

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DAVID ZARATE SANCHEZ,	)	
	)	Case No. 25-5767
Petitioner,	)	
	)	
v.	)	
	)	
WARDEN MARTIN FRINK, <i>et al.</i>	)	
	)	
	)	
Respondents.	)	
_____	)	

**PETITIONER’S RESPONSE IN OPPOSITION TO MOTION TO DISMISS AND  
MOTION FOR SUMMARY JUDGMENT**

Petitioner, David Zarate Sanchez, submits this response and opposition to the Respondents’ motion to dismiss and for summary judgment. Respondents’ motion argues both that Petitioner should be denied relief for failure to exhaust administrative remedies and that detention is proper under 8 U.S.C. § 1225(b). Neither argument is convincing and this Court, along with many others around the country, have already rejected Respondents’ arguments in similar cases. Petitioner’s detention violates the law, and this Court should deny Respondents’ motion and the writ of habeas corpus should issue.

**I. Exhaustion is not Required or Should be Excused**

Respondents argue that the habeas petition should be dismissed outright for failure to exhaust administrative remedies, pointing to the “general rule” requiring administrative exhaustion before seeking judicial relief against a federal agency. ECF No. 8 at 3. However, 28 U.S.C. § 2241 has no exhaustion requirement. *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025). Moreover, exhaustion of remedies is only required in the immigration context when appealing a final order of removal. *Hniguira v. Mayorkas*, No. CV H-

23-3314, 2024 WL 1201634, at \*6 (S.D. Tex. Mar. 20, 2024). When exhaustion is not required by statute, whether to apply prudential exhaustion is a determination left to the discretion of the courts. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). The Fifth Circuit has also held that claims of due process violations, except for procedural errors that are correctable by the BIA, are generally not subject to the exhaustion requirement. *Anwar v. INS*, 116 F.3d 140, 144 n. 4 (5th Cir.1997).

The Respondents' reliance on *Gallegos-Hernandez* is misplaced as that case resulted in a finding that the petitioner was *not* required to exhaust as doing so would have been futile. *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012)(citing to *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) for the proposition that exceptions to exhaustion requirements are appropriate where exhaustion would be a patently futile course of action).

Here, as in *Gallegos*, it would be futile to seek an administrative remedy as the issue of which statute governs Petitioner's detention is plainly foreclosed by binding precedent issued from the very same administrative body to which Petitioner would have to appeal. *See Gallegos*, 688 F.3d 194 (finding futility in seeking relief from the same administrative agency charged to enforce the challenged regulation); *see also Taylor v. United States Treasury Dept.*, 127 F.3d 470, 477 (5th Cir.1997) (noting exhaustion not required where the agency would clearly reject the claim).

To the extent that prudential exhaustion applies to Petitioner's claims, it should be waived. Petitioner presents a purely legal question, squarely within the purview of this Court. *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025). As noted in *Buenrostro-Mendez*, when a "'legal question is fit for resolution and delay means hardship,' a court may choose to decide the issues itself." *Id.* (citing to *Pizarro Reyes*, No. 25-cv-12546, 2025 WL 2609425, at \*3 (quoting *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000))). Any delay in securing a bond hearing and potential release from custody is obviously a

hardship to Petitioner as he continues to be detained day after day. Courts considering this issue have found that “preventing six months or more of unlawful detention (bond determinations typically take six months or more) outweighs the BIA's interest in detaining an individual while his or her bond determination is resolved on appeal.” *Id.* Waiting an indefinite amount of time for a ruling on an administrative appeal only worsens the injury to Petitioner and thus waiver of any prudential exhaustion requirement is appropriate. *Lopez-Arevelo v. Ripa*, No. EP-25-cv-337, 2025 WL 2691828, at \*6 (W.D. Tex. Sep. 22, 2025).<sup>1</sup>

## II. Petitioner’s Detention is Governed by 8 U.S.C. § 1226(a)

Respondents argue that Petitioner is not eligible for bond and is instead subject to mandatory detention under 8 U.S.C. § 1225. ECF No. 8 at 3. In support, they put forth the same arguments this Court has already found unconvincing. *E.g.*, *Ortega-Aguirre v. Noem*, 4:25-cv-04332 (S.D. Tex., Oct. 10, 2025); *Gamez-Chinchilla v. Dickey*, 4:25-cv-04427 (S.D. Tex., Oct. 29, 2025); *Martinez Mendez v. Noem*, 4:25-cv-04981 (S.D. Tex., Nov. 25, 2025). In denying Respondents’ motion, this Court should once again rule that Petitioner’s detention and bond eligibility are governed by § 1226(a).

In *Jennings v. Rodriguez*, the Supreme Court analyzed the statutory sections in question, 8 U.S.C. § 1225 and 8 U.S.C. § 1226. *Jennings*, 583 U.S. at 287. The Court held that § 1225(b) “applies primarily to aliens seeking entry into the United States.” *Id.* at 297. The Court further

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<sup>1</sup> See also *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*5 (E.D. Mich. Aug. 29, 2025) (citing to *Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1245 (W.D. Wash. 2025)) (“Because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.”); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025) (“the Court requires administrative exhaustion, Pizarro Reyes faces not only more, potentially unnecessary, months in prison, but also harm to his ability to mount a successful case against his removal. As a result, the Court will waive administrative exhaustion.”); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at \*6-7 (D. Mass. Sept. 9, 2025) (holding that because “the policy concerns animating the common-law exhaustion” are absent, “waiver of exhaustion is warranted”).

noted that § 1226 “applies to aliens already present in the United States.” *Id.* At 303. In fact, it was long understood that § 1225 applied to noncitizens seeking admission into the country while § 1226 applied to those already present. *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at \*8 (D. Mass. July 24, 2025) (citing *Jennings*, 583 U.S. at 288-89). Prior to the government’s sudden policy change, noncitizens arrested in the interior of the country were routinely detained and considered eligible for bond under § 1226. *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at \*3 (D.N.J. Sept. 26, 2025) (noting that “up until July 8 the predominant form of detention authority for petitioner and other noncitizens arrested in the interior of the United States was § 1226(a.)”).

To be subject to mandatory detention under § 1225(b)(2)(A), the plain text requires an individual to be 1) an “applicant for admission”; 2) “seeking admission”; and 3) determined by an examining immigration officer to be “not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The second element of § 1225(b)(2)(A)—which requires that an applicant be seeking admission—is not met in the case of noncitizens who entered without permission and are found miles away from the border, years after their entry.

The statutory use of the present and present progressive tenses—“is an applicant for admission” “seeking admission”—excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at \*3–4 (S.D. Tex. Oct. 8, 2025). (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior and also noting ); *see also United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”). Respondents argue that the phrases “applicant for admission” and “seeking admission”

are synonymous, but when two different phrases are used in the same statute, “‘a variation in terms suggests a variation in meaning’” and a “noncitizen must be *both* an ‘applicant for admission’ and one who is ‘seeking admission’” in order to be subject to mandatory detention under § 1225(b)(2). *Id.* (emphasis added)(citing to A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012)). “If the two phrases were actually synonymous, the phrase ‘seeking admission,’ although different from ‘applicant for admission’ and appearing in the same sentence of the statute, would be rendered superfluous.” *Cruz Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at \*4 (S.D. Tex. Nov. 14, 2025).

Reading § 1225(b)(2) to require the detention of all noncitizens present without admission is contrary to the overall statutory structure and renders other portions of the statutory scheme superfluous. Congress recently amended the detention statute when they passed the Laken Riley Act, which added a new category of noncitizens subject to mandatory detention under § 1226(c)—those unlawfully present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). If these unlawfully present individuals were already subject to mandatory detention under § 1225 the amendment would be utterly redundant and have no real or substantive effect. We must presume that Congress would not have made such an amendment if doing so had no effect. *Van Buren v. United States*, 593 U.S. 374, 393 (2021).

The statutory language, history, and overall structure are clear that Petitioner’s detention is governed by § 1226 and he is eligible to seek a discretionary bond. *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at \*4–5 (D. Nev. Sept. 17, 2025)(discussing the statutory scheme, legislative history, and historical agency practices). Additionally, the BIA

decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is neither binding on this Court nor persuasive. *Loper Bright Enters. v. Raimando*, 603 U.S. 369, 385 (2024).

Nearly every district court—including this Court and most others in the district—to decide this issue has decided that 8 U.S.C. § 1226(a) applies to the detention and bond of persons unlawfully present in the United States.<sup>2</sup> *Padron Covarrubias*, 2025 WL 2950097, at \*3 (S.D. Tex. Oct. 8, 2025); *see also Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at \*2 (S.D. Tex. Nov. 24, 2025)(collecting cases in this district where § 1226(a) was found to apply to petitioners' detention). The authority offered by Respondents is neither binding nor persuasive to overcome prior decisions of this Court and their motion should be denied.

### III. Petitioner Has Been Denied Due Process

Although Respondents do not address it, Petitioner has argued alternatively that his detention is a violation of due process and that he is also entitled to relief on that basis. ECF No.

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<sup>2</sup> *See, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025)(on appeal); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at \*3–4 (S.D. Tex. Oct. 8, 2025); *Cruz Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at \*6 (S.D. Tex. Nov. 14, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Lopez Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Soto v. Soto, et al.*, No. 25-cv-16200, 2025 WL 2976572, at \*5 (D.N.J. Oct. 22, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Savane v. Francis*, No. 25-cv-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Zumba*, 2025 WL 2753496; *Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lepe v. Andrews*, No. 25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. 25-cv-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-0096, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, No. 25-cv-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Vazquez*, 2025 WL 2676082; *Garcia Cortes v. Noem*, No. 25-cv-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Perez v. Kramer*, No. 25-cv-3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-7559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *J.O.E. v. Bondi*, No. 25-cv-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos v. Raycraft*, No. 25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).

1 at 16-18. As noted in the petition, to determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at \*2 (W.D. Tex. Sept. 8, 2025). Those factors are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

The *Mathews* factors weigh heavily in favor of Petitioner. His arguments regarding those factors were developed in the initial petition and need not be reiterated here. ECF No. 1 at ¶ 52-57. In other cases involving similarly situated petitioners, courts have repeatedly found their detention without a bond hearing to be a due process violation. *Gonzalez Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at \*5 (W.D. Tex. Oct. 21, 2025)(finding a due process violation and noting two prior decisions of the court with the same result); *Vieira v. Anda-Ybarra*, --- F. Supp. 3d ----, 2025 WL 2937880, at \*5 (W.D. Tex. Oct. 16, 2025). So should this Court find upon consideration of the *Mathews* factors.

#### IV. Conclusion

Based on the foregoing, Petitioner asks this Court to deny the Respondents’ motion and issue an order for him to be scheduled for a bond hearing immediately or, if a bond hearing is not scheduled promptly, that he be released from custody without further delay.

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Respectfully submitted,

Date: January 7, 2026

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**CERTIFICATE OF SERVICE**

I certify that on January 7, 2026, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/S/ WILLIAM C. STROM

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