

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

GERBER GEOVANNI GARCIA HERNANDEZ,

Petitioner,

v.

KRISTI NOEM, in her Official Capacity as the
Secretary of the U.S. Department of Homeland
Security, *et al.*,

Respondents.

No. 5:25-cv-00145-DCB-RPM

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

REPLY TO GOVERNMENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS

CORPUS

TABLE OF CONTENTS

PROCEDURAL HISTORY 5

ARGUMENT..... 7

I. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER THE EXPEDITED REMOVAL STATUTE, 8 U.S.C. § 1225(b)(2)(A)..... 9

II. DHS ELECTED § 1225(b) AS THE SOLE BASIS FOR DETENTION AND OBTAINED A JURISDICTIONAL DENIAL OF BOND ON THAT BASIS..... 11

A. DHS Affirmatively proceeded Under § 1225(b) Before the Immigration Court..... 11

III. PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION PROCEEDINGS 12

IV. DHS WAIVED THE ABILITY TO DETAIN UNDER § 1225(B)(2) AND DETENTION IS ULTRA VIRES 14

A. DHS’s invocation of § 1226(a) forecloses reliance on § 1225(b)(2)..... 14

V. THE APPROPRIATE REMEDY IS RELEASE, NOT A BOND HEARING 15

CONCLUSION 15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Booth v. Churner</i> , 532 U.S. 731 (2001)	8
<i>Bridges v. Wixon</i> , 326 U.S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945)	12
Credible Fear Interviews., 27 I&N Dec. 509 (A.G. 2019).....	10, 11
<i>Demore v. Kim</i> , 538 U.S. 510 (2003)	8
<i>Dep't of Homeland Sec. v. Thuraissigiam</i> , 591 U.S. 103, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020)	12
<i>Fuller v. Rich</i> , 11 F.3d 61 (5th Cir. 1994).....	7
<i>Gallegos-Hernandez v. United States</i> , 688 F.3d 190 (5th Cir. 2012).....	7
<i>Garza v. Davis</i> , 596 F.3d 1198 (10th Cir. 2010).....	8
<i>Hechavarria v. Sessions</i> , 891 F.3d 49 (2d Cir. 2018).....	15
<i>Hinojosa v. Horn</i> , 896 F.3d 305 (5th Cir. 2018).....	8
<i>INS v. St. Cyr</i> , 533 U.S. 289 (2001)	8
<i>Leng May Ma v. Barber</i> , 357 U.S. 185, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958)	12
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024)	13
<i>Matter of Q. Li</i> , 29 I&N Dec 66 (BIA 2025).....	6
<i>Matter of Yajure Hurtado</i> , 29 I&N 216 (BIA 2025)	6
<i>McCarthy v. Madigan</i> , 503 U.S. 140 (1992)	8
<i>Pierre-Paul v. Barr</i> , 930 F.3d 684 (5th Cir. 2019).....	11, 12, 14
<i>Velasco Lopez v. Decker</i> , 978 F.3d 842 (2d Cir. 2020).....	15
<i>Yamataya v. Fisher</i> , 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903)	12
Statutes	
8 U.S.C. § 1225.....	5, 10, 11, 14
8 U.S.C. § 1225(b)(1)	6, 9, 10
8 U.S.C. § 1226.....	Passim
8 U.S.C. § 1229a.....	5, 6, 10, 14
8 U.S.C. § 1229a(a)(3).....	6, 10

§1226(a) 10, 11, 14, 15
§ 1225(a)(1) 9
§ 1226(c) 15

Rules

Rule 5(e) of the Federal Rules 5

Regulations

8 C.F.R. § 1003.19(a) (2025) 6

PRELIMINARY STATEMENT

Petitioner, Gerber Giovanni Garcia Hernandez, respectfully submits the instant Reply to Respondent's Response to Petition for Writ of Habeas Corpus. Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules Governing §2254 cases.

The Petitioner has resided in the United States for at least four years before the Department of Homeland Security ("DHS") placed the Petitioner in full removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a, which is mutually exclusive with expedited removal proceedings under 8 U.S.C. § 1225. Petitioner's detention violates both the Immigration Nationality Act ("INA") and Petitioner's Fifth Amendment rights and due process of law as he was not subject to 8 U.S.C. § 1225(b)(2)(a) when detained in the interior of the United States after four years of residing in the country.

The Government's opposition rests on a single legal error: that long-term interior resident arrested after years of entry may be retroactively transformed into an "arriving alien" subject to mandatory detention under INA § 1225(b). This position conflicts with statutory text, Fifth Circuit precedent, and constitutional due process principles. This Reply addresses (1) the Government's misapplication of § 1225(b); (2) the legally deficient reliance on *Matter of Yajure Hurtado*, (3) and the Government's attempt to justify detention violates Petitioner's due process rights.

PROCEDURAL HISTORY

Petitioner entered the United States on or about February 23, 2021. He fled his country due to severe threats from gangs, escalating violence, and credible fears that he would be targeted if he remained. He was arrested on October 10, 2025, and transferred to Adams County Correctional Center. DHS issued a Notice to Appear on or about October 10, 2025, pursuant to 8 U.S.C. § 1229a. The NTA alleges that Petitioner is "a [noncitizen] present in the United States who has not been admitted or paroled" pursuant to §§212(a)(6)(A)(i). See ECF 1-2, Notice to Appear.

DHS's filing of the NTA against Petitioner in this case initiated "full" removal proceedings in Immigration Court pursuant to 8 U.S.C. § 1229a-which vested jurisdiction with the Immigration Judge-and constituted "the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3) (emphasis added). As the Board of Immigration Appeals ("BIA") recently stated, "DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), or full removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a." *Matter of Q. Li*, 29 I&N Dec 66, 68 (BIA 2025) (emphasis added).

Full removal proceedings and expedited removal proceedings are mutually exclusive. Moreover, the Government must concede that Petitioner is not in expedited removal proceedings, or ever was. While the Government submitted evidence, they failed to provide the warrant of arrest by which they detained Petitioner.

Nonetheless, Petitioner has proceeded with full removal proceedings, appeared at hearings with the Lasalle Immigration Court. Petitioner subsequently filed a request for custody redetermination, also known as a "bond request", pursuant to 8 C.F.R. § 1003.19(a) (2025) ("Custody and bond determinations made by [DHS]. .. may be reviewed by an Immigration Judge."). The Immigration Court summarily denied the Petitioner's request citing the recent holding in *Matter of Yajure Hurtado*, 29 I&N 216 (BIA 2025). Relying on that decision, the Court determined that Petitioner was subject to mandatory detention under section 235(b)(2)(A) of the Immigration Nationality Act ("INA"), 8 U.S.C. § 1225(B)(2)(A).

This determination represents a significant departure from the long-standing interpretation recognized for more than two decades, that individuals charged under § 212(a)(6)(A)(i) are not

subject to mandatory detention, but rather fall within the discretionary custody provisions of INA § 236(a). By adopting the reasoning in *Yajure Hurtado*, the Immigration Court effectively eliminated access to custody redetermination hearings for a broad category of noncitizens who have never been deemed subject to mandatory detention under any prior authority. The Immigration Court further improperly conflated the detention framework applicable to “arriving aliens” seeking admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), with the post-entry custody provisions of INA § 236, 8 U.S.C. § 1226, thereby erroneously treating Petitioner, who was apprehended well inside the United States, as if he were an arriving alien subject to mandatory detention rather than discretionary release under § 236(a).

ARGUMENT

I. THE PETITION IS PROPERLY BEFORE THIS COURT BECAUSE NO ADMINISTRATIVE REMEDY EXISTS

Respondents’ threshold argument that this Court lacks jurisdiction due to Petitioner’s alleged failure to exhaust administrative remedies fails as a matter of law and logic. Exhaustion in § 2241 habeas proceedings challenging immigration detention is prudential, not jurisdictional, and it is excused where administrative remedies are unavailable or futile. See *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (recognizing that exhaustion in § 2241 cases is judicially imposed and subject to exceptions); *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (same).

Here, there is nothing for Petitioner to exhaust. The Immigration Judge expressly denied custody redetermination on the ground that the Court lacked jurisdiction to conduct a bond hearing under *Matter of Yajure-Hurtado*. As a result, no Immigration Judge and no administrative tribunal within EOIR has authority to review or reconsider Petitioner’s detention. Where the agency has disclaimed power to act, exhaustion is excused because there is no meaningful remedy

to pursue. See *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (exhaustion not required where it would be futile); *McCarthy v. Madigan*, 503 U.S. 140, 148–49 (1992) (exhaustion excused where administrative body lacks power to grant effective relief), superseded on other grounds by statute.

Respondents cannot simultaneously argue that no adjudicator has custody authority and that Petitioner must nonetheless exhaust review before that same non-existent authority. Courts routinely excuse exhaustion where resort to the agency would be futile or where relief is unavailable as a matter of law, particularly in detention habeas cases challenging the statutory basis for confinement rather than the merits of removal proceedings. See *Booth v. Churner*, 532 U.S. 731, 736 n.4 (2001) (recognizing futility exception where relief is unavailable); *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010) (exhaustion excused where agency lacks authority to provide requested relief).

Moreover, Petitioner does not seek review of removability or interim procedural rulings in Immigration Court. He challenges the legal authority of the Government to detain him without bond under the statute it invokes. That question lies at the core of habeas jurisdiction and is properly addressed by this Court. The Supreme Court has made clear that habeas review remains available where executive detention would otherwise evade judicial scrutiny. See *INS v. St. Cyr*, 533 U.S. 289, 314 (2001) (habeas jurisdiction exists where no other judicial forum is available to test the legality of detention); *Demore v. Kim*, 538 U.S. 510, 517 (2003) (recognizing habeas jurisdiction to review statutory basis for immigration detention).

Because administrative review is foreclosed by Respondents' own interpretation of the law, habeas corpus is not premature, it is the only available forum for meaningful review of

Petitioner's detention. Under these circumstances, exhaustion is excused, and this Court plainly has jurisdiction to adjudicate the Petitioner's claims.

I. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2)(A)

The Government argues that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). That argument has no application here. Section 1225(b)(2)(A) governs noncitizens who are "applicants for admission" where an examining immigration officer determines that the noncitizen "seeking admission" is not clearly and beyond a doubt entitled to be admitted.

Respondents do not contend that Petitioner is subject to expedited removal under § 1225(b)(1). Instead, they rely on § 1225(b)(2)(A), which they characterize as a "catchall" detention provision for all applicants for admission. But § 1225(b)(2) remains an inspection-based, pre-admission detention statute that presupposes a contemporaneous determination by an examining officer that an alien is "seeking admission." It does not authorize DHS to impose mandatory detention years after entry, and after the agency has elected to initiate full removal proceedings under § 240 of the INA.

Even accepting that § 1225(a)(1) defines "applicant for admission" broadly, § 1225(b)(2) applies only where an immigration officer determines that an alien "seeking admission" is not clearly entitled to be admitted. That determination occurs during inspection, not years later, and not after DHS has already initiated § 240 proceedings. Reading "seeking admission" to include any noncitizen who wishes to remain in the United States would collapse § 1226 entirely and render Congress's separate detention regimes meaningless.

Petitioner entered the United States in 2021. Now, in 2025, after Respondent's policy reinterpreting significant portions of 8 U.S.C. 1226, the Government wants to argue that Petitioner is now, four years later, seeking admission. When DHS encountered him, he had already lived in the United States for over 4 years. DHS chose to initiate full removal proceedings by issuing a Notice to Appear under 8 U.S.C. § 1229a, because they could not impose an expedited process. The checkbox on the NTA confirming that an asylum officer found credible fear is blank. This confirms that DHS did not initiate the statutory process that triggers § 1225(b)(1)'s mandatory-detention clause. *See* ECF 1-1.

Full removal proceedings under § 1229a are mutually exclusive from expedited removal under § 1225. Congress expressly provided that proceedings under § 1229a “shall be the sole and exclusive procedure” for determining removability once DHS elects that pathway. 8 U.S.C. § 1229a(a)(3). Once DHS elected that statutory framework, § 236(a) governed custody.

Administrative guidance confirms this reading. In *Matter of M-S-*, the Attorney General explained that 8 U.S.C. § 1225 requires detention only for individuals originally placed in expedited removal and undergoing Credible Fear Interviews. 27 I&N Dec. 509, 512 (A.G. 2019). Individuals apprehended in the interior and issued NTAs are governed instead by §1226(a), under which DHS may detain or release the person on bond or parole. This distinction is reflected in DHS's own arrest practices. The record here shows that DHS processed Petitioner under § 1226(a) and recognized Immigration Judge custody jurisdiction, before reversing course based on subsequent BIA decisions.

The Government also argues that § 1225(b)(2)(A) applies because Petitioner is an “applicant for admission.” § 1225(b)(2)(A) applies to individuals who are seeking admission at the time they encounter immigration officers, before DHS files an NTA. The statute itself makes

this clear: it applies where an officer determines that “an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” *Matter of M-S-*, 27 I. & N. Dec. 509 (emphasis added). That statutory language does not describe Petitioner. He was not seeking admission; he was living in the United States and was apprehended years after entry.

The Fifth Circuit has recognized that detention authority flows from the statutory framework governing the removal proceedings DHS elects to initiate. Once DHS places a noncitizen into removal proceedings under INA § 240, custody is governed by 8 U.S.C. § 1226, not § 1225. See *Pierre-Paul v. Barr*, 930 F.3d 684, 690–93 (5th Cir. 2019) (analyzing detention authority by reference to the statute governing the pending removal proceedings). DHS may not rely on post-hoc recharacterizations to alter the statutory basis for detention once it has invoked the § 240 process.

Nothing about Petitioner’s posture aligns with the statutory scheme of § 1225(b). He was not seeking admission at the port of entry. He was not placed in expedited removal. He was not referred for a Credible Fear Interview. He was arrested while he was already present in the United States, with the knowledge of DHS, for more than four years. See ECF 1-5. He was placed directly into § 240 proceedings, and DHS’s own actions reflect an initial determination that § 1226(a), not § 1225(b), governed custody.

II. DHS ELECTED § 1225(b) AS THE SOLE BASIS FOR DETENTION AND OBTAINED A JURISDICTIONAL DENIAL OF BOND ON THAT BASIS

A. DHS Affirmatively proceeded Under § 1225(b) Before the Immigration Court

From the outset of removal proceedings, DHS affirmatively took the position that Petitioner was subject to mandatory detention under INA § 1225(b). DHS classified Petitioner as an “applicant for admission,” asserted that the Immigration Court lacked jurisdiction to conduct a custody redetermination, and opposed bond solely on that ground. See ECF 1-7. The Immigration

Judge accepted DHS's representation and denied bond for lack of jurisdiction, without reaching the merits of custody.

That statutory election matters. The Fifth Circuit has recognized that detention authority turns on the statutory framework governing the removal proceedings DHS elects to initiate. See *Pierre-Paul v. Barr*, 930 F.3d 684, 690–93 (5th Cir. 2019). Once the Government chooses the statutory basis for detention and secures a ruling on that basis, it may not later disavow its own election through post hoc recharacterization in order to justify continued custody under a different detention regime.

III. PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION PROCEEDINGS

Noncitizens who have entered the United States are entitled to basic procedural protections, including notice and an opportunity to be heard. The Supreme Court has long held that noncitizens within the United States are entitled to procedural due process. *Yamataya v. Fisher*, 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903); *Bridges v. Wixon*, 326 U.S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945). Our immigration laws distinguish between individuals seeking initial admission and those who have already entered the country. *Leng May Ma v. Barber*, 357 U.S. 185, 187, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958). Noncitizens who are physically present in the United States “undeniably have due process rights.” *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 191, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020).

Here, the Government attempts to categorize Petitioner as an “applicant for admission” by relying on *Matter of Yajure Hurtado*. That decision involved a noncitizen treated as an applicant for admission based on her manner of entry and processing, not an individual arrested inside the United States years after entry and placed directly into removal proceedings under INA § 240. *Yajure-Hurtado* does not authorize DHS to retroactively alter the factual posture of an interior arrest in order to impose the expedited-removal or mandatory-detention framework. DHS may not

rewrite the history of this case to justify detention under § 1225(b) after electing to proceed under § 240.

Petitioner is not in expedited removal, has never undergone a Credible Fear Interview, and is not subject to § 235(b). He is a long-term resident placed squarely in the statutory framework of § 236(a) and § 240. More importantly, he has approved Special Immigrant Juvenile Status and will be eligible to adjust his status to Permanent Resident once his EB-4 immigrant visa priority date becomes available. Thus, he is entitled to the due-process protections available in those proceedings, including meaningful consideration of release under § 236(a).

Accordingly, Petitioner, who remains in full § 240 removal proceedings, is entitled to the due-process protections afforded to individuals in those proceedings. DHS's effort to deny him those protections by mischaracterizing his statutory posture has no basis in fact or law.

To the extent the Government suggests that recent district Court decision yield to the BIA's recent precedential decision in *Matter of Yajure Hurtado*, that argument misstates both the law and the current judicial landscape. After *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), courts - not agencies - exercise independent judgment in interpreting statutory meaning. Chevron deference no longer applies, and agencies are owed no special weight on pure questions of statutory construction.

Consistent with this framework, federal courts addressing interior arrests have rejected the Government's effort to impose § 1225(b)(2) mandatory detention where DHS elected to proceed under § 240. See, e.g., *Hyppolite v. Noem*, Slip Op. (E.D.N.Y. 2025); *Placido Romero Perez v. Francis*, Slip Op. (S.D.N.Y. 2025); *Rueda Torres v. Francis*, Slip Op. (S.D.N.Y. 2025); *J.U. v. Maldonado*, Slip Op. (E.D.N.Y. 2025); *Artiga v. Genalo*, Slip Op. (E.D.N.Y. 2025).

While these decisions arise outside the Fifth Circuit, they apply the same statutory text and post-*Loper Bright* interpretive principles the Fifth Circuit employs. See *Pierre-Paul v. Barr*, 930 F.3d 684, 690–93 (5th Cir. 2019) (detention authority flows from the statutory framework governing the removal proceedings DHS initiates). Together, these cases reinforce that DHS’s decision to proceed under § 236(a) and § 240 forecloses later reliance on § 235(b)(2) to impose mandatory detention on long-term interior residents.

IV. DHS WAIVED THE ABILITY TO DETAIN UNDER § 1225(B)(2) AND DETENTION IS ULTRA VIRES

The Government’s position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) fails for an additional, independent reason: DHS waived any ability to rely on § 1225(b)(2) when it chose to process Petitioner under § 1226(a) and place him in full removal proceedings pursuant to 8 U.S.C. § 1229a. The record demonstrates that DHS (1) issued and filed a Notice to Appear initiating § 240 removal proceedings, and (2) processed him through the custody framework of § 1226(a) by acknowledging Immigration Judge jurisdiction over custody. See Notice to Appear. Notably, DHS did not issue the required record of arrest identifying § 1225(b)(2) as the authority for detention, further undermining its belated reliance on that provision.

A. DHS’s invocation of § 1226(a) forecloses reliance on § 1225(b)(2)

The Fifth Circuit has recognized that detention authority turns on the statutory framework governing the removal proceedings DHS elects to initiate. See *Pierre-Paul v. Barr*, 930 F.3d 684, 690–93 (5th Cir. 2019). When DHS arrests a noncitizen in the interior and files a Notice to Appear initiating full removal proceedings under INA § 240, custody is governed by INA § 1226, not § 1225.

Other circuits have made this principle explicit, holding that detention authority depends on the statutory posture of the removal proceedings rather than post hoc agency labels. See *Hechavarría v. Sessions*, 891 F.3d 49, 56–58 (2d Cir. 2018); *Velasco Lopez v. Decker*, 978 F.3d 842, 852–55 (2d Cir. 2020). Once DHS elects to proceed under § 240, that statutory choice carries legal consequences. DHS may not retroactively reclassify custody as mandatory detention under § 1225(b)(2) after removal proceedings are underway. To hold otherwise would permit DHS to evade the procedural and constitutional limits Congress imposed on § 1226 detention by relabeling custody after the fact.

V. THE APPROPRIATE REMEDY IS RELEASE, NOT A BOND HEARING

Respondents do not contend that Petitioner is entitled to a bond hearing under any circumstance. To the contrary, they argue that section 1225(b)(2) mandates detention without a bond and that no immigration judge has authority to review custody. That position underscores why habeas relief is necessary. That is, without judicial intervention, Petitioner’s detention will never be reviewed by a neutral decisionmaker.

Because DHS initiated § 240 proceedings, processed Petitioner under § 1226(a), failed to invoke § 1226(c) administratively, and lacked authority to detain under § 1225(b)(2), Petitioner’s continued detention is ultra vires and must end.

CONCLUSION

DHS detained Petitioner under an inapplicable statute, obtained a jurisdictional denial of bond based on that misclassification, and now seeks to retroactively justify detention by invoking a different statute it never raised administratively. The law does not permit such after-the-fact rationalizations. Because Respondents lack lawful statutory authority to continue Petitioner’s

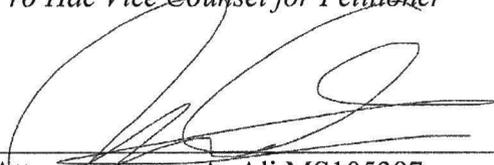
detention, the Court should grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release.

Dated: White Plains, New York
January 02, 2026

Respectfully Submitted,

By: 

Andrea C. Soto, Esq.
Soto Law, PLLC
445 Hamilton Avenue, Suite 407
White Plains, New York 10601
T : 914-290-4900
F: 914-898-9100
asoto@andreasotolaw.com
Pro Hac Vice Counsel for Petitioner


Attorney Assma A. Ali MS105397
591 Northpark Drive, Suite A
Ridgeland, Mississippi 39157
P: 601-707-7791
F: 607-707-8188
aali@aliimmigration.com