UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

LAZARO SAEZ MARTINEZ, Petitioner, v. MIGUEL VERGARA, *in his official capacity* as Field Office Director of the Harlingen ICE Field Office, et al. Respondents.	§ § § § § § § § § §	Case No.: 1:25-cv-00342

REPLY TO GOVERNMENT'S OPPOSITION TO PETITION FOR HABEAS CORPUS AND OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Government posits three arguments as to why this Court should deny the petition. First, the Government contends that the Petitioner failed to exhaust his administrative remedies by applying for a bond before an immigration judge. But this argument fails because the law contains no requirement that Petitioner exhaust his administrative remedies in this proceeding and a prudential requirement by this Court to require it would not promote judicial efficiency and would only prolong the constitutional violation Petitioner is suffering while in detention. Finally, any effort to obtain a bond in this legal environment would be futile. The Government's other main argument, that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is also unavailing. This Court has already held that 8 U.S.C. § 1225(b) applies primarily to aliens seeking entry into the United States while 8 U.S.C. § 1226 applies to aliens already present in the United States. In addition, while Petitioner was initially apprehended close to the border and close in time

to his arrival in the United States, from the moment that he stepped foot in the United States, the Department of Homeland Security ("DHS") has classified him as falling under 8 U.S.C. § 1226. This classification is in the warrant for his arrest, the document releasing him on his own recognizance, and the notice of custody determination. In addition, both Notices to appear, including the more recent one, classifies him as being present in the United States with admission or parole. The Government cannot now retract that custody determination without violating due process. For these reasons, the Court should deny the Government's motion for summary judgment and grant the petition.

ARGUMENT

I. PETITIONER IS NOT REQUIRED TO EXHAUST HIS ADMINISTRATIVE REMEDIES.

First, the Government argues that this Court should deny the petition on the basis that Petitioner has not exhausted his administrative remedies. This argument fails because an immigrant is only required to exhaust his administrative remedies when required to by statute. No such statutory requirement exists. *Santoyo v. Dickey*, No. H-25-5555, 2025 U.S. Dist. LEXIS 265636, at *5 (S.D. Tex. Dec. 23, 2025). In addition, while a Court may require exhaustion as a matter of prudence to "promote judicial efficiency," this requirement may not be required when a "legal question is fit for resolution and delay means hardship." *Id.* at *5-6. In those cases, "a court may choose to decide the issues itself." *Id.* at *6. This case turns on statutory interpretation, which is within the province of the Court. *Id.* at *6. To require Petitioner to wait would only exacerbate the constitutional injury alleged in the petition. Finally, the Government's own briefing demonstrates that any attempt to seek a bond would be futile as the Government is arguing that Immigration Judges do not have jurisdiction to give a bond to someone in the Petitioner's position. *Id.* at *6-7. Requiring him to apply for a bond would only waste time, money and other resources

only for him to get a denial based on lack of jurisdiction. Therefore, the Court should not require Petitioner to exhaust prudential administrative remedies.

II. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a).

Next, the Government argues that the Court should deny the petition because Petitioner is detained under 8 U.S.C. § 1225(b). This Court has already concluded "Section 1225 applies only to aliens at the time of their arrival at a United States border, whether presenting themselves at a port of arrival, or after being arrested while attempting to enter the country without detection." *Lang Shi v. Lyons*, No. 1:25-CV-274, 2025 U.S. Dist. LEXIS 260870, at *10-11 (S.D. Tex. Dec. 12, 2025). Similarly, this Court also noted that historically, the Department of Homeland Security "applied Section 1226 to individuals arrested after having entered the country without detection and who had lived in the country for some period of time." *Id.* at *14. At first blush, it would appear that Petitioner would fall under 8 U.S.C. § 1225 as he was detained near the border shortly after he crossed into the United States. But the documentary evidence points to a different conclusion.

When Petitioner crossed the border in January 2022, DHS detained him and issued several documents. First, DHS issued a Warrant for Arrest of Alien on January 4, 2022. Dkt. No. 1-4. That warrant states that DHS took him into custody "as authorized by section 236 of the Immigration and Nationality Act." This provision is codified as 8 U.S.C. § 1226. Second, DHS issued a Notice of Custody Determination. Dkt. No. 1-3. This document claims that DHS determined that he could be released on his own recognizance under the authority contained 8 U.S.C. § 1226. Third, DHS issued an Order of Release on Recognizance, in which Petitioner was released in accordance with 8 U.S.C. § 1226. In addition, DHS issued two separate Notices to Appear. The first Notice to Appear, dated January 4, 2022, when he came across the border, designates Petitioner as being

present in the United States without admission or parole. DHS had the opportunity to designate him as an arriving alien or place him in expedited removal proceedings and did not do so. The second Notice to Appear, dated November 27, 2025, also designates Petitioner as being present in the United States without admission or parole.[1] From his first day in the country, DHS has designated him as falling under 8 U.S.C. § 1226(a). And for the last four years, Petitioner has lived in this country on his own recognizance under 8 U.S.C. § 1226(a). Petitioner contends that for legal and practical reasons, Petitioner falls under 8 U.S.C. § 1226(a).

The Government's response does not really dispute this when discussing the rationale for his detention. The government does not contend that he has a criminal record. The Government does not contend that Petitioner is now a flight risk because he failed to appear in Court. The Government does not discuss, much less refute, any of the documents issued to Petitioner designating him as falling under 8 U.S.C. § 1226(a). The Government provides no explanation for its decision to now designate him as falling under 8 U.S.C. § 1225(b) except that the Government has chosen to reinterpret 8 U.S.C. § 1225(b) under the new *Yajure Hurtado* regime and now applies that new interpretation to the Petitioner.

The Government's reliance on other "persuasive" cases supporting its position is misplaced. A vast majority of courts have rejected the Government's position. In fact, it is not even close. Back in November 2025, courts rejected *Yajure Hurtado* in over 200 cases. *Ramirez v. Noem*, No. 2:25-cv-02136-RFB-MDC, 2025 U.S. Dist. LEXIS 230420, at *20 (D. Nev. Nov. 24, 2025. A recent article in Politico calculated that, at publication time, over 300 judges had ruled against *Yajure Hurtado* in 1,600 cases while just 14 judges adopted the Government's argument. Kyle Cheney, Hundreds of Judges Reject Trump's Mandatory Detention Policy, With No End in

[1] The November 27, 2025 Notice to Appear has his date of entry to the United States listed as July 15, 2022, while all other documents related to his entry list his entry date as January 4, 2022.

Sight, POLITICO (January 5, 2026) available at https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494. As noted above, this Court previously rejected the Government's argument in *Lang Shi*. If the issue is persuasion based on other courts' decisions, Petitioner's position is favored by the majority of courts to decide this issue.

III. THE PROPER REMEDY IS IMMEDIATE RELEASE

Petitioner respectfully requests immediate release. DHS has already made a custody determination that he is detained under 8 U.S.C. § 1226(a), that he should be released on his own recognizance, and issued a separate order to that effect. A copy of that determination and that order are included in the Petition. Dkt. Nos. 1-2 and 1-3.

The Government has not produced any evidence whatsoever to show that Petitioner has violated the terms of that release. The government has not claimed that he is a flight risk. It has made no claims that he has missed immigration court or a check-in. It has made no claims that he has a criminal record or is otherwise a danger to persons or property. The government has not demonstrated at all why he should not have to go back to immigration court and apply for a bond. The government revoked that order only based on its new interpretation of 8 U.S.C. § 1225(b). Therefore, if the Court determines that he is detained under 8 U.S.C. § 1226(a), Petitioner submits that he should go back to the position he was before he was detained, i.e., released on his own recognizance.

In the alternative, Petitioner requests a bond hearing with the burden on the government to show by clear and convincing evidence that he is a flight risk and/or danger to persons or property and that no alternatives to detention exist to mitigate that risk.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny the Government's motion for summary judgment, grant the Petition, and order Petitioner's immediate release. In the alternative, Petitioner requests a bond hearing with the burden on the government to show by clear and convincing evidence that he is a flight risk and/or danger to persons or property and that no alternatives to detention exist to mitigate that risk.

Dated: January 16, 2026

Respectfully submitted,

s/Aaron J. Aisen

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2026, I electronically filed the attached Declaration and accompanying exhibit with the Clerk of the Court for the United States District Court for the Southern District of Texas by using the CM/ECF system.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

LAZARO SAEZ MARTINEZ, *Petitioner*,	§	
	§	CIVIL ACTION NO. 1:25-cv-342
v.	§	
MIGUEL VERGARA, *et al.*, *Respondents*.	§	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

The Government[1] hereby respond to Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1), move for summary judgment, and request that the Court deny the Petition.

SUMMARY OF ARGUMENT

Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the Port Isabel Detention Center in Los Fresnos, Texas. Petitioner filed this habeas corpus Petition, seeking immediate release from immigration detention or alternatively, a bond hearing before na Immigration Judge. **Dkt. No. 1** at 11. Petitioner, however, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). As such, the Petition for a writ of habeas corpus should be denied and summary judgment entered in favor of the government.

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). It is the originally named federal Respondents who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

BACKGROUND

Petitioner entered the United States on January 4, 2022, near Calexico, California. **Gov't Ex. 1**. Petitioner was not then admitted or paroled after inspection by an immigration officer. *Id.* at 2. Petitioner was apprehended by immigration authorities as he was arriving in the United States. *Id.* Also on January 4, 2022, Petitioner was served with a notice to appear and charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien who is present in the United States without being admitted or paroled. **Gov't Ex. 2**. Petitioner was taken into immigration custody on December 2, 2025, after being encountered at the U.S. Border Patrol Checkpoint near Falfurrias, Texas. **Gov't Ex. 1**. Petitioner has an upcoming removal hearing before an Immigration Judge on January 27, 2026. **Gov't Ex. 3**. To this date, Petitioner has not requested a custody redetermination (bond) hearing before an Immigration Judge.

APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarily a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As the Supreme Court has stated in no unmistakable terms, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

ARGUMENT

A. PETITIONER FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING THE PETITION.

As a threshold matter, the Court should dismiss the habeas Petition because Petitioner has not administratively exhausted his claims. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a habeas petitioner must exhaust all administrative remedies prior to filing a federal habeas petition under § 2241. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012). The Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted).

In this case, Petitioner has not demonstrated that he has requested a custody redetermination before an Immigration Judge, so he has not been denied bond before filing this habeas Petition. This is important because the Immigration Judge may find that the Petitioner's individual circumstances present facts that may result in the Immigration Judge lacking jurisdiction based on a rationale that is unrelated to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). For example, the evidence shows that Petitioner was apprehended upon his arrival to the United States. **Gov't Ex. 1** at 2. These facts suggest that the Petitioner is subject to *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), a different precedent which may result in a lack of jurisdiction to redetermine his custody status. Petitioner does not challenge *Matter of Q. Li* in his Petition for Writ of Habeas Corpus. There may be alternative bases for the Immigration Judge to deny a request for custody redetermination, but the Parties can only speculate as to the decision of the Immigration Judge because Petitioner did not seek a bond hearing prior to filing this Petition. Therefore, Petitioner has not exhausted his administrative remedies.

B. PETITIONER IS SUBJECT TO MANDATORY DETENTION.

Petitioner's habeas Petition should be denied because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner is an alien who is present in the United States without having been admitted or paroled. As discussed below, an alien "present in the United States who has not been admitted," is by definition "an applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, Petitioner is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that "the alien *shall* be detained" in the case of "an alien seeking admission" who "is not clearly and beyond a doubt entitled to be admitted" (emphasis added)).

1. The Plain Language and Statutory Structure of the INA

"As usual, we start with the statutory text." *Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 177 (5th Cir. 2024). Section 1225(b)(2) provides the following:

> in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings].

8 U.S.C. § 1225(b)(2). Based on this text, if an alien is an "applicant for admission," then they are subject to mandatory detention. The INA defines "applicant for admission" as "an alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). Here, the Petitioner was not previously admitted to the United States, and he has not otherwise shown that he is entitled to be admitted. The Petitioner is therefore subject to mandatory detention and is not eligible for a bond.

Petitioner may argue, and other courts have mistakenly held, that there is a separate requirement: that Petitioner also be "seeking admission." But, in the context of § 1225(b)(2), "seeking admission" and "applying for admission" are plainly synonymous. Congress has linked these two variations of the same phrase in Section 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive— a word or phrase that is

synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). Read properly, a person "seeking admission" is just another way of describing a person applying for admission, meaning he is an applicant for admission, which includes both those individuals arriving in the United States and those already present without admission. 8 U.S.C. § 1225(a)(1).

A comparison of Section 1225's mandatory-detention provisions against the discretionary detention provisions of Section 1226 also supports the Government's interpretation. A basic canon of statutory construction is that a specific provision should govern over a more general provision encompassing that same matter. *See Matter of GFS Indus., L.L.C.*, 99 F.4th 223 (5th Cir. 2024). Here, Section 1226(a) is the general provision, applicable to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is much more specific, applying particularly to aliens who are "applicants for admission"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). So while the general rule might be that aliens detained pending removal may be detained, the specific rule for aliens who have not been admitted is that this subset of aliens must be detained.[2] The Court should be loath to eviscerate the specific text of Section 1225(b)(2)(A) in favor of the more general text of Section 1226(a). *See, e.g., United States v. Menasche*, 348 U.S. 528, 538-39 (1955) ("It is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section[.]"). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

[2] To be clear, there remains a large population of aliens who remain subject to § 1226 discretionary detention (and not § 1225 mandatory detention). For example, aliens who were admitted to the United States via a tourist visa, but who overstayed that visa, are subject to § 1226 detention.

Additional provisions of the INA further support the Government's argument that applicants for admission are deemed to be "seeking admission" irrespective of their length of time in the United States. Section 1225(a)(4) permits an alien applying for admission "*at any time* … to withdraw the application for admission and depart immediately from the United States." The explicit inclusion of "at any time" demonstrates that Congress intended applicants for admission to be deemed "seeking admission" for however long they remain in the United States.

Additionally, Section 1229a places the burden on applicants for admission in removal proceedings to establish that they are "clearly and beyond doubt entitled to be admitted and [are] not inadmissible under section 212." 8 U.S.C. § 1229a(c)(2). If an alien can establish that they have been admitted, then the Government has the burden of establishing that the alien is deportable. *See* 8 U.S.C. § 1229a(c)(3); 8 U.S.C. § 1227(a). An "admission" is therefore a status that determines which party in removal proceedings has the burden of proof and under which section of the INA (8 U.S.C. § 1182 or § 1227(a)) an alien may be deemed removable from the United States. Because the INA places the burden on applicants for admission to demonstrate that they are entitled to be admitted to the United States, applicants for admission are therefore deemed to be "seeking admission" in removal proceedings at the moment in which an Immigration Judge must determine whether they are removable from the United States. 8 U.S.C. § 1229a(c)(1).

2. The BIA's Decision in *Matter of Hurtado*

The text of the INA requires that aliens like Petitioner already present in the United States are applicants for admission and thus subject to mandatory detention under § 1225(b)(2). To be sure, while this interpretation is straightforward, that is not to say there are no colorable counterarguments. However, the Government would point to the BIA's decision in *Hurtado*, which thoughtfully and meticulously considered and rejected a myriad of counterarguments. See 29 I. &

N. at 221–27 (discussing and rejecting no fewer than six distinct legal counterarguments). *Hurtado* is a unanimous, published decision from the BIA and binding on immigration courts. Here, the BIA utilized its immigration expertise and gave a lengthy, comprehensive account as to why the Government's position in this case is not only correct, but comfortably so. This Court should thus accord great weight to the persuasiveness of *Hurtado*.

Moreover, the BIA's interpretation of § 1225(b)(2) is not undermined by the passage of the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025). The BIA's *Hurtado* decision specifically addressed the issue of whether its interpretation of § 1225(b)(2) rendered the recent Laken Riley Act superfluous. *Hurtado*, 29 I. & N. Dec. at 221. The BIA first pointed out that nothing in the Laken Riley Act purported to alter or amend § 1225(b)(2)'s mandatory detention requirement. *Id.* Moreover, the BIA noted that the fact that the Laken Riley Act required mandatory detention for a subset of illegal aliens that are also subject to mandatory detention under § 1225(b)(2) is not a basis to ignore the mandatory detention requirement of § 1225(b)(2). *Id.* at 222. In support of this holding, the BIA cited the Supreme Court's *Barton* decision. *Id.* (citing *Barton v. Barr*, 590 U.S. 222, 239 (2020) (holding that because "redundancies are common in statutory drafting--sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication,"--"[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text")). Thus, the BIA correctly concluded that both § 1225(b)'s and the Laken Riley Act's mandatory detention requirements should be given effect. For the reasons discussed below, including recent decisions from other courts in the Fifth Circuit and the Southern District of Texas, this Court should find that Petitioner is subject to mandatory detention pursuant to § 1225(b)(2).

3. Persuasive decisions from other district courts.

In the absence of controlling authority, the Court should follow those district courts that have applied the plain language of the INA and found aliens like the Petitioner subject to mandatory detention under § 1225(b)(2). Although the Government acknowledges that there are district court decisions that hold to the contrary,[3] several district courts have adopted the Government's and the BIA's interpretation, and more are likely to follow. *See Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

Most recently, a district court in the Western District of Louisiana recently agreed with the BIA's reading of the INA. *See Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025). In denying the habeas petition, the court held that "[b]ecause Petitioner crossed the United States-Mexico border without being inspected by an immigration officer, [Petitioner was] therefore also appropriately categorized as an inadmissible alien . . . [and thus concluded] that § 1225(b)(2)'s plain language and the 'all applicants for admission language' of *Jennings* permits [DHS] to detain Petitioner under § 1225(b)(2)." (citations omitted). *Id.* The court reasoned that "to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA." *Id.* at *6.

[3] This includes decisions from other courts in the Southern District of Texas. *See, e.g., Buenrostro- Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (on appeal); *Fuentes v. Lyons*, 5:25-cv-153 (S.D. Tex. October 16, 2025); *Ortiz v. Bondi*, 5:25-cv-132 (S.D. Tex. October 15, 2025); *Baltazar v. Vasquez*, 25-cv-175 (S.D. Tex. October 14, 2025); *Covarrubias v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

Finally, another court in the Southern District of Texas decided *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge), in the Government's favor. In denying the habeas petition and granting the Government's motion for summary judgment, the *Cabanas* Court held "[t]he text of § 1225(b)(2)(A) supports the Government's position." The *Cabanas* Court reasoned that "[t]he statutory definition of *applicant for admission* is broad and, indeed, so broad that Petitioner doesn't dispute that she is such a person. . . . That factual determination itself resolves the question as to whether § 1225(b)(2)(A) applies." *Id.* at *4 (emphasis in original). Thus, the *Cabanas* Court held that the plain language of the Immigration and Nationality Act required a ruling in the Government's favor. The court also explained why it was not persuaded by the many other district court decisions deciding to the contrary. *Id.* at * 5.[4]

The Government requests this Court follow the reasoning of *Cabanas* and the Government's other proffered authorities.

C. THE APPROPRIATE REMEDY

The Government urges the Court to deny the instant Petition, as Petitioner failed to exhaust his administrative remedies and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). If the Court grants the instant Petition, the Government urges the Court not to order the Petitioner's instant release. A bond hearing is the appropriate remedy. An Immigration Judge should have the opportunity to review the evidence regarding dangerousness and flight risk prior to any potential release from custody.

[4] The Court should be aware that a court in the Central District of California recently certified a class of aliens who are being detained under § 1225(b)(2). *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL3288403 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, the *Bautista* court entered final judgment in favor of the petitioners and members of the certified class. Petitioner, however, is not a Bautista class member because he was apprehended by immigration authorities upon his arrival to the United States. *See* **Gov't Ex. 1** at 2.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's request for habeas relief and grant the instant motion. The Court should enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

Dated: January 9, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 9, 2026, the foregoing was filed and served through the Court's CM/ECF system.

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

LAZARO SAEZ MARTINEZ, Petitioner, v. MIGUEL VERGARA, *in his official capacity* as Field Office Director of the Harlingen ICE Field Office; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and PAMELA BONDI, *in her official capacity* as Attorney General of the United States; Respondents.	Case No.: 25-cv-342 VERIFICATION PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner-Plaintiff ("Petitioner") is a citizen of Cuba who has resided in the U.S. for nearly four years.

2. On information and belief, on or about January 4, 2022, Petitioner entered the United States at or near Calexico, California.

3. Upon arriving in the United States, the Department of Homeland Security ("DHS")

issued a Notice of Custody Determination that placed him under INA § 236 (8 U.S.C. § 1226), and he was released on his own recognizance.

4. Upon information and belief, on or about November 25, 2025, Petitioner was detained by agents of DHS in or about Edinberg, Texas.

5. Petitioner is currently detained at the Port Isabel Service Processing Center in Los Fresnos, Texas.

6. Petitioner seeks declaratory relief that he is subject to detention under § 1226(a) and its implementing regulations and asks that this Court either order Respondents to release Petitioner from custody or provide him with a bond hearing.

CUSTODY

7. Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at Port Isabel Service Detention Center.

JURISDICTION

8. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et. seq.

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

10. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Petitioner is "in custody" for the purpose of 28 U.S.C. § 2241 because Petitioner was arrested and detained by Respondents.

VENUE

13. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained at the Port Isabel Service Processing Center in Los Fresnos, Texas.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007).

15. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge ("IJ") because of the recent decision by the Board of Immigration Appeals ("BIA") holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 U.S. Dist. LEXIS 174828, at *15-17 (C.D. Cal. Sep. 8, 2025) (noting that BIA's decision in Yajure Hurtado renders exhaustion futile).

16. Additionally, the agency does not have jurisdiction to review Petitioner's claim of

unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751, at *13-15 (W.D. Tex. Oct. 21, 2025).

PARTIES

17. Petitioner is from Cuba and has resided in the U.S. since 2022. He is currently detained in the Port Isabel Camp East Montana Detention Facility in El Paso, Texas.

18. Respondent Miguel Vergara is sued in his official capacity as Field Office Director of the ICE Harlingen Field Office. In his official capacity, Respondent Baker is the legal and physical custodian of Petitioner.

19. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

20. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

21. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

STATEMENT OF FACTS

22. Petitioner is a citizen of Cuba.

23. Upon information and belief, Petitioner has resided in the U.S. since 2022.

24. Upon information and belief, Petitioner has never been arrested or charged with any crime.

25. On January 4, 2022, the Department of Homeland Security issued Petitioner a

Notice to Appear designating him as an "alien present in the United States who has not been admitted or paroled. A true and accurate copy of the January 4, 2022 NTA is attached as **Exhibit A**.

26. On January 4, 2022, DHS issued an Order of Release on Recognizance ("ORR"). A true and accurate copy of this ORR is attached as **Exhibit B**.

27. The ORR specifically states that Petitioner was released in accordance with INA § 236 (8 U.S.C. § 1226). *See* **Exhibit B**.

28. In addition, on January 4, 2022, DHS also issued a Notice of Custody Determination in which DHS determined that he was in custody pursuant to INA § 236 (8 U.S.C. 1226(a). A true and accurate copy of the Notice of Custody Determination is attached as **Exhibit C**.

29. In addition, on January 4, 2022, DHS issued a warrant for his arrest pursuant to INA § 236 (8 U.S.C. § 1226(a)). A true and accurate copy of this warrant is attached as **Exhibit D**.

30. On November 27, 2025, DHS issued a new NTA. This also designated him as "an alien present in the United States who has not been admitted or paroled." A true and accurate copy of the NTA dated November 27, 2025, is attached as **Exhibit E**.

31. He is now detained at the Port Isabel Service Processing Center.

32. Without relief from this Court, he faces continued detention without a bond hearing.

LEGAL BACKGROUND AND ARGUMENT

33. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

34. First, individuals detained pursuant to 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes and are subject to mandatory detention. See 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); see also 8 C.F.R. §§ 1003.19(a) (immigration judges may review custody determinations made by DHS), 1236.1(d) (same).

35. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

36. Third, the INA authorizes detention of noncitizens who have received a final order of removal, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231.

37. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

38. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination"). *See Perez v. Frink, No. H-25-5357*, 2025

U.S. Dist. LEXIS 258491, at *5 (S.D. Tex. Dec. 12, 2025).

39. For decades, long-term residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

40. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

41. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

42. Numerous federal courts have rejected this interpretation and instead have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S. Dist. LEXIS 201967, at *5 (S.D. Tex. Oct. 7, 2025).

43. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of 8 U.S.C § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024); Buenrostro-Mendez, 2025 U.S. Dist. LEXIS 201967, at *7 n. 3.

44. The statutory context and structure also make clear that 8 U.S.C. § 1226 applies to individuals who have not been admitted and entered without inspection. If "applicant for admission" was the same as "seeking admission," Congress would not have used two different terms to describe the same person. *Perez*, 2025 U.S. Dist. LEXIS 258491, at *5.

45. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). In contrast, 8 U.S.C. § 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

46. In addition, the NTAs issued by DHS to Petitioner all indicate that DHS sees him as not an arriving alien. An NTA issued by the DHS can indicate the non-citizen's detention status. The NTA has specific boxes for those who fall under 8 U.S.C. § 1225(b)(1) and (b)(2). Those under 8 U.S.C. § 1225(b)(1) fall under the box that states, "Section 235(b)(1) order was vacated pursuant to: [ ] 8 CFR 208.30 [ ] 8 CFR 235.3(b)(5)(iv)." Those under 8 U.S.C. 1225(b)(2) fall under the box that states, "You are an arriving alien." Finally, those who fall under 8 U.S.C. § 1226(a) fall under the box entitled "You are an alien present in the United States who has not been admitted or paroled."

47. Both of Petitioner's NTAs indicate that is not an arriving alien because DHS stated that Petitioner is "an alien present in the United States who has not been admitted or paroled." Exhibits A and D.

48. In addition, Petitioner's ORR, Notice of Custody Determination, and Warrant for Arrest state that Petitioner was detained and released pursuant to INA § 236 (8 U.S.C. § 1226(a)).

49. Accordingly, the mandatory detention provision under U.S.C. § 1225(b)(2) does not apply to Petitioner.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

50. Petitioner restates and realleges all paragraphs as if fully set forth here.

51. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

52. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing.

53. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

54. Petitioner's continuing detention is therefore unlawful.

55. Petitioner respectfully requests that the Court order Respondents to release him or, in the alternative, order that he be given a bond hearing with the burden on the government to prove by clear and convincing evidence that Petitioner is a flight risk and/or danger to persons or property and that no amount of bond or combination of conditions could mitigate the risk of danger or flight.

COUNT II
Violation of Fifth Amendment Right to Due Process

56. Petitioner restates and realleges all previous paragraphs as if fully set forth here.

57. Respondents violate Petitioner's due process rights under the Fifth Amendment of the U.S. Constitution by detaining Petitioner without a bond hearing that he is due under 8 U.S.C. § 1226(a).

58. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

59. Under the *Mathews v. Eldridge*, 424 U.S. 319 (1976) framework, the balance of interests strongly favors Petitioner's release.

60. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

61. The risk of erroneous deprivation is exceptionally high. Petitioner has never been arrested and has deep ties to the community.

62. Finally, the government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

63. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

64. In addition, Respondents have changed Petitioner's status from 8 U.S.C. § 1226(a) to 1225(b) without notice or explanation.

65. Petitioner respectfully requests that this Court declare that Petitioner is detained under 8 U.S.C. § 1226(a) and either order his immediate release from custody or provide him with a bond hearing with the burden on the government to prove by clear and convincing evidence that Petitioner is a flight risk and/or danger to persons or property and that no amount of bond or combination of conditions could mitigate the risk of danger or flight..

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner not be transferred outside of this District;

(3) Issue an Order to Show Cause ordering Respondents to show cause why his Petition should not be granted within three days;

(4) Declare that Petitioner's detention is under 8 U.S.C. § 1226(a);

(5) Issue a Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing with the burden on the government to prove by clear and convincing evidence that Petitioner is a flight risk and/or danger to persons or property and that no amount of bond or combination of conditions could mitigate the risk of danger or flight;

(6) Award him his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant him any further relief this Court deems just and proper.

Dated: December 17, 2025
Buffalo, New York

s/ Aaron J. Aisen
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I submit this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I verify that the statements made in this Verified Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: December 17, 2025
Buffalo, New York

s/ Aaron J. Aisen

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