UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

MEHMOOD ATIF,

Petitioner,

v.

PAUL MCBRIDE, et.al.
Respondents.
_____/

Case No. 6:25-CV-00554

Hon. Judge: Derek T. Gilliland

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

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I. Introduction

Petitioner is unlawfully detained under §1225(b)(2), though any detention authority, if applicable, lies under §1226(a). The Petitioner was apprehended shortly after entry, but the Respondents released him at that time. While §1225 would have been applicable in 2023 when he was first apprehended, it certainly is not applicable now. The cases cited by the Respondents are applicable to apprehensions at the border because §1225 is applicable at the border. It is not applicable while a person is in removal proceedings and has been in the United States for over two years. §1226 is applicable to persons in removal proceedings who are in the U.S. for over two years. The Petitioner is wrongfully detained under §1225.

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

Respondents rely on the July 8, 2025, DHS/DOJ Guidance and *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. Section 1225(b)(2) targets noncitizens "seeking admission" at ports of entry; it does not apply to Petitioner, detained at a USCIS interview while residing in the U.S. and in ongoing removal proceedings. Filing for asylum or permanent residence is not a request for border inspection.

Respondents' argument that all "applicants for admission" are automatically "seeking admission" ignores statutory text and the surplusage canon. 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). Statutory interpretation is a judicial, not agency, function. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). 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). Cases addressing immediate post-entry detention, including *DHS v. Thuraissigiam,* 591 U.S. 103 (2020), do not apply. Petitioner has resided in the United States for over two years.

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).

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

Nearly every court reviewing the July 2025 DHS/DOJ Guidance has rejected it. These courts, including decisions in this District, have held that 8 U.S.C. § 1226(a) governs detention of noncitizens already present in the U.S. as well as the courts have jurisdiction because these cases are not challenging removal orders but rather the constitutionality of the detention. See, *Cruz Zafra v. Noem* 3:25-cv-00541 (W.D. Tex. Nov 20, 2025); *Vieira v. De Anda-Ybarra* , No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025)

IV. 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. Atif's liberty is at stake. The Respondents have not demonstrated a significant interest in the continued detention of Atif who is married to a U.S. citizen, has a stable home and employment, no criminal record and has several applications pending in

immigration court. Petitioner has been detained for 74 days solely due to Respondents' arbitrary application of detention statutes, without regard to statutory text, interpretive principles or documentary evidence (i.e. warrant). Based on the evidence in this case and the pertinent statutes, detention without a bond hearing under §1225(b)(2) is unlawful. Atif is detained pursuant to §1226(a) and merits immediate release or in the alternative a bond hearing.

Respectfully submitted:

s/Caridad Pastor Dated: December 15, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 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