

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ARREY EYONG ENEKE,  
*Petitioner,*

v.

KRISTI NOEM,  
Secretary of Homeland Security, et al.,  
*Respondents.*

Civil No. 3:26-cv-133-K-BN

**PETITIONER'S REPLY IN SUPPORT OF HABEAS PETITION**

TO THE HONORABLE JUDGE KINKEADE:

Petitioner Arrey Eyong Eneke (“Ms. Eneke”) respectfully submits this brief in reply to Respondents’ Response in Opposition, filed January 28, 2026 (ECF No. 8), to the writ of habeas corpus and request for declaratory and injunctive relief, filed with the Court on January 16, 2026 (ECF No. 1).

Over the past several months, these issues have been thoroughly litigated in federal district courts throughout the country, including in cases previously before this Court in which the Court ultimately granted habeas relief. *See Carrillo Paniagua v. Noem*, No. 3:25-cv-2872-K-BK. Respondents and similarly situated noncitizens asserted the same claims and defenses in those cases, and Petitioner will not fully restate all of such issues here. To be clear, Petitioner would contend that exhaustion of administrative remedies is futile, and that this Court has jurisdiction over this habeas petition.

Furthermore, Petitioner would generally reply that Respondents' opposition confirms the need for immediate judicial intervention and confirms the central defect in this case: the Government seeks to detain a long-time "§ 240 respondent"—one who has complied with every requirement of her proceedings for more than four years, who has been granted a work permit under 8 C.F.R. § 274a.12(c)(10), and whose immigration hearing was recently scheduled on the immigration court's docket—under a detention statute that applies *only* to individuals seeking admission at the border.

By recasting Ms. Eneke, retroactively and without explanation, as an "applicant for admission" subject to 8 U.S.C. § 1225(b)(2), Respondents attempt to bypass the procedural safeguards Congress built into 8 U.S.C. § 1226, in a boldfaced attempt to strip the immigration judges of bond jurisdiction, and to insulate their unlawful detention decision from any neutral review. *See* ECF No. 8 at 6–9.

Also, the Respondents' theory fails for two reasons. Firstly, *Lopez-Arevelo v. Ripa*, EP-25-cv-337, 2025 WL 2691828, at \*7 (W.D. Tex. Sep. 22, 2025), is directly on point and persuasive, as recently observed by other courts within the Fifth Circuit. *See* Exhibit G to Pet's Habeas Petitioner, ECF No. 1-8 (agreeing with the court in *Lopez-Arevelo* and other courts in the Fifth Circuit and finding that *Thuraissigiam* is distinguishable in context of procedural due process argument). *Lopez-Arevelo* rejected the same maneuver DHS attempts here: reclassifying a long-standing § 240 respondent as an applicant for admission to deny access to § 1226 custody hearings. Allowing DHS to toggle between statutory regimes, at will, would collapse the INA's careful distinction between border-processing statutes and interior-removal statutes, undermining Congress's design and authorizing

precisely the kind of unchecked detention of which the Supreme Court has consistently been wary. *See Jennings v. Rodriguez*, 583 U.S. 281, 289–90 (2018).

Second, the Government cannot retroactively convert interior-arrest custody during long-running removal litigation into border-processing detention simply because it prefers the harsher statutory framework. Indeed, as this Court is likely aware, these issues were recently discussed during oral argument on February 3, 2026, before a three-judge panel of the United States Court of Appeals for the Fifth Circuit in the case of *Buenrostro-Mendez v. Bondi*, No. 25-20496. During oral argument, the Fifth Circuit seemed skeptical of the Government’s interpretation of § 1225 as broadly applying to justify detaining aliens found “present inside the United States,” especially in view of Congress’s recent passage of the Laken Riley Act just a year ago, in January 2025. The result is that, under the Government’s reading, § 1226(c) and the Laken Riley Act become largely superfluous. *Nielsen v. Preap* confirms that § 1226(c) applies only to individuals arrested under § 1226(a) in the first place. If § 1225 controls here, § 1226(c) never comes into play.

In sum, Respondents’ opposition does not undermine Petitioner’s entitlement to relief—it reinforces it. DHS’s abrupt and unexplained shift to § 1225(b)(2) detention is legally unsustainable, factually inconsistent with the record, and constitutionally fraught. The Court should reject that position and order the Government to provide Ms. Eneke the custody process Congress prescribed: a bond hearing under § 1226(a) before a neutral arbiter, without further delay.

### **CONCLUSION & PRAYER**

For the reasons set forth above, Petitioner Arrey Eyong Eneke respectfully submits that the Department of Homeland Security lacks statutory authority to detain her

under 8 U.S.C. § 1225(b)(2) and that her continued confinement without a neutral custody determination violates both the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

The Government's own filings demonstrate that it has initiated—and continues to pursue—removal proceedings under § 240, thereby subjecting Petitioner's custody to 8 U.S.C. § 1226. Yet DHS has invoked § 235(b)(2) to deny her access to any bond hearing, trapping her in administrative limbo and depriving this Court of the orderly judicial review that Congress and the Constitution require.

Judicial intervention is thus warranted to prevent further unlawful detention and to preserve Ms. Eneke's constitutional right to liberty pending resolution of her removal case. Accordingly, Petitioner respectfully prays that the Court grant the writ of habeas corpus and order Petitioner's immediate release from custody.

DATE: February 4, 2026.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing PETITIONER'S REPLY IN SUPPORT OF HABEAS PETITION, as well as any and all attachments thereto, on Counsel for Respondents by serving the same to Special Assistant U.S. Attorney Omar J. Famada via email to [Omar.J.Famada@usdoj.gov](mailto:Omar.J.Famada@usdoj.gov) and/or by filing the same using the Court's CM/ECF system.

/s/ John M. Bray  
John M. Bray  
Counsel for Petitioner

DATE: February 4, 2026.