

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

KIKEY M-O.,)	
Petitioner,)	
v.)	C/A No. 1:25-cv-00319
)	
FRANCISCO VENEGAS, <i>et al.</i> ,)	
Respondents.)	
)	
)	

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

RESPONDENTS’ MISAPPLICATION OF 8 U.S.C. § 1225(b)(2)

Respondents argue that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). However, this interpretation conflicts with the statutory framework of the Immigration and Nationality Act (“INA”), as well as binding and persuasive judicial precedent. Petitioner was apprehended inside the United States decades after entry, arrested pursuant to a § 1226 warrant, and placed in standard removal proceedings under 8 U.S.C. § 1229a (also known as 240 removal proceedings). These circumstances place Petitioner’s detention squarely within the scope of 8 U.S.C. § 1226(a), which requires an individualized bond hearing.

FEDERAL HABEAS REVIEW AND SUMMARY JUDGMENT

It is undisputed that federal courts retain jurisdiction to review the statutory and constitutional basis for immigration detention through habeas corpus proceedings. However, summary judgment is inappropriate here because material legal questions remain regarding the statutory basis for Petitioner’s detention.

SECTION 1226(a) AS THE DEFAULT DETENTION STATUTE

The Supreme Court has clarified that 8 U.S.C. § 1226(a) is the default detention provision for noncitizens arrested within the United States pending removal proceedings. In *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018), the Court distinguished from § 1225(b), noting that § 1225(b) governs inspection and admission determinations for noncitizens seeking entry at the border or a port of entry. The Supreme Court further stated that Section 1226(a) is the default rule: “The Attorney General may issue a warrant for the arrest and detention of an alien ‘pending a decision on whether the alien is to be removed from the United States.’” *Id* at 288. Here, Petitioner, who was apprehended in the interior long after entry, is not subject to § 1225(b)(2).

“SEEKING ADMISSION” REQUIRES PRESENT-TENSE CONDUCT

Section 1225(b)(2)(A) applies only to noncitizens who are both applicants for admission and seeking admission. The statutory language and structure make clear that Congress intended these terms to have distinct meanings. A noncitizen apprehended in the interior after decades of residence cannot reasonably be characterized as “seeking admission.”

RESPONDENTS’ RELIANCE ON § 1225(a)(3) MISREADS THE STATUTE

Respondents argue that “seeking admission” and “applying for admission” are synonymous because Congress used both phrases in 8 U.S.C. § 1225(a)(3). That contention misreads the statute. Section 1225(a)(3) is a general inspection provision and does not define detention authority.

In § 1225(b)(2)(A), Congress limited mandatory detention to applicants for admission who are seeking admission. Courts must give effect to Congress’s use of different language. *Duncan v. Walker*, 533 U.S. 167, 174 (2001). The phrase “seeking admission” describes present-tense conduct. *See Carr v. United States*, 560 U.S. 438, 448 (2010).

Treating the phrases as interchangeable would collapse § 1226 into § 1225, contrary to *Jennings*, and would raise serious constitutional concerns. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

**RESPONDENTS' INTERPRETATION CREATES STATUTORY SURPLUSAGE AND
RENDERS § 1226 SUPERFLUOUS**

Respondents' interpretation of § 1225(b)(2) would render § 1226 largely superfluous for noncitizens apprehended in the interior. Courts must avoid statutory interpretations that create surplusage or redundancy, particularly where Congress has recently amended the relevant provisions to clarify their scope.

AGENCY GUIDANCE CANNOT EXPAND STATUTORY AUTHORITY

Statutory interpretation is the exclusive province of the judiciary. While agency guidance may inform certain administrative practices, it cannot expand the scope of mandatory detention beyond what Congress has authorized. The Supreme Court has repeatedly emphasized that courts must independently interpret statutory provisions to ensure compliance with constitutional and statutory limits. *Zadvydas*, 533 U.S. at 689. Agency guidance or administrative precedent cannot expand mandatory detention beyond what Congress authorized.

PROLONGED DETENTION WITHOUT INDIVIDUALIZED REVIEW IS UNLAWFUL

In *Demore v. Kim*, the Supreme Court upheld mandatory detention under § 1226(c) only in the narrow context of brief detention for certain criminal noncitizens. The Court explicitly distinguished such brief detention from prolonged, categorical detention without individualized review. Prolonged detention under § 1225(b)(2) without a bond hearing would exceed the scope of permissible detention under the INA and raise serious constitutional concerns. Additionally, **Gov't Ex. 2 at 2** states Petitioner has no primary criminal history.

CONSTITUTIONAL AVOIDANCE DOCTRINE

Construing § 1225(b)(2) to mandate detention of long-term interior residents would raise significant Fifth Amendment due process concerns. Under the constitutional avoidance doctrine, courts must adopt an interpretation of the statute that avoids such constitutional issues where a plausible alternative exists. Here, interpreting Petitioner's detention as governed by § 1226(a) avoids these constitutional problems while remaining consistent with the statutory framework.

RELIEF REQUESTED

Because Petitioner is detained under § 1226(a), she is entitled to a prompt individualized bond hearing. Federal courts possess broad equitable authority to grant habeas relief where detention is unlawful. Respondent requests that the Court deny Respondents' motion for summary judgment, grant the petition for writ of habeas corpus, and order Petitioner's immediate release or, alternatively, order a bond hearing under § 1226(a) to be held within three days of the Court's order.

CONCLUSION

Petitioner's continued detention without a bond hearing is unlawful under the INA and the Constitution. The Court should grant the requested relief and ensure compliance with statutory and constitutional requirements.

Date: January 6, 2026

Respectfully Submitted,

/s/Daniel Abraham Lorber
DANIEL ABRAHAM LORBER
Texar Bar No. 24124758
Law Offices of Daniel A. Lorber, PC
1910 Pacific Avenue, Suite 14000
Dallas, TX 75201
214-989-6001 (telephone)
dlorber@lorberlawpc.com

Attorney for the Petitioner

CERTIFICATE OF SERVICE

I certify that on January 6, 2026, the foregoing was filed and served through the Court's
CM/ECF system.

/s/Daniel Abraham Lorber
Daniel A. Lorber