

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Guillermo Hernandez Nanduca,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of  
Homeland Security,

Department of Homeland Security,

Todd M. Lyons, Acting Director of  
Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Daren K. Margolin, Director for Executive  
Office for Immigration Review,

Executive Office for Immigration Review,

David Easterwood, Acting Director, St. Paul  
Field Office, Immigration and Customs  
Enforcement;

and,

Eric Tollefson, Sheriff of Kandiyohi County.

Respondents.

0:25-cv-04546-SRN-EMB

**COMBINED REPLY IN  
SUPPORT OF TRO AND  
WRIT OF HABEAS  
CORPUS**

**REPLY ARGUMENT**

Petitioner Guillermo Hernandez Nanduca (hereinafter “Petitioner”) maintains the Court should grant this Petition.

Respondents ask the Court to consider a few decisions that have reached the opposite conclusion sought here. For example, Respondents raise *Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y Dec. 4, 2025). *Chen* reflects the flaw in the few adverse decisions that exist. *Chen* and others do not engage what constitutes “seeking,” nor do they acknowledge the administrative record that shows that Respondents apprehended, and sometimes initially released, a person under § 1226. *Chen*, for example, tries to suggest that the vast majority of courts have contrived a third requirement in which a person has to be seeking an admission consistent with the definition of admission set forth in 8 U.S.C. § 1101(a)(13)(A). *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tx. Nov. 13, 2025), merges the actor and the action as if they are one in the same. Petitioner’s opening memorandum rebuts this position. The Court must continue to see that there is a difference from fitting the mold as an applicant for admission and doing something to seek admission. There is no action here that invokes § 1225(b)(2). In fact, the only action is the government apprehending consistent with § 1226.

Admission as an action act refers to seeking lawful entry. It is unavoidable that this comports with a section identified as inspection and refers to individuals as

applicants for admission. There is no doubt that at the time of Petitioner's apprehension, he was not trying to enter lawfully. This conflicts with "admission," which is "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1182(a)(13)(A). "The word 'entry' by its own force implies a coming from outside." *U.S. ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929). "Seeking" means "to try to acquire or gain." *Seek*, MERRIAM WEBSTER'S ENGLISH DICTIONARY (11<sup>th</sup> Ed. 2020). When Petitioner was detained, he was not seeking lawful admission from outside. Respondents never explain how § 1101(a)(13)(A) supports the notion that a person continues in perpetuity to seek lawful entry from within the United States. It is illogical.

Furthermore, *Chen*, *Cabanas*, and cases like them maintain that § 1225(b)(2) becomes meaningless. There is a bevy of case law demonstrating that § 1225(b)(2) applies to numerous individuals who are not arriving aliens, however. Most notably, it applies to lawful permanent residents who do not qualify or satisfy the returning resident exemption. Section 1225(b)(2) requires the detention of such individuals until an immigration court determines whether the person is a returning resident or not. This is a very large population of individuals. It includes people who have been abroad for too long, criminality, national security concerns, and other grounds. *Chen* lastly makes the fatal mistake of making an application for relief, such as asylum, into some form of seeking admission. This is contrary to law and Board of

Immigration Appeals precedent. Several forms of relief are not tantamount to admission. “TPS does not come with a ticket of admission.” *Sanchez v. Mayorkas*, 593 U.S. 409, 416 (2021). Adjustment of status is not “admission.” *See Matter of J-H-J-*, 26 I. & N. Dec. 563, 565 (BIA 2015). A grant of asylum is not an “admission.” 8 U.S.C. § 1158(b)(1)(A). Relief is not admission. *Chen* and others simply fail to recognize that precedent and statute contradict their supposition.

Respondents lean on platitudes about the intent behind IIRIRA but avoid the entire legislative record. Contemporaneous House Reports note how the detention authority that now lives at 8 U.S.C. § 1226(a) merely “restates the [then] current provisions in section 242(a)(1) [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996). Since bond was available then, it is now too. Congress could not have been clearer. “The contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect,” particularly “when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). Respondents cannot just walk away from 29 years and thousands of contrary adjudications.

Respondents otherwise attempt to bait the Court into resolving, or in effect trusting Respondents' conclusion, that this matter resolves under 8 U.S.C. § 1226(c). This is inaccurate and inappropriate. Resolution of whether 8 U.S.C. § 1226(c) applies is a fact inquiry that this Court is not asked to make. It is the responsibility of the immigration court to make this determination during a § 1226(a) proceeding. Respondents essentially are suggesting that the Court preempt the immigration court from considering whether to release Petitioner on bond. This is not a request that the Court can grant. The sole issue before the Court is whether the immigration court is obligated to hear Petitioner's request for bond. The Court is not to delve into whether the immigration court *should* grant a bond.

Furthermore, Respondents' recitation of facts relative to the § 1182(a)(2) concern relies on its interpretation of the underlying state court record. Petitioner respectfully disagrees with Respondents' characterization. Moreover, a full and fair hearing before the proper administrative actor in which the parties assert their positions will resolve whether the matter resolved via diversion and is therefore not a conviction under the Immigration & Nationality Act, or is a conviction despite the diversion agreement noted in Minnesota's notice of proceeding. This is fact inquiry under *Mendoza-Saenz v. Sessions*, 861 F.3d 720 (8th Cir. 2017). Petitioner maintains that the minutes entries before the state court and their impact on federal

law is a factual inquiry for the immigration court to resolve. Petitioner avers that he in fact has no record of conviction for state or federal purposes.

Alas, this is why granting this Petition is necessary. Petitioner is merely seeking an opportunity to demonstrate that he is eligible for release. The immigration court, however, at this point will not even consider the arguments made here because it will not accept that it has jurisdiction to entertain the question. That is the point of this Petition, and why the Court should grant it.

### **CONCLUSION**

Petitioner has demonstrated that his detention absent a bond hearing is illegal. A writ must issue. If the Court requires additional time to mull the matter, he has illustrated a strong likelihood of success on the merits, will suffer significantly and irreparably in the absence of a TRO, and the equities weigh in his favor. As such, either a writ or a TRO must be granted ordering Respondents to provide Petitioner with a bond hearing within seven days.

DATED: December 16, 2025

Respectfully submitted,

/s/ David Wilson

David Wilson  
MN Attorney Lic. No. 0280239  
Wilson Law Group  
3019 Minnehaha Avenue  
Minneapolis, MN  
(612) 436-7100 / [dwilson@wilsonlg.com](mailto:dwilson@wilsonlg.com)

/s/ Gabriela Anderson

Gabriela Anderson  
MN Attorney Lic. No. 0504395  
Wilson Law Group  
3019 Minnehaha Avenue  
Minneapolis, MN 55406  
(612) 436-7100 / [ganderson@wilsonlg.com](mailto:ganderson@wilsonlg.com)

Attorneys for Petitioner