continue indefinitely; at six months, the statutory basis for custody shifts to § 1226(a), which requires a bond hearing. The court noted that relying solely on discretionary parole was inadequate, as it left detainees vulnerable to errors and deprived them of neutral review.

Other circuits have reached similar conclusions. The Third Circuit in *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 235 (3d Cir. 2011), held that Congress did not intend to authorize "prolonged, unreasonable detention" without the safeguard of a bond hearing, emphasizing that due process requires an opportunity to test the necessity of continued custody. District courts around the country have also intervened in comparable cases. In *Cuello v. Adduci*, No. 10-13641, 2010 WL 4226688, at *16 (E.D. Mich. Oct. 21, 2010), the court granted habeas relief to a § 1226(a) detainee who had never received a bond hearing, holding that his continued detention without meaningful custody review violated due process

Taken together, these decisions reinforce two key points: first, that § 1226(a) detention is fundamentally tied to the availability of bond review before an immigration judge; and second, that the absence of such review has consistently been viewed by courts as constitutionally suspect. When considered alongside the plain text of § 1226(a) and the Supreme Court's recognition in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), that § 1226(a) represents a discretionary bond framework, this body of case law demonstrates why the IJ's reliance on *Matter of Yajure Hurtado* to deny jurisdiction was misplaced.

5. Application to Petitioner Reveals Statutory Eligibility to Request Bond.

Mr. Vezga has lived in the United States for approximately four and a half years. He was placed into § 240 removal proceedings (*i.e.*, removal proceedings before the immigration court pursuant to 8 U.S.C. § 1229a) and charged as removable due to being subject to a ground of inadmissibility under INA §§ 212(a)(6)(A)(i) & 212(a)(7)(A)(i)(I) [8 U.S.C. §§ 1182(a)(6)(A)(i) & 1182(a)(7)(A)(i)(I)].

By the plain language of the Immigration and Nationality Act, Mr. Vezga's detention falls within 8 U.S.C. § 1226(a)—not § 1225(b). As a noncitizen who entered the United States without inspection in May 2021, received a positive credible-fear determination, and has since lived continuously in Texas for over four years while pursuing asylum, he is not properly classified as an "arriving alien." For decades, Board of Immigration Appeals precedent has confirmed that similarly situated individuals—those charged as inadmissible under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] for entry without inspection—remain eligible for release on bond while in § 240 proceedings. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006. Accordingly, Mr. Vezga is statutorily entitled to seek bond before an immigration judge, and his ongoing detention under § 1225(b) constitutes an unlawful and arbitrary misapplication of the statute.

Accordingly, the IJ's refusal to exercise jurisdiction, based on the BIA's recent decision in *Matter of Yajure Hurtado*, was legally erroneous and contrary to the statutory scheme, the regulations, and both binding and persuasive judicial precedent.

CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays that the Court enter an order setting a hearing on Petitioner's Application for a TRO and

Preliminary Injunction at the earliest practicable time, and after such hearing grant Petitioner's requested TRO and Preliminary Injunction, and granting such other relief as the Court deems just and proper.

DATE: November 18, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing *Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, Request for Hearing, and Incorporated Memorandum of Law*, as well as any and all attachments thereto, on Counsel for Respondents-Defendants by serving the same via email to Ms. Nicole Robbins, Assistant U.S. Attorney for the Southern District of Texas, via Nicole.Robbins@usdoj.gov and/or by filing the same using the Court's CM/ECF system.

/s/ John M. Bray
John M. Bray
Counsel for Petitioner

DATE: November 18, 2025.