UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SAMAT GOGUEV (A[redacted] Petitioner, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; MIGUEL VERGARA, Field Office Director, San Antonio Field Office, Immigration and Customs Enforcement, Respondents.	)	Case No. 5:25-cv-1593

REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S HABEAS PETITION

The Petitioner, SAMAT GOGUEV, by and through his own and proper person and through his attorneys, KRIEZELMAN BURTON & ASSOCIATES, LLC, submits this reply to Respondents' Response to his Petition for Writ of Habeas Corpus, and in support thereof, states as follows:

A. Petitioner is Not an Arriving Alien

Respondents allege that Petitioner's case "differs from those frequently filed before the Court." Dkt. 4, pg. 2. However, Petitioner's case squarely falls within within the Court's purview, similarly to those cases previously heard by the Court. Petitioner entered the United States on April 28, 2024, after presenting himself at the border. Dkt. 1, pg.1-2. He was then issued a Form I-94, admitting him into the United States until April 25, 2024. Dkt. 1-2, pg.1. Petitioner was placed in removal proceedings before the Chicago Immigration Court. Dkt. 1-3, pg. 1-4. Petitioner was detained in November 2025, after his parole had expired and he was no longer "seeking admission" to the United States.

a. Petitioner is detained under 8 U.S.C. § 1226(a) and not under 8 U.S.C. § 1225(b)(2).

By way of review, 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of "Applicants for Admission." Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. The Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge's authority to hear a bond request for any noncitizen present in the United States without having been inspected and admitted and who are later apprehended by DHS.

Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226(a). .

Prior to and since the decision in *Matter of Yajure Hurtado*, other judges within the district courts of the Fifth Circuit, have rejected Respondents' interpretation and have subsequently granted relief to habeas petitioners. *See Espinoza Andres v. Noem*, No. CV H-25-5128, 2025 WL 3458893 (S.D. Tex. Dec. 2, 2025); *Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025); *Galmadez Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Morales Aguilar v. Bondi*, No. 5:25-CV-01453-JKP, 2025 WL 3471417 (W.D. Tex. Nov. 26, 2025); *Coulibaly v. Thompson*, No. 5:25-CV-1539-JKP, 2025 WL 3471573 (W.D. Tex. Nov. 25, 2025);

Guzman Tovar v. Noem, No. 5:25-CV-1509-JKP, 2025 WL 3471416 (W.D. Tex. Nov. 25, 2025); *Aguinaga Trujillo v. Noem*, No. 5:25-CV-1266-JKP, 2025 WL 3471572 (W.D. Tex. Nov. 24, 2025); *Martinez Orellana v. Noem*, No. 5:25-CV-1028-JKP, 2025 WL 3471569 (W.D. Tex. Nov. 24, 2025); *Miralrio Gonzalez v. Ortega*, No. 5:25-CV-1156-JKP, 2025 WL 3471571 (W.D. Tex. Nov. 24, 2025); *Vasquez Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3268459 (W.D. Tex. Nov. 24, 2025); *Penuela Carlos v. Bondi*, No. 9:25-CV-00249-MJT-ZJH, 2025 WL 3252561 (E.D. Tex. Nov. 21, 2025); *Cruz Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025); *Orellana Cantarero v. Bondi*, No. 9:25-CV-00250-MJT-ZJH, 2025 WL 3252402 (E.D. Tex. Nov. 20, 2025); *Leon Hernandez v. Bondi*, No. 25-CV-1384 SEC P, 2025 WL 3217037 (W.D. La. Nov. 18, 2025); *Rodriguez Cortina v. Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025); *Cruz Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025); *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187 (W.D. Tex. Oct. 24, 2025); *Martinez v. Trump*, No. CV 25-1445 SEC P, 2025 WL 3124847 (W.D. La. Oct. 22, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

These decisions join other district courts across the country that have overwhelmingly rejected *Matter of Yajure Hurtado's* new interpretation that those who entered unlawfully and are later apprehended are now subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner provided a sampling in his Petition of the over 300 and counting cases that have rejected Respondents' interpretation and granted relief. Dkt. 1, pg. 13.

This Court is not required, and should not, give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

Respondents' new interpretation of § 1225 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) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 at *2 (D. Mass. July 24, 2025) (citing *Jennings v.*

Rodriguez, 583 U.S. 281, 289 (2018)).

The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 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."). In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the numerous district court decisions confirm that she is subject to section 1226(a)'s discretionary detention scheme.

C. Petitioner's Continued Detention Without a Bond Hearing is a Fifth Amendment Violation.

Petitioner's deprivation of his liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Clause of the Fifth Amendment. Petitioner has not been found to be a danger to the community and Respondents do not allege that detention is to

ensure Petitioner's appearance during removal proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents have not put forth a credible argument that Petitioner could not be safely released to his community and family.

Respondents contend Petitioner has no claim of right under the Fifth Amendment's Due Process Clause because he is only entitled to the due process provided to him under the INA. Dkt. 4, p. 3. Respondents cite to *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) to support their position. *Id.* District courts within the Fifth Circuit Court of Appeals have already found *Thuraissigiam* is not preclusive on the facts of these cases because (1) Petitioner is not challenging his removal, but rather detention during removal, and (2) he was not detained at the border on the threshold of initial entry, but rather after living in the United States over a year. *See Rodriguez Cortina v. De Anda-Ybarra*, Case No. 3:25-cv-00523 (W.D. Tex. Nov. 18, 2025); *Vasquez Chinchilla v. De Anda-Ybarra*, Case No. 3:25-cv-00548 (W.D. Tex. Nov. 24 2025). Respondents' position overlooks the well-established "distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law." *Zadvydas*, 533 U.S. at 693. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*

CONCLUSION

For the foregoing reasons, this Court should order Petitioner's immediate release or in the alternative, order Respondents to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order.

Dated: December 15, 2025 Respectfully Submitted,

/s/ Khiabett Osuna
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