

**U.S. DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

(1) Habib Abdul Ganiyu,)	
)	
Petitioner,)	
-vs.-)	Case No. 5:25-cv-01443-G
)	
(1) Kristi Noem, Secretary, U.S.)	
Department of Homeland Security,)	
in her official capacity, et al.)	
)	
Respondents.)	

REPLY

I. Introduction

Petitioner Habib Abdul Ganiyu submits this Reply in further support of his Petition for a Writ of Habeas Corpus challenging his continued detention. Respondents, in their Response, pointed to a scheduled bond hearing for December 9, 2025. Bond was denied based on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See* Ex. 1. In essence, no bond application was considered.

As the Court is aware, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a binding precedent decision holding that immigration judges lack authority to consider bond requests for any noncitizen who entered the United States without being admitted. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The BIA concluded that such individuals are detained under 8 U.S.C. §1225(b)(2)(A) and are therefore categorically ineligible for bond.

Petitioner’s detention nevertheless remains unlawful because §1225 applies only to individuals who are “arriving” or “seeking admission” at the border—not to noncitizens like Petitioner who have resided within the United States and were previously released under §1226(a). *See* Ex. 2. Continued detention without a bond hearing violates both the Immigration and Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment.

II. Jurisdiction Exists Under 28 U.S.C. §2241

Respondents challenged this Court’s jurisdiction. Sections 1252(a)(5) and 1252(b)(9) channel only review of final orders of removal to the Courts of Appeals; they do not strip district courts of jurisdiction over habeas challenges to detention itself under 28 U.S.C. §2241. *See Jennings v. Rodriguez*, 583 U.S. 281, 298–302 (2018) (confirming that §1252(b)(9) does not bar challenges to detention). The Tenth Circuit recently reaffirmed this distinction in *Daley v. Ceja*, No. 24-1191 (10th Cir. Nov. 3, 2025), recognizing that habeas petitions challenging immigration detention remain civil actions within the scope of the EAJA and §2241.

This Court retains habeas authority to review the legality of immigration detention. The Supreme Court in *Demore v. Kim*, 538 U.S. 510, 516–17 (2003), and *INS v. St. Cyr*, 533 U.S. 289, 298–314 (2001), held that habeas jurisdiction persists for constitutional and statutory challenges to detention absent an express prohibition. Petitioner’s claim challenges the statutory and constitutional basis for his confinement—not the commencement or validity of removal proceedings—and thus falls squarely within 28 U.S.C. §2241(c)(3).

III. Section 1226 Controls Petitioner's Detention

Detention under §1226 applies to individuals who are “already in the country,” whereas §1225 governs persons seeking admission at the border or a port of entry. Petitioner, having entered the United States and having lived in Chicago for over a year while on release, fits squarely within §1226(a)'s framework. His prior release on an Order of Recognizance under §1226 confirms Department of Homeland Security's recognition of that legal authority.

The INA expressly distinguishes between those “arriving” and those “already in” the United States. Under 8 U.S.C. §1225(a)(1), only “an alien present in the United States who has not been admitted or who arrives in the United States ... shall be deemed ... an applicant for admission.” The deeming clause serves to permit removal proceedings for recent entrants apprehended near the border—not to reclassify long-term residents or releasees previously placed under §1226 authority. The statutory structure thus channels individuals like Petitioner, who were apprehended and initially released on recognizance under §1226(a), into the discretionary detention scheme with eligibility for bond hearings. Once DHS released him under §1226, they cannot later retroactively reclassify him as a §1225(b)(2)(A) detainee. Petitioner would also argue that absent a change of circumstances since his initial release that Petitioner should be immediately released on recognizance without requiring a bond hearing.

IV. Fifth Amendment Protections Extend to Petitioner

Even if Petitioner is deemed inadmissible, the Supreme Court has recognized that noncitizens physically present in the United States—whether lawfully or unlawfully—are

“persons” entitled to due process under the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Denying any opportunity for a bond hearing violates this guarantee of procedural fairness. Mandatory detention applied to someone already released for over 15 months is punitive and not related to the purpose of ensuring attendance.

In *Zadvydas*, the Court emphasized that “freedom from imprisonment” lies at the core of liberty protected by the Due Process Clause, and that detention without temporal limits or judicial review raises “serious constitutional concerns.” *Zadvydas* at 690. Petitioner presently faces indefinite confinement without any individualized assessment of flight risk or danger—precisely the kind of open-ended detention the Court condemned as incompatible with procedural due process.

V. Conclusion

Respondents’ reliance on §1225(b)(2)(A) misapplies the statute to a class of individuals Congress never intended to detain mandatorily. Petitioner respectfully requests that this Court grant the writ of habeas corpus and order Respondents either to release him or provide a bond hearing within five days under 8 U.S.C. §1226(a). As Petitioner was previously on an order of recognizance and no change of conditions occurred, Petitioner argues that ordering Petitioner’s release is the most appropriate remedy in this case.

Dated this 11th day of December 2025.

s/Steven F. Langer
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CERTIFICATE OF SERVICE

I certify that on the date below, I served this Reply to counsel of record for

Respondents through the CM/ECF system:

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Dated this 11th day of December 2025.

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