

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

GREGORIO US CASTRO)	
Petitioner,)	Case No. 0:26-cv-20422
v.)	Agency File:
CHARLES PARRA, in his official capacity as Assistant Field Office Director, Krome North Service Processing Center, et al.)	
Respondents.)	
)	

PETITIONER’S REPLY

Petitioner filed a Petition for Writ of Habeas Corpus on January 22nd, 2026. (Doc. 1). This Court issued an Order to Show Cause on January 23rd, 2026, which required Respondents to respond by January 26th, 2026. (Doc. 7). Respondents filed a Response on January 26th, 2026. (Doc 8). Petitioner is replying to Respondent’s Response *See* Doc. 7; Doc. 8.

INTRODUCTION

The petitioner challenges his detention under 8 U.S.C. § 1226(a), not § 1225(b)(2), arguing that the government’s 2025 policy wrongly classifies long-term residents who entered without inspection as “applicants for admission,” denying them bond hearings. Courts nationwide, including in *Maldonado Bautista v. Santacruz*, have rejected this interpretation, confirming that such individuals are entitled to individualized bond hearings. The Petitioner contends that prolonged detention without review violates due process, fifth amendment and may implicate the Eighth Amendment given the overcrowded and harsh conditions at Krome Detention Center. Administrative remedies are futile under *Matter of Yajure Hurtado*, making this § 2241 petition proper. The Petitioner seeks a bond hearing to assess whether continued detention is justified.

ARGUMENT

I. The Petitioner is being detained pursuant to 8 USC § 1226 and not 1225(b)(2)

This § 2241 petition challenges Respondents' unprecedented attempt to impose mandatory detention under 8 U.S.C. § 1225(b)(2)(A) on a noncitizen who entered the United States without inspection nearly seventeen years ago and is now in standard removal proceedings. In 2025, DHS and the BIA abruptly departed from decades of settled law by categorically denying bond eligibility to such individuals. Courts nationwide—including in a certified nationwide class action—have rejected that interpretation as contrary to the plain text of the INA. Because Petitioner's detention is governed by 8 U.S.C. § 1226(a), he is entitled to an individualized bond hearing.

A. The Government's recent application of 8 USC § 1225(b)(2)(a) to individuals traditionally eligible for bond.

For decades, noncitizens who entered without inspection, were arrested in the United States and were placed into removal proceedings were generally subject to discretionary detention under 8 USC § 1226(a) (and its predecessor statute). Under that framework, they could be considered for release on bond or conditional parole by the Department of Homeland Security ("DHS") and receive a bond hearing in immigration court before an IJ who could order release if found not to pose an undue flight risk or danger that justified continued detention.

The government upended this long-held understanding of the law in 2025. First, on July 8, 2025, U.S. Immigration and Customs Enforcement ("ICE") issued an interim guidance memo stating that anyone who entered without inspection was ineligible for release on bond and could not challenge their detention at a bond hearing in immigration court, regardless of how long an individual has lived in the United States. As a result, DHS attorneys started arguing, and some IJs started finding that such individuals were not eligible for bond hearings in immigration court. Then, on September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision, binding on all IJs, holding that an IJ had no authority to consider bond requests for any person who entered the United States without inspection. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA determined that such individuals are subject to mandatory detention under 8 USC § 1225(b)(2)(A) and therefore ineligible for release on bond. As a result, thousands of people are facing months or years in detention without any individualized consideration for whether they should be detained.

Mandatory detention under 8 USC § 1225(b)(2)(A) applies "in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a

noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” The government’s position is that anyone who entered without inspection remains an “applicant for admission” who is “seeking admission” and thus subject to § 1225(b)(2). The vast majority of district court judges who have considered this legal issue, however, have rejected the government’s position and have held that such individuals are subject to § 1226(a) and thus eligible for a bond hearing.

B. The District Court orders in *Maldonado Bautista v. Santacruz*

On July 18, 2025, several weeks after the new DHS policy was announced, a nationwide class action was filed on behalf of four detained petitioners in the Central District of California challenging the new mandatory detention policy. That case, *Maldonado Bautista v. Santacruz* (Case No. 5:25-cv-1873).

On November 20, 2025, the Court granted partial summary judgment for the four petitioners, holding that the government’s policy is inconsistent with the plain language of the Immigration and Nationality Act (“INA”), and that petitioners are properly subject to § 1226(a). See *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Five days later, on November 25, 2025, the Court certified a nationwide class of individuals who are being subject to the government’s new no bond policy.

The district court certified the following Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 USC § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

C. The Petitioner is not Subject to Mandatory Detention

Respondents contend that Petitioner’s entry into the United States without inspection or admission renders him an “applicant for admission” under 8 USC section 1225(b)(2)(A), which makes him subject to mandatory detention and does not compel his release or a bond hearing. Petitioner asserts that 8 USC § 1225 is being incorrectly applied, and that his detention is governed by 8 USC § 1226(a), which allows for the release of noncitizens on bond. § 1226(a) applies to Petitioner.

i. Petitioner is Entitled to a Bond Hearing Under Section 1226(a)

The question of whether section 1225(b)(2) or section 1226(a) governs Petitioner's detention is a question of statutory interpretation squarely within the Court's jurisdiction. *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sep. 9, 2025) (noting that the interplay of these two sections is a matter "of statutory interpretation belong[ing] historically within the province of the courts.") (citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)); *Barrios v. Shepley*, No. 25-cv-00406, 2025 WL 2772579, at *5 (D. Me. Sept. 25, 2025) (district court had jurisdiction to review petitioner's challenge to the "statutory framework" regarding his detention); see *Gomes*, 2025 WL 1869299, at *8 n.9 ("Courts must exercise independent judgment in determining the meaning of statutory provisions"); *Mosqueda*, 2025 WL 2591530, at *7 (district court had jurisdiction to decide whether § 1225 or § 1226 applied as "[t]hese are purely legal questions of statutory interpretation.").

The NTA that DHS issued to Petitioner did not classify him as an "arriving alien." Instead, the NTA charged him as "present in the United States without admission or parole." *Id.* This classification places him squarely within section 1226. See e.g., *Pizarro Reyes*, 2025 WL 2609425, at *8 (emphasizing ICE's selection of "present" rather than "arriving" on the NTA as evidence that § 1226 applied); see also *Hyppolite v. Noem*, No. 25-4304, 2025 WL 2829511, *8 (E.D.N.Y. Oct. 6, 2025) (respondent's initial classification of petitioner "certainly is relevant to the Court's assessment of the credibility and good faith of 'Respondents' new position as to the basis for [Hyppolite's] detention, which was adopted post hoc and raised for the first time in this litigation.") (citation omitted); *Perez v. Berg*, No. 25-cv-494, 2025 WL 2531566, at *2 (D. Neb. July 24, 2025) ("The Court notes that the government itself charged Petitioner as an alien present in the United States who has not been admitted or paroled rather than an arriving alien.")

There are three relevant statutes to authorize detention. First, 8 USC § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. See 8 USC § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 USC § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 USC § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Third, the INA also provides for detention of noncitizens who have

been ordered removed, including individuals in withholding-only proceedings, *see* 8 USC § 1231(a)–(b).

In the present case, Petitioner has not been ordered removed and is not in expedited removal proceedings, as evidenced by the pending § 1229a proceedings against him. Furthermore, § 1225(b) applies to people arriving at U.S. ports of entry or who *recently entered* the United States. The statute is built around the idea that these individuals are subject to border inspections because they are “seeking admission” to the United States. For that reason, it makes little sense to apply § 1225 to someone who has been living inside the United States for 17 years, as Petitioner has, because such an individual is no longer in the posture of an arriving applicant for admission.

Petitioner has been present in the United States for nearly 17 years before his apprehension by ICE, which makes “his detention is governed by 8 USC § 1226(a), which allows for the release of noncitizens on bond,” *Puga*, 2025 WL 2938369, at *3, not § 1225(b)(2), applicable to noncitizen “applicant[s] for admission” to the United States. § 1225(b)(2)(A).

It has been found by courts throughout the country that Respondents’ interpretation of the INA to expand the scope of 8 USC § 1225 detention, “directly contravenes the statute, disregards decades of settled precedent,” and is erroneous. *Hernandez Alvarez v. Morris*, 25-24806 (S.D. Fla. Oct. 27, 2025), ECF 6 at 5; *Cerro Perez v. Parra*, 25-24820 (S.D. Fla. Oct. 27, 2025), ECF 9 at 6, *Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-cv-24292 (S.D. Fla. Oct. 10, 2025), ECF 41 at 10; *see also Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sep. 9, 2025) (“Finally, the BIA’s decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes’ detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.”); *see also Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *5 (M.D. Fla. Dec. 1, 2025); *Puga*, 2025 WL 2938369, at *3–6; *Merino v. Ripa*, No. 25-23845, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); *Lopez v. Hardin*, No. 25-cv830, 2025 WL 2732717, at *2 (M.D. Fla. Sep. 25, 2025); *Guerra v. Joyce*, No. 25-cv-00534, 2025 WL 2986316, at *3 (D. Me. Oct. 23, 2025); *Lomeu v. Soto*, 25-cv-16589, 2025 WL 2981296, at *7–8 (D.N.J. Oct. 23, 2025); *Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at *4 (D.N.J. Oct. 23, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120, 2025 WL 2977650, at *5–6 (D. Colo. Oct. 22, 2025); *Aguiar v. Moniz*, No. 25-cv-12706, 2025 WL 2987656, at *3 (D. Mass. Oct. 22, 2025); *Rivera v. Moniz*, 25-cv-12833, 2025 WL 2977900, at *1–2 (D. Mass. Oct. 22, 2025); *Avila v. Bondi*, No. 25-

3741, 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042, at *7 (D. Md. Oct. 21, 2025); *Miguel v. Noem*, 25-11137, 2025 WL 2976480, at *6 (N.D. Ill. Oct. 21, 2025); *Pineda v. Simon*, No. 25-cv-01616, 2025 WL 2980729, at *2 (E.D. Va. Oct. 21, 2025); *Matheus Araujo DA Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163, at *2 (D. Mass. Oct. 21, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610, at *4–6 (N.D. Ill. Oct. 20, 2025); *Polo v. Chestnut*, No. 25-cv01342, 2025 WL 2959346, at *11 (E.D. Cal. Oct. 17, 2025); *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigr. Processing Ctr.*, No. 25-cv-01187, 2025 WL 2959274, at *3 (E.D. Cal. Oct. 17, 2025); *Alvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at *4–6 (W.D. Mich. Oct. 17, 2025); *Zamora v. Noem*, No. 25-12750, 2025 WL 2958879, at *1 (D. Mass. Oct. 17, 2025); *Pacheco Mayen v. Raycraft*, 25-cv-13056, 2025 WL 2978529, at *6–9 (E.D. Mich. Oct. 17, 2025); *Diaz Sandoval v. Raycraft*, No. 25-cv-12987, 2025 WL 2977517, at *6–9 (E.D. Mich. Oct. 17, 2025); *Contreras-Cervantes v. Raycraft*, No. 25-cv-13073, 2025 WL 2952796, at *6–8 (E.D. Mich. Oct. 17, 2025); *Ochoa v. Noem*, No. 25-10865, 2025 WL 2938779, at *4–6 (N.D. Ill. Oct. 16, 2025); *Hernandez v. Crawford*, No. 25-cv-01565, 2025 WL 2940702, at *2 (E.D. Va. Oct. 16, 2025); *Piña v. Stamper*, No. 25-cv-00509, 2025 WL 2939298, at *3 (D. Me. Oct. 16, 2025); *Sequen v. Albarran*, No. 25-cv-06487, 2025 WL 2935630, at *8 (N.D. Cal. Oct. 15, 2025); *Teyim v. Perry*, No. 25-cv-01615, 2025 WL 2950184, at *2–3 (E.D. Va. Oct. 15, 2025); *Singh v. Lyons*, 25-cv-01606, 2025 WL 2932635, at *2–3 (E.D. Va. Oct. 14, 2025); *Alejandro v. Olson*, 25-cv-02027, 2025 WL 2896348, at *7–9 (S.D. Ind. Oct. 11, 2025); *Chavez v. Kaiser*, No. 25-cv-06984, 2025 WL 2909526, at *5 (N.D. Cal. Oct. 9, 2025); *Donis v. Chestnut*, No. 25-01228, 2025 WL 287514, at *11 (E.D. Cal. Oct. 9, 2025); *Eliseo A.A. v. Olson*, No. 25-3381, 2025 WL 2886729, at *2–4 (D. Minn. Oct. 8, 2025).

Since Petitioner’s detention is governed by section 1226(a), he is entitled to an individualized bond hearing before an Immigration Judge.

II. Petitioner is Entitled to Due Process

Respondents argue that Petitioner’s due process claims fail as a matter of law because Congress mandated detention under INA § 1225(b)(2). That argument mischaracterizes both Petitioner’s claim and the governing Supreme Court precedent. Petitioner does not assert a facial challenge to § 1225(b)(2), nor does he argue that Congress lacks authority to mandate detention in the immigration context. Rather, Petitioner brings an as-applied constitutional challenge to his

prolonged detention without any individualized custody review, which remains cognizable after *Jennings* and *Demore*.

A. *Jennings v. Rodriguez* Does Not Foreclose As-Applied Due Process Challenges

Respondents' reliance on *Jennings v. Rodriguez* is misplaced. *Jennings* addressed whether bond hearings could be imposed as a matter of statutory interpretation under §§ 1225 and 1226. 583 U.S. at 299–301. The Supreme Court expressly declined to decide whether prolonged detention without a bond hearing violates the Due Process Clause. *Id.* at 305–06.

Thus, *Jennings* does not bar constitutional challenges to prolonged detention. To the contrary, it confirms that detainees may bring as-applied due process claims through habeas petitions under 28 USC § 2241. Petitioner's claim falls squarely within that category.

B. *Demore v. Kim* Does Not Authorize Prolonged, Unreviewed Detention

Respondents' reliance on *Demore v. Kim* is similarly unavailing. *Demore* upheld mandatory detention under § 1226(c) based on Congress's determination that brief detention of certain criminal noncitizens during removal proceedings was constitutionally permissible. 538 U.S. at 523–28. Critically, the Court emphasized that detention under § 1226(c) was generally brief, lasting “roughly a month and a half” in most cases, and “about five months” in the minority of cases involving appeals. *Id.* at 530.

Here, by contrast, Petitioner has been detained at Krome since early October—now for several months—without a bond hearing or any individualized assessment of flight risk or danger, and with removal proceedings still ongoing. *Demore* did not address, much less approve, prolonged detention of this nature without procedural safeguards.

C. *Zadvydas v. Davis* Supports, Rather Than Undermines, Petitioner's Due Process Claim

Although *Zadvydas v. Davis* involved post-removal-order detention under § 1231, its core holding—that immigration detention is subject to constitutional limits and cannot be indefinite—applies more broadly. 533 U.S. at 690. Courts routinely rely on *Zadvydas* for the general principle that due process constrains civil immigration detention, even outside the § 1231 context.

Petitioner does not argue that *Zadvydas* applies directly to § 1225 detention; rather, he relies on its constitutional reasoning to demonstrate that prolonged detention without meaningful review violates due process. That reliance is proper.

III. Prolonged Detention: Eight Amendment Violation, or in the Alternative Violation of the Due Process Clause of the Fifth Amendment.

Undersigned Counsel argues that when detention is indefinite, lacks a clear endgame, or is characterized by harsh conditions, it “crosses the line from civil to punitive,” thereby triggering Eighth Amendment protections. The Eighth Amendment also prohibits excessive bail. Mandatory detention without the possibility of a bond hearing—or setting a bond amount that is unattainable—violates this clause by effectively ensuring continued incarceration without individual justification.

Joining five other circuits, Sopo v. U.S. Attorney Gen., 825 F.3d 1199, 1213 (11th Cir. 2016) holds that the mandatory immigration detention statute, 8 USC § 1226(c), ““authorizes detention for [only] a reasonable amount of time.”” Once mandatory detention has exceeded a reasonable period, the government must provide a bond hearing to determine whether the person’s detention is still justified based on flight risk and danger. *Id.* at *12 (quoting *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 231 (3d Cir. 2011)). In *Sopo v. U.S. Attorney Gen.*, the court held that mandatory detention under 8 USC § 1226(c) may violate the Fifth Amendment if it is “unreasonably prolonged” without a bond hearing. No one shall be “deprived of life, liberty or property without due process of law” by the federal government.

The Court in *Sopo* declined to adopt a presumptive period of time at which detention without a bond hearing becomes unreasonably prolonged. Instead, “[r]easonableness . . . is a fact-dependent inquiry requiring an assessment of all of the circumstances of any given case.” *Id.* at *13 (quoting *Diop*, 656 F.3d at 234).

Massive overcrowding: In April 2025, Krome was identified as the “most overcrowded Immigration and Customs Enforcement (ICE) facility in the country,” with reports of up to 1,700–1,800 people being held in a facility with a much lower, though debated, capacity.

Inhumane environment: Visitors, including Rep. Debbie Wasserman-Schultz, described finding dozens of men crammed into small, dirty rooms for up to 48 hours, forced to defecate, eat, and sleep on the floor in close proximity to one another.

Sleeping arrangements: Detainees have reported being forced to sleep on concrete floors, with some instances of migrants being held in buses for days at a time, and others having to sleep outside.

A class-action lawsuit, *Gayle et al. v. Meade et al.*, has been filed to challenge the conditions and to force a reduction in the population of detainees.

Here, the respondent has been detained at the Krome Detention Center in Miami with the reported overcrowding conditions. He has been there for now over three (3) months plus what is left of his removal proceedings.

IV. Seeking Administrative Relief Would be Futile

The respondents next argue the Court should dismiss this action because Castro has not exhausted available administrative remedies by requesting a bond hearing. Castro asks the Court to excuse administrative exhaustion because it “would be futile.” In *Matter of Yajure Hurtado*, the Board of Immigration Appeals (“BIA”) held that immigration judges have no authority to consider bond requests from noncitizens who entered the United States without inspection “because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 USC § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” 29 I&N Dec. 216, 220 (B.I.A. 2025). Respondents’ mention the lack of administrative exhaustion, however, the exhaustion requirement under 8 USC § 1251(d)(1) “is not jurisdictional,” but prudential. *Kemokai v. U.S. Att’y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023) (acknowledging the abrogation of prior Eleventh Circuit precedent interpreting § 1252(d)(1) as a jurisdictional bar by *Santos-Zacaria v. Garland*, 598 U.S. 411, 413 (2023)). Additionally, pursuing the administrative relief would be futile given the Board of Immigration Appeal’s Decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

Administrative “exhaustion is not required where . . . an administrative appeal would be futile.” *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (citing *Von Hoffberg v. Alexander*, 615 F.2d 633, 638 (5th Cir. 1980)). The result of any “bond appeal to the BIA is nearly a foregone conclusion under [*Yajure Hurtado*], any prudential exhaustion requirements are excused for futility.” *Puga v. Assistant Field Off. Dir., Krome North Serv. Processing Ctr.*, 25-cv-24535, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025); *see also Jefry Josue Del Cid Del Cid and Marlon Letona Marroquin Marroquin v. Pamela Bondi*, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025); *Guerrero Orellana v. Moniz*, --F. Supp. 3d--, 2025 WL 2809996, at *4 n.2 (D. Mass. Oct. 3, 2025); *Inlago Tocagon v. Moniz*, --F. Supp. 3d--, 2025 WL 2778023, at *2 (D. Mass. Sep. 29, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 WL 2710211, at *5 (D. Nev. Sep. 23, 2025); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *9–10 (D. Nev. Sep. 17, 2025); *Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *3 (M.D. Fla. Dec. 1, 2025).

Here, the petitioner did seek bond before the Court, but his counsel was advised to either “get a denial” based on jurisdiction (Per Yajure Hurtado), or a “no action,” which in the end means no “bond hearing was conducted because of jurisdiction.”

CONCLUSION

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and this Reply to Request for Order to Show Cause, the undersigned urges the Court to grant the petition for Habeas Corpus.

Respectfully submitted,

/s/ Alejandro Roque

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Dated January 29th, 2026

CERTIFICATE OF SERVICE

I hereby certify that on January 29th, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Alejandro Roque

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Counsel for Petitioner