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

VELIC YALIC
PETITIONER
V.

Cause No. 5:25-cv-00133-DCB-BWR

RAFAEL VERGARA,
Warden of Adams County
Correctional Center,
RESPONDENT.
_____/

PETITIONER'S REBUTTAL TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

TABLE OF CONTENTS

I.	Introduction	1
II.	Petitioner Is Detained Under § 1226(a), not § 1225(b)	1
III.	Respondents' Interpretation Conflicts with Nearly Every Federal Decision to Address the Issue	5
IV.	Exhaustion of Administrative Remedies would be futile and exacerbate the harm in this case.	6
V.	Petitioner's Detention under 8 U.S.C. §1225 is unconstitutional as applied to him because it violates due process.	7

TABLE OF AUTHORITIES

CASES	PAGES
Aguilar v. Lewis, 50 F. Supp. 2d 539, 541 (E.D. Va. 1999)	6
Bufkin v. Collins, 604 U.S. 369, 386 (2025)	4
Guitard v. U.S. Sec'y of the Navy, 967 F.2d 737, 741 (2d Cir. 1992)	7
Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004)	8
Hinojosa v Horn, 896 F.3d 305, 314 (5th Cir. 2018)	6
Jennings v. Rodriguez, 58 U.S. 221 (2018)	1,3
Loper Bright Enters. v. Raimondo, 603 U.S. 369, 413 (2024)	3
Lopez Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025)	3
Mathews v. Eldridge, 424 U.S. 319 (1976)	8
McCarthy v. Madigan, 503. U.S. 140, 144 (1992)	6
Miranda v. Garland, 34 F.4th 338, 351 (4th Cir.2022)	6
Martinez v. Hyde, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025)	3
Quinonez Mercado as next friend of Abarca-Jovel v. Dep't of Homeland Sec., No. 1:25-CV-12066 (D. Mass Aug.22, 2025)	5,6
Ross v. Blake, 578 U.S. 632, 642 (2016)	4
U.S. v. Wilson, 503 U.S. 329, 333 (1992)	3
Zadvydas v. Davis, 533 U.S. 678, 693 (2001)	7

Matter of MD-C-V-, 28 I. & N. Dec. 18, 23 (BIA 2020) 3

*Matter of Q.*Li., 29 I&N Dec. 66, 2025 WL 1442892 (BIA 2025) 7

Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025) 1

STATUTES	PAGES
8 U.S.C. §1225(b)(2)	1, 2,3,4,5
8 U.S.C. §1226(a)	1,2,4,
8 U.S.C. §1226(c)(1)(E)	1

OTHER AUTHORITIES	PAGES
H.R. Rep.No. 104-469, pt. 1, at 229 (1996)	4

I. Introduction

Petitioner is unlawfully detained under §1225(b)(2), though any detention authority, if applicable, lies under §1226(a). Therefore, Yalic is entitled to immediate release because he has not been provided a bond hearing and there is no reason to have the Petitioner detained since nothing has changed since he was released in 2022.

II. Petitioner Is Detained Under § 1226(a), not § 1225(b)

The statutory language is clear. There is no ambiguity in statutes themselves. Respondents rely on *Matter of Yajure-Hurtado,* asserting that § 1225(b)(2) applies to all "applicants for admission," including those already in the U.S. This interpretation contradicts the INA's text and structure. As the Supreme Court held in *Jennings v. Rodriguez*, 58 U.S. 221 (2018), § 1226(a) governs detention of noncitizens "already in the country" pending removal, while § 1225(b)(2) applies only to those "seeking to enter" at the border.

Respondents' shift departs from decades of applying § 1226(a) to interior arrests, rendering § 1226—and the 2025 Laken Riley Act amendments (§ 1226(c)(1)(E))—superfluous. For nearly thirty years, the practice of the government—specifically ICE and Executive Office for Immigration Review,

which operate under DHS—was that most individual noncitizens that were apprehended in the interior of the United States after they had been living in the U.S. for more than two years received a bond hearing. If determined not to be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were released from detention either on their own recognizance or after paying the bond amount. 8 U.S.C. § 1226(a)(2)(A). As a result of unilaterally applying §1225 to all non-citizen regardless of when or how they entered, ICE is now ignoring particularities that have historically been highly relevant to determinations whether a noncitizen such remain or custody or be released—such as: whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S. citizen family members dependent upon them to provide necessary care; or, whether the noncitizen's detention is in the community's best interest. Depriving someone of their liberty without any consideration is antithetical to our laws.

This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. §

1225(b)(2)(A). In other words, mandatory detention applies to an 'applicant for admission' who is 'seeking admission'; and is 'not clearly and beyond a doubt entitled to be admitted. Section 1225(b)(2) targets noncitizens "seeking admission" at ports of entry. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025), at *6; see also *Matter of MD-C-V-*, 28 I. & N. Dec. 18, 23 (B.LA.2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived, 'implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress use of verb tense is significant in construing statutes.").

Respondents' argument that all "applicants for admission" are automatically "seeking admission" ignores statutory text and the surplusage canon. Statutory interpretation is a judicial, not agency, function. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). "The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); see also *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) ("the Court need not reach the outer limits of

the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone "already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention only as a matter of discretion under § 1226(a)").

Extending § 1225(b)(2) to all noncitizens not formally admitted disregards statutory limits and Supreme Court guidance, while undermining Congress's distinction between noncitizens "seeking admission" and those "already in the country." See *Bufkin v. Collins*, 604 U.S. 369, 386 (2025).

Applying their reading would eliminate § 1226(a) entirely and nullify congressional amendments, which must have a "real and substantial effect." See *Ross v. Blake*, 578 U.S. 632, 642 (2016). Policy arguments that § 1226(a) grants interior detainees an advantage over border arrivals are irrelevant. Congress intended § 1226(a) to govern noncitizens apprehended within the U.S., preserving authority to arrest, detain, and release on bond those not lawfully present. H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226. The government's assertion that Petitioner is detained under § 1225 even though he was arrested at an ICE check-in in Tennessee and with the

Respondents knowing full well that he had been in the U.S. continuously for over 2 years is absurd. No allegation as required in §1225(b)(1)(A)(iii)(ii) that the Petitioner had not shown he had "been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility under this subparagraph could be shown and the Respondents are fully aware that they cannot meet this plain language in the statute. Filing for asylum or permanent residence is not a request for border inspection.

III. Respondents' Interpretation Conflicts with Nearly Every Federal Decision to Address the Issue

Nearly every court reviewing this issue has rejected the Respondents' interpretation of the statutes at issue. (See attached Appendix)[1] The Respondents cite *Quinonez Mercado as next friend of Abarca-Jovel v. Dep't of Homeland Sec.*, No. 1:25-CV-12066 (D. Mass Aug.22, 2025) in support of the failure to exhaust administrative remedies. But that court, too also stated that §1226 was the proper statute under which that Petitioner was detained since he had been in the U.S. for over two years.

[1] The appendix cites 288 cases of which 282 granted habeas based on detention authority being pursuant to §1226. Only 6 of those cases denied habeas.

IV. Exhaustion of Administrative Remedies would be futile and exacerbate the harm in this case.

The INA does not require or mandate exhaustion of administrative remedies. Exhaustion is not statutorily required and is wholly within the Court's prudential discretion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir.2022) (explaining that "where Congress had not clearly required exhaustion, sound judicial discretion governs") (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)) *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 541 (E.D. Va. 1999) (clarifying that "there is no federal statute that imposes an exhaustion requirement on aliens taken into custody pending their removal").

The Respondents citation to *Hinojosa v Horn* is not relevant to this case. *Hinojosa v Horn*, 896 F.3d 305, 314 (5th Cir. 2018) In *Hinojosa,* the habeas petition at issue raised a different statute. The petitioners there were denied citizenship by the government, and they had access to procedures to raise their claims under 8 U.S.C. § 1503. No such adequate procedures exist here.

In *Quinonez Mercado as next friend of Abarca-Jovel v. Dep't of Homeland Sec.,* No. 1:25-CV-12066 (D. Mass Aug.22, 2025) is also distinguishable because there the court found that the Petitioner was detained under §1226 and therefore entitled to a bond hearing. Here, the Respondents continue to insist that Yalic is

detained pursuant to §1225 which does not allow for bond redetermination before an immigration judge.

Here, where Petitioner has raised serious constitutional claims, administrative exhaustion should be excused. See *Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) (providing that "[e]xhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question'");

Presenting a due process claim to the agency would be futile, as the agency is entrenched in its position that § 1225(b) applies. Bond appeals would likewise be ineffective given the agency's precedential decision. See, *Matter of Q.Li.,* 29 I&N Dec. 66, 2025 WL 1442892 (BIA 2025) In this case there is no available administrative remedy that would provide adequate relief for the Petitioner. Without this Court's intervention, the unlawful detention of Yalic would continue and the irreparable injury already suffered by him would be prolonged.

V. Petitioner's Detention under 8 U.S.C. §1225 is unconstitutional as applied to him because it violates due process.

The Fifth Amendment's Due Process Clause prohibits depriving any person of liberty without due process, applying to noncitizens "whether lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). As the

Supreme Court recognized, "freedom from imprisonment…lies at the heart of the liberty [the Due Process] Clause protects." *Id.* at 690.

A balancing test regarding the adequacy of process applies in the context of immigration detention. In applying that balancing test, the court must consider the following three factors: "(1) the private interest that will be affected by official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *Mathews v. Eldridge*, 424 U.S. 319 (1976) Petitioner has a significant private interest in avoiding detention, as one of the "most elemental of liberty interests" is to be free from detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (citation omitted). There is virtually no difference between immigration detention and criminal detention. During the three years that the Petitioner resided in the U.S. waiting for his asylum case to be heard, he complied with all the government's requests. He developed friends, had employment authorization and a full-time job and resided with his brothers. The Petitioner is suffering from loss of contact with friends and family, loss of income earning, lack of privacy, and, most fundamentally, the lack of freedom of movement. Therefore, this factor weighs in Yalic's favor.

There is a high risk of erroneously depriving Petitioner of his freedom. The Petitioner is being held under the mandatory provisions of §1225. Over 200

district courts have held that people in Petitioner's situation have been erroneously deprived of their liberty with due process and have granted the Writ of Habeas Corpus. Those courts have found that the proper detention authority in these circumstances is §1226(a) which provides for bond redetermination. Therefore this factor also weighs in Yalic's favor.

The third factor is the government's interest and while the government has an interest in making sure non-citizens comply with the government's instructions, the Petitioner has already demonstrated that he complies with the government. It was precisely in complying with the government by attending his ICE check-in that he was detained. The Respondent has not pointed to any legitimate interest in continuing to detain the Petitioner. Rather, the continued detention is costing the taxpayers because detention facilities need to be maintained as well as staff need to be onsite, This factor weighs in Petitioner's favor.

When balancing all three factors, it is clear that the Petitioner's due process rights are being violated.

Yalic's liberty is at stake. Every day that the Petitioner remains detained, his due process rights are being violated. Based on the pertinent statutes, detention without a bond hearing under §1225(b)(2) is unlawful. Yalic is detained pursuant to

§1226(a) and merits immediate release or in the alternative a bond hearing.

Respectfully submitted:

s/Brandon H. Riches
The Riches Law Firm
Attorneys for Petitioner
Post Office Box 1526
Ocean Springs, MS 39566
(228) 800-4178
brandon@richeslawfirm.com

Dated: December 29, 2025

s/Caridad Pastor
Caridad Pastor C (P43551)
Pastor and Associates, P.C.
Attorneys for Petitioner
11 Broadway Suite 1005
New York, New York 10004
(248) 619-0065
carrie@pastorandassociates.com

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, I filed the foregoing paper with the Clerk of the Court through the ECMF system which will notify all counsel of record.

/S/Caridad Pastor
Caridad Pastor
Attorney for the Petitioner