

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

Guilherme Cavalcante Mol
Plaintiff

Case No. 1:25-CV-02023 SEC

JUDGE TERRY
A. DOUGHTY

MAGISTRATE
JUDGE PEREZ-
MONTES

VS.

Eleazar Garcia and Kristi Noem
Defendants

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS**

Petitioner, through undersigned counsel, respectfully submits this Reply in support of his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.

Respondents' Return does not defend lawful custody. It attempts to justify continued detention through statutory expansion, doctrinal conflation, and reliance on an immigration court ruling issued without jurisdiction. Each premise is legally unsound. Petitioner has been detained since August 2025. His appeal before the Board of Immigration Appeals remains pending. His removal order is not administratively final. The Government nevertheless continues to detain him under a mandatory detention statute that does not apply to him. That detention is ultra vires, unauthorized by Congress, and unconstitutional. Immediate release is required.

This case presents a narrow legal question: whether the Executive may detain a lawfully admitted noncitizen—charged solely as a visa overstay and presently pursuing a pending

administrative appeal—under the mandatory detention provision governing applicants for admission. The Immigration and Nationality Act answers that question in the negative. Respondents ask this Court to collapse the statutory framework and expand mandatory detention beyond Congress’s text. The Court cannot.

Respondents’ position compels this Court to adjudicate an issue that Congress has already resolved through unambiguous statutory language. Persisting in an indefensible detention theory wastes judicial resources, burdens the courts, and expends taxpayer funds to defend custody the Executive has no lawful authority to maintain.

I. PETITIONER IS DETAINED UNDER THE WRONG STATUTE

Petitioner was lawfully admitted to the United States as a nonimmigrant visitor. He did not enter without inspection. He has not departed the country. He is not seeking entry. He was placed in removal proceedings under INA § 237(a)(1)(B) as a deportable visa overstay. His appeal before the BIA remains pending. His removal order is therefore not final. See 8 C.F.R. § 1003.6(a).

Detention pending removal proceedings for noncitizens who have been admitted is governed by 8 U.S.C. § 1226. Section 1226(a) provides the default rule: civil detention subject to custody review. Section 1226(c) creates a narrow exception for specified criminal categories.

Respondents instead invoke 8 U.S.C. § 1225(b)(2), the mandatory detention provision applicable to “applicants for admission.” Petitioner is not an applicant for admission. He was admitted. The statute defines applicants for admission as persons “arriving” or those “present in the United States who have not been admitted or paroled.” 8 U.S.C. § 1225(a)(1). Petitioner fits neither category.

Overstay of lawful admission does not erase admission. Admission is a legal event with enduring statutory consequences. Congress repeatedly distinguishes between inadmissible applicants for admission and deportable noncitizens who were lawfully admitted. See 8 U.S.C. §§ 1182, 1227. Courts are not free to collapse that structure.

Because Petitioner is an admitted noncitizen in ongoing removal proceedings, detention authority arises, if at all, under § 1226—not § 1225.

II. RESPONDENTS' THEORY THAT OVERSTAY "REVERTS" ADMISSION IS LEGALLY UNSUPPORTED

Respondents contend that Petitioner's failure to maintain status rendered him inadmissible and thereby "reverted" him into an applicant for admission subject to § 1225. That argument has no statutory foundation.

Nothing in the INA provides that lawful admission is undone by overstaying a visa. Congress knows how to define loss of status. It did not create a legal fiction whereby an admitted noncitizen retroactively becomes an arriving applicant.

Inadmissibility and deportability are distinct statutory regimes. A noncitizen may be deportable after lawful admission without becoming an applicant for admission. The Government's attempt to merge those categories rewrites the statute.

III. *BUENROSTRO-MENDEZ* DOES NOT CONTROL THIS CASE

Respondents' reliance on *Buenrostro-Mendez v. Bondi* is misplaced. That case involved individuals who entered without inspection and were never admitted. The Fifth Circuit held they

were applicants for admission subject to § 1225. Petitioner, by contrast, was lawfully admitted and charged under the deportability statute. The statutory posture is different.

Respondents concede that § 1226 continues to govern “visa holders whose visas have expired.” That concession describes Petitioner. Their own brief undermines their position.

Buenrostro did not hold that lawful admission evaporates upon overstay. It did not rewrite § 1225(a)(1)’s definition of applicant for admission. It does not authorize detention of admitted noncitizens under § 1225.

IV. THIS HABEAS ACTION CHALLENGES CUSTODY AUTHORITY, NOT BOND DISCRETION

Respondents repeatedly mischaracterize this action as a bond dispute. It is not. Petitioner challenges whether DHS possesses statutory authority to detain him under § 1225 at all.

Federal courts retain habeas jurisdiction to review the legal basis of executive detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). The Fifth Circuit recognizes that detention authority presents a legal question reviewable in habeas. *Martinez v. Mukasey*, 519 F.3d 532, 543 (5th Cir. 2008).

Bond proceedings cannot cure detention imposed under the wrong statute.

V. THE IMMIGRATION JUDGE’S CUSTODY RULING IS VOID

Respondents rely on an immigration judge’s ruling that simultaneously disclaimed jurisdiction and issued substantive custody findings. A tribunal lacking jurisdiction lacks authority to act. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998).

Administrative agencies possess only delegated authority. Ultra vires action is void. *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013). The IJ's ruling cannot supply detention authority Congress did not grant.

VI. PROLONGED DETENTION WITHOUT LAWFUL AUTHORITY VIOLATES DUE PROCESS

Petitioner has been confined for many months while pursuing lawful administrative review. Civil detention must bear a reasonable relation to its purpose and rest on lawful statutory authority. *Zadvydas*, 533 U.S. at 690.

Detention under the wrong statute is arbitrary governmental restraint.

VII. RESPONDENTS' REMAINING ARGUMENTS ARE IRRELEVANT TO CUSTODY AUTHORITY

Assertions regarding marriage timing, adjustment eligibility, and voluntary departure do not supply detention authority. Removal merits do not determine custody statutes.

Likewise, the existence of bond hearings does not cure ultra vires detention. Proceedings conducted without jurisdiction cannot legitimize custody.

VIII. THE ONLY EFFECTIVE REMEDY IS IMMEDIATE RELEASE

Habeas is a remedy against unlawful detention. Where custody lacks statutory authorization, release—not remand—is required. *Zadvydas*, 533 U.S. at 699.

Petitioner does not seek bond reconsideration. He seeks release from detention the Government has no authority to impose.

CONCLUSION

Respondents seek to expand mandatory detention beyond Congress's text, collapse statutory categories, and rely on void agency action. The INA does not authorize detention of a lawfully admitted visa overstay under § 1225(b)(2). Continued detention is ultra vires and unconstitutional.

The Petition for Writ of Habeas Corpus should be granted. Respondents should be ordered to release Petitioner immediately.

Respectfully submitted,

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