

**UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

ROHIT KUMAR,

Petitioner,

v.

Civil Action No.: 5:25-cv-244

KRISTI LYNN NOEM, et al.

Hon. Judge: Diana Saldana

Respondents.

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**PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE IN
OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS
AND MOTION TO DISMISS AND, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT**

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I. Introduction

Petitioner respectfully submits this Reply to Respondents' Response in Opposition to the Petition for Writ of Habeas Corpus and Motion to Dismiss and, in the Alternative for Summary Judgement. Respondents' arguments fail because Petitioner is unlawfully detained under 8 U.S.C. § 1225(b)(2), despite being properly subject to detention, if at all, under 8 U.S.C. § 1226(a). As recently reaffirmed by the Southern District of Texas in *Padron Covarrubias v. Vergara*, No. 5:25-CV-112 (S.D. Tex. Oct. 8, 2025) and *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025), Respondents' interpretation of § 1225(b) is contrary to the plain statutory text, established precedent, and principles of statutory construction.

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, who was previously detained when he entered the U.S. and then released by the Respondents. 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). Petitioner has resided in the United States for over two years. He is not currently at the border where §1225 applies.

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. ECF Document No. 1 pp. 15-16. 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. *Padron Covarrubias v. Vergara*, No. 5:25-CV-112 (S.D. Tex. Oct. 8, 2025)

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

Exhaustion is not statutorily required and is wholly within the Court’s prudential discretion. The Fifth Circuit has recognized that exceptions to exhaustion are appropriate where the available administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding.

Presenting a due process claim to the agency would be futile, as the agency is entrenched in its position that § 1225(b) applies. A bond hearing in this case would be inadequate to address the due process violation that occurs when a person is detained by ICE without deliberation as to why he/she should be stripped of their freedom from detention. 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) and *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). In this case there is no available administrative remedy that would provide adequate relief for the Petitioner. *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) is distinguishable from this case for a very important reason. In *Fuller*, the Plaintiff was not detained and no unlawful deprivation of liberty had taken place. Without this Court's intervention, the unlawful detention of Kumar 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. Kumar’s liberty is at stake. The Respondents have not demonstrated a significant interest in the continued detention of Kumar who has a stable home and employment, no criminal record and has applications pending in immigration court. Petitioner has been detained solely due to Respondents’ arbitrary application of detention statutes, without regard to statutory text or interpretive principles. Based on the pertinent statutes, detention without a bond hearing under §1225(b)(2) is unlawful. Petitioner is detained pursuant to §1226(a) and merits immediate release or in the alternative a bond hearing. The Respondents’ motion should be denied because the Petitioner has alleged viable causes of actions and violations of the U.S. Constitution which require the intervention of this Court to remedy.

Respectfully submitted:

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

Dated: December 15, 2025

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