

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Thomas Chinnappan,

*Petitioner,*

-v-

Todd M. Lyons, Acting Director of US ICE, *et al.*,

*Respondents.*

Case No: 5:25-cv-1711-XR

**Petitioner's Reply**

**PETITIONER'S BRIEF IN SUPPORT OF RELIEF**

Petitioner submits this Reply to the Response dated December 22, 2025. Respondents claim Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A) as an "arriving alien." ECF No. 4 at 1. The provision at § 1225(b)(2)(A) provides for the detention of certain "applicants for admission." Here, Petitioner is not applying for admission nor is he an "arriving alien." *See* ECF No. 4-1 at 1. Petitioner asks the Court to order his release because Respondents have not provided any legal basis to justify his detention.

**I. Respondents have not provided any evidence in support of their claims that Petitioner is an arriving alien who entered at a port of entry.**

Respondents state that Petitioner is ineligible for bond because he is an "arriving alien." ECF No. 4 at 1. However, they do not provide any documentation showing that he is an arriving alien, and the evidence Respondents submitted to the Court states that he is *not* an arriving alien. *See* ECF No. 4-1 at 1. Respondents' Exhibit A contains the Notice to Appear which commenced

Petitioner's removal proceedings under Section 240 of the Immigration and Nationality Act. That Notice includes a section allowing immigration agents to select from several options:

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

*Id.* The box indicating that Petitioner was an "arriving alien" was not checked. *Id.* Respondents therefore did not allege that Petitioner was an arriving alien on October 16, 2023 when this Notice was presented to the immigration judge to commence his removal proceedings. Respondents have not explained this discrepancy in their Response. The most likely explanation is that he is not an arriving alien, but even if he were previously an arriving alien, he is not properly detained under 8 U.S.C. § 1225(b)(2)(A). *See infra* Section II.

Respondents also allege that Petitioner presented himself at a port of entry when he initially arrived in the United States. *See* ECF No. 4 at 1-2. Respondents believe that this manner of entry renders Petitioner permanently subject to mandatory detention. There is no evidence in the record to substantiate this claim. Respondents' evidence states only that Petitioner "arrived in the United States at or near Otay Mesa, CA," which is indeterminate and inconsistent with an individual presenting himself at a specific port of entry. *Id.*

Had Petitioner entered the United States in the manner that Respondents contend, officials would likely have marked his Notice consistently with those facts. For example, in an unrelated case, Respondents properly marked that an individual was an arriving alien and had "applied for admission" at a port of entry on a specific date:

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of VENEZUELA and a citizen of VENEZUELA;
3. You applied for admission on 08/10/2024 at SAN YSIDRO, CA, USA;
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

This notice, which is unrelated to this case, simply serves as an example of how Respondents would typically mark an individual's notice to appear had they entered the U.S. in such a manner.

In habeas proceedings, “[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention.” 28 U.S.C. § 2243. Respondents have failed to certify the true cause of Petitioner’s detention. Petitioner asks the Court to grant his immediate release.

## II. Petitioner’s detention is not authorized by 8 U.S.C. § 1225(b)(2)(A)

Respondents argue that Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A). *See* ECF No. 4 at 2-3. There are “three conditions” to mandatory detention under 8 U.S.C. § 1225(b)(2)(A): (1) the alien is an “applicant for admission”; (2) the alien is “seeking admission”; and (3) an “examining immigration officer determines” the alien “is not clearly and beyond a doubt entitled to be admitted.” *Pereira-Verdi v. Lyons*, No. SA-25-CV-1187-XR at 7 (W.D. Tex. Oct. 10, 2025) (*citing* 8 U.S.C. § 1225(b)(2)(A)).

Here, Petitioner was not “seeking admission” at the time of his detention. He was detained during a routine immigration check-in with US Immigration and Customs Enforcement agents. Nor have Respondents demonstrated that an examining officer determined that Petitioner was “not clearly and

beyond a doubt entitled to be admitted”. *Id.* No such evidence has been submitted to the Court. Because Respondents have not demonstrated that these conditions apply to Petitioner, his detention is unlawful under 8 U.S.C. § 1225(b)(2)(A). Petitioner asks the Court to grant his immediate release.

**III. Petitioner’s detention under 8 U.S.C. § 1225 is unconstitutional because it violates his due process rights**

Should the Court find that Petitioner is detained pursuant to § 1225, Petitioner argues that this detention authority is unconstitutional under the Fifth Amendment. Challenges to the extent of DHS’ detention authority are permissible and do not relate to any discretionary determinations. *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018).

Petitioner is a civil detainee who has never been charged with or convicted of any crime. As an immigrant, he is entitled to the same due process protections afforded to civil detainees. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). Petitioner has a “constitutionally protected interest in avoiding physical restraint”. *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). He may not be detained as a means of punishment for noncriminal purposes. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Due process protections apply even if a statute explicitly authorizes detention. *See Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 338 (S.D. Tex. 2020) (finding that plaintiffs who were at high risk of serious illness or death due to the COVID-19 Pandemic were detained for a purpose that did “not reasonably relate to a legitimate governmental purpose.”).

Respondents’ asserted detention authority is unlawful because it ignores the statutory scheme carefully set out by Congress and would eviscerate the due process rights of potentially millions of immigrants like Petitioner. As noted above, Congress created a statutory scheme that clearly distinguishes between expedited removals at border and general removals which occur outside of that context. The expedited removal scheme necessarily trades some due process protections for expedited processing.

Such tradeoffs are not appropriate for individuals like Petitioner who were already processed under 8 U.S.C. § 1226.

The Supreme Court analyzed the interplay between both sections in *Jennings v. Rodriguez*. Section 1225 provides that “an alien who arrived in the United States or is present in this country but has not been admitted, is treated as an applicant for admission.” *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. § 1225(a)(1) (internal quotations omitted)). The Court there observed that the decision of who may enter this country “generally begins at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible. *Id.* at 287. The *Jennings* Court noted that § 1225(b), the provision at issue in the instant habeas petition, “applies primarily to aliens seeking entry into the United States.” *Id.* at 297. Then the Court noted, § 1226 “applies to aliens already present in the United States.” *Id.* at 303. “Section 1226(a) creates a default rule for those aliens by permitting – but not requiring – the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, ‘except as provided in subsection (c) of this section.’” *Id.* at 303. Subsection (c) of Section 1226 pertains to aliens who fall into categories involving criminal offenses or terrorist activities. “Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.” *Id.* at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

Respondents’ position destroys the balance created by Congress and outlined by the Supreme Court in *Jennings*. The Court should find that this overreach is unconstitutional, violates Petitioner’s Fifth Amendment rights, and order his release.

#### **IV. Exhaustion before the BIA is futile in Petitioner's case**

Petitioner is not required to exhaust administrative remedies here and such a requirement would be futile because Respondents have already clearly determined that they will not grant Petitioner bond. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. Courts have routinely reviewed the detention of immigrants pursuant to different statutes in habeas proceedings. *See, e.g., Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). Furthermore, exhaustion is inappropriate here because appeal to the Board of Immigration Appeals is futile and inadequate.

Requesting bond and appealing to the BIA are futile because the agency has already issued a precedential decision holding that immigration judges unequivocally have no jurisdiction to entertain granting bond in these exact circumstances. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA described its holding in this case as:

Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *Id.*

The requirement that Petitioner must exhaust all available appeals is subject to exceptions. The Fifth Circuit has held that “[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action.” *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (citing *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam)).

As of today, the BIA has issued at least two precedential decisions stating that Petitioner's exact circumstances deprive an immigration judge of jurisdiction to consider bond. There is no reason to believe that the BIA would not apply its own recent precedent decisions to Petitioner's case. That assertion is unsupported and cannot surmount Petitioner's clear due process interest in being released from detention. Respondents bear the burden of proving that Petitioner's detention is lawful and they

have not met that burden. In light of the above, Petitioner asks the Court to find that an appeal to the BIA is not required and futile.

**V. There are no jurisdictional bars to the relief sought**

There are no jurisdictional bars to relief in this case whether under 8 U.S.C. §§ 1252(a)(5), (b)(9), (g), or 8 U.S.C. § 1226(e). Section 1252(a)(5) narrowly “specifies that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals.” *Duarte v. Mayorkas*, 27 F.4th 1044, 1051 (5th Cir. 2022). Here, there is no final order of removal which Petitioner seeks review before this Court.

Section 1252(b)(9) limits judicial review of “questions of law and fact...arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter”. 8 U.S.C. § 1252(b)(9). This provision is a jurisdictional channeling provision intended to prevent review of issues prior to the end of administrative proceedings. *See Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at \*7 (D. Minn. Aug. 15, 2025) (*citing Aguilar v. U.S. Immigr. & Customs Enf’t*, 510 F.3d 1, 11 (1st Cir. 2007)). Petitioner is not challenging the initiation of removal proceedings or any action that occurred during those proceedings. He is challenging the constitutionality of his detention.

Section 1252(g) strips jurisdiction over “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). Here, Petitioner does not seek this review, and Congress did not intend to sweep in additional claims that were not explicitly included here. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at \*4 (W.D. Tex. Sept. 22, 2025) (*citing Jennings v. Rodriguez*, 583 U.S. 281 at 924 (2018)). Additionally, this provision carves out habeas petitions; the jurisdictional bar is “notwithstanding any other provision of law (statutory or nonstatutory), including section 2241”. 8 U.S.C. § 1252(g).

Section 1226(e) does not apply to Petitioner's claim because he "challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 583 U.S. at 295, 138 S.Ct. 830 (cleaned up) (quoting *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)); *see also Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Petitioner is not challenging an individualized bond hearing determination but rather his indefinite detention without the opportunity to have such a hearing. In other similar cases before the Western District, Respondents' jurisdictional arguments have been found unavailing. *See Lopez-Arevelo* at \*5.

**I. Conclusion**

Because Respondents have unlawfully detained him, the only means that Petitioner has for being released is through an order of this Court. Therefore, Petitioner respectfully asks this Court to grant his Petition and issue a writ of habeas corpus ordering his release.

Respectfully submitted,

/s/ Joseph Krebs Muller

Joseph Krebs Muller  
Counsel for Petitioner  
Bar: MO #65066, TX #24117397  
Law Office of Joseph Muller  
9600 Great Hills Trl. Ste. 150W  
Austin, TX 78759  
Email: joseph@jkmllaw.cc  
Phone: (512) 593-8258  
Fax: (512) 361-4938