UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

DAVID QUITZE BADILLO TEJEDA
(A[redacted])

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; SAMUEL OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, SCOTT SMITH, Jail Administrator, Dodge County Jail

Respondents.

Case No. 2:25-cv-1995

REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner submits this reply to Respondent's Answer to his Petition for Writ of Habeas Corpus. Petitioner continues to be detained unlawfully during his pending removal proceedings, in violation of his constitutional and statutory rights.

A. Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of "Applicants for Admission." Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. The Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge's authority to hear a bond request for any noncitizen

present in the United States without having been inspected and admitted and who are later apprehended by DHS.

Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. This argument fails for several reasons.

Prior to and since the decision in *Matter of Yajure Hurtado*, this court[1], as well as several district courts within the Seventh Circuit[2], as well as in the First Circuit, Second Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, and Tenth Circuit have all disagreed with Respondents' interpretation and have subsequently granted relief to habeas petitioners. *See* Dkt 1-2.

This Court is not required, and should not, give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this

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[1] *Ramirez Valverde v. Olson*, No. 25-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Alonso v. Olson*, No. 25-1660, 2025 WL 3240928 (E.D. Wis. Nov. 20, 2025).

[2] *Rusu v. Noem*, No. 25-13819, 2025 WL 3240911 (N.D. Ill. Nov. 20, 2025); *Pacheco v. Olson*, No. 25-13405, 2025 WL 3281850 (N.D. Ill. Nov. 25, 2025); *Gallegos Valenzuela v. Olson*, No. 25-13499, 2025 WL 3296042 (N.D. Ill. Nov. 26, 2025); *Valerio v. Noem*, No. 25-13648, 2025 WL 3470733 (N.D. Ill. Dec. 3, 2025); *Velazquez v. Olson*, No. 25-14360, 2025 WL 3552116 (N.D. Ill. Dec. 11, 2025); *Barrera Simon v. Olson*, No. 25-14799, 2025 WL 3567469 (N.D. Ill. Dec. 13, 2025); *Sura Cruz v. Noem*, No. 25-15323, 2025 WL 3720247 (N.D. Ill. Dec. 23, 2025); *Singh v. English*, No. 25-962, 2025 WL 3713715 (N.D. Ind. Dec. 23, 2025); *Perez Reyes v. Bondi*, No. 25-00239, 2025 WL 3755928 (S.D. Ind. Dec. 29, 2025); *Morales Sandoval v. Crowley*, No. 25-00560, 2025 WL 3760760 (S.D. Ind. Dec. 30, 2025).

contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the repeated representations of the government in Petitioner's case before the Court confirm that he is subject to section 1226(a)'s discretionary detention scheme.

B. Petitioner's Continued Detention Without a Bond Hearing is a Fifth Amendment Violation.

Petitioner's deprivation of his liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Clause of the Fifth Amendment. Petitioner has not been found to be a danger to the community and Respondents do not allege that detention is to ensure Petitioner's appearance during removal proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents have not put forth a credible argument that Petitioner could not be safely released to his community and family.

Respondents contend Petitioner has no claim of right under the Fifth Amendment's Due Process Clause. Respondents' position overlooks the well-established "distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law." *Zadvydas*, 533 U.S. at 693. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*

The Supreme Court's balancing test in *Mathews v. Eldridge* is dispositive. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting Armstrong v.

Manzo, 380 U.S. 545, 552 (1965)). "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors": (1) "the private interest that will be affected by the official action"; (2) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," and (3) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Id.* at 335.

In regard to the first *Mathews* factor, Petitioner has a significant private interest in avoiding detention, one of the "most elemental of liberty interests." *See Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Additionally, Petitioner resides in the Chicagoland area, has a U.S. citizen wife, a U.S. child and another on his way; and supports himself and his family. *See* Dkt. 1. Pg. 2. Petitioner is now detained in another state, "experiencing [many of] the deprivations of incarceration, including loss of contacts with friends and family, loss of income earning…lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025).

As to the second *Mathews* factor, a risk of erroneous deprivation is minimized through a bond hearing, where an Immigration Judge can determine whether Petitioner is a flight risk or a danger to the community. *See Lopez Campos*, 2025 WL 2496379, at *9. Petitioner has been in the United States for over 20 years, a pregnant U.S. citizen wife and a U.S citizen child, factors that would minimize his flight risk. *See* Dkt. 1. Pg 2. During the pendency of this petition, Petitioner has received an approval notice from U.S. Citizenship and Immigration Services ("USCIS") regarding a Petition for Alien Relative (Form I-130) that his wife filed on his behalf.

See Exhibit D. Petitioner is one step closer to receiving lawful permanent resident status in the future, further minimizing his flight risk.

Finally, as to the third factor, while Respondents do have "a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community," here, Respondents have not established an interest in regards to detaining Petitioner who may well convince "a neutral adjudicator, following a hearing and assessment of the evidence, that his ongoing detention is not warranted." *S Sampiao v. Hyde,* No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

As such, Petitioner's current detention under the framework of Section 1225(b)(2)(A) violates Petitioner's Fifth Amendment Due Process rights.

CONCLUSION

For the foregoing reasons, this Court should order Petitioner to be released or order Respondents to schedule a bond hearing for Petitioner's removal proceedings within 3 days of the order and accept jurisdiction to issue a bond order.

Dated: January 2, 2026

Respectfully Submitted,
/s/ Nicole Provax

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