UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Sergio Gabriel Fajardo Rivera,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Daren K. Margolin, Director for Executive Office for Immigration Review,

Executive Office for Immigration Review,

David Easterwood, Acting Director, St. Paul Field Office, Immigration and Customs Enforcement;

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents.

0:26-cv-00794-SHL-EMB

PETITIONER'S REPLY IN SUPPORT OF WRIT OF HABEAS CORPUS

INTRODUCTION

This Court should rule consistently with its previous determinations in this District and its sister districts. The Court has already decided multiple cases that are nearly identical to Petitioner's. Petitioner was detained in the interior of the United States more than two years after entering without inspection. District courts in every corner of the country have validated the Court's previous conclusion. The Court should grant the requested relief and order Petitioner's immediate release.

Petitioner will not reiterate the well-worn arguments on this issue but, like Respondents, asks to preserve arguments made in materially similar briefs filed by Petitioner's counsel in case of appeal.

Respondents rest on arguments that have been rejected by "[e]very judge in this District to have addressed this question." *Ahmed M. v. Bondi et al.*, 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026). Furthermore, when given the opportunity to provide a warrant justifying detention under the only remaining authority enabling Respondents to hold Petitioner, that is 8 U.S.C. § 1226(a), Respondents failed to do so. As such, release is the appropriate remedy.

ARGUMENT

As articulated above, countless cases within this circuit have exercised jurisdiction and subsequently found that the detention of individuals in materially identical positions with Petitioner was improper under 8 U.S.C. § 1225(a)(2)(B).

Those individuals, like Petitioner, were entitled to immediate release or bond hearings under 8 U.S.C. § 1226(a). The weight of the authority, consistent with the record, plain text, context, congressional intent, and long held practice all illustrate why this writ must issue.

I. Petitioner Is Not Subject to 8 U.S.C. § 1225.

Petitioner acknowledges the increase in the minority position following the decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); however, *Yajure Hurtado* is owed no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369 (2024). *Hurtado* mimics the arguments that a multitude of courts have rejected, including this Court. The flaw in these decisions is almost universal – the ruling merges the deeming a person an applicant for admission part and parcel with the act of seeking admission. An artificial label does not become actionable because there is a classification. More important, none of these decisions acknowledge 8 U.S.C. § 1101 and the definition of admission: lawful entry into the United States. Furthermore, there is no reconciliation with 8 U.S.C. § 1351. Warrantless arrests are limited in the scope of § 1225 – observing *entering* the United States unlawfully. A warrant is otherwise required because the person is in the United States. This dichotomy mirrors the § 1225 and § 1226 explications Petitioner has asserted here.

Chen v. Almodovar, 2025 WL 3484855 (S.D.N.Y Dec. 4, 2025), exemplifies the flaw in the few adverse decisions that exist. *Chen* and others do not engage with

what constitutes "seeking," nor do they acknowledge the administrative record that shows that Respondents apprehended, and sometimes initially released, a person under § 1226. *Chen*, for example, tries to suggest that most courts have contrived a third requirement in which a person has to be seeking admission consistent with the definition of admission set forth in 8 U.S.C. § 1101(a)(13)(A). *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tx. Nov. 13, 2025), merges the actor and the action as if they are one and the same.

Furthermore, *Chen*, *Cabanas*, and similar cases maintain that § 1225(b)(2) becomes meaningless given the majority interpretation. However, this is not true. There is a bevy of case law demonstrating that § 1225(b)(2) applies to numerous individuals who are not arriving aliens. Most notably, it applies to lawful permanent residents who do not qualify or satisfy the returning resident exemption, individuals seeing *re*admission under automatic revalidation rules after traveling to Canada or Mexico for less than 30 days, and individuals in transit through the United States. Section 1225(b)(2) requires the detention of such individuals until an immigration court determines whether the person is a returning resident or not. This is a very large population of individuals. It includes people who have been abroad for too long, criminality, national security concerns, and other grounds. *Chen* ultimately makes the fatal mistake of making an application for relief, such as asylum, into some form of seeking admission. This is contrary to law and Board of Immigration

Appeals precedent. Relief is not admission. *Chen* and others simply fail to recognize that precedent and statute contradict their supposition.

As the Supreme Court has explained, relief from removal does not afford a person "admission"—defined as "the lawful entry . . . after inspection and authorization by an immigration officer," 8 U.S.C. § 1101(a)(13)(A)—but instead affords them "lawful status," a "distinct concept[] in immigration law." *Sanchez v. Mayorkas*, 593 U.S. 409, 409, 415 (2021). Thus, the Court in *Sanchez* concluded that an individual who had entered the country unlawfully and subsequently received Temporary Protected Status ("TPS")—a form of temporary relief from deportation, *see* 8 U.S.C. § 1254a—was not constructively "admitted," but instead granted a "lawful status." *Id.* at 415–16 (explaining that ("a grant of TPS does not come with a ticket of admission").

The same distinction applies for other forms of relief from removal, such as Special Immigrant Juvenile designees, *see Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 163 (3d Cir. 2018); Deferred Action for Childhood Arrivals, *see Resendiz v. Exxon Mobil Corp.*, 72 F.4th 623, 625, 627 (4th Cir. 2023); petitions under the Violence Against Women Act, *see Enriquez v. Barr*, 969 F.3d 1057, 1060 (9th Cir. 2020), *withdrawn on other grounds sub nom.*, *Enriquez v. Wilkinson*, 988 F.3d 1210 (9th Cir. 2021); benefits under the Nicaraguan Adjustment and Central American Relief Act, *see Fuentes v. Lynch*, 837 F.3d 966, 967 (9th Cir. 2016) (per curiam);

Family Unity Program benefits, *see Medina-Nunez v. Lynch*, 788 F.3d 1103, 1105 (9th Cir. 2015); asylum, *see Matter of V-X-*, 26 I. & N. Dec. 147, 150 (BIA 2013); and T-nonimmigrant visas for victims of trafficking, *see Villatoro v. Noem*, No. 25-CV-05306 (OEM), 2025 WL 2880140, at *1, n.1 (E.D.N.Y. Oct. 9, 2025).[1]

Applying for relief from removal cannot be construed as seeking admission. Adjustment of status is not "admission" as a matter of administrative precedent. *See Matter of J-H-J-*, 26 I. & N. Dec. 563, 565 (BIA 2015). In no iteration of Petitioner's paths of relief can he be construed to be seeking admission. Petitioner is seeking relief, not admission.

There is a constant theme in the few negative cases of not engaging with the positive caselaw and maintaining tunnel vision. An applicant for admission must be fulfilling the condition of seeking admission for 8 U.S.C. § 1225(b) to apply. None of these negative cases engage in the definition of admission, which is defined in the Act. None of the cases that have adopted the minority position move the needle. The

[1] The only exception arises in the post-entry adjustment of status context where individuals who entered without inspection and later adjusted status are deemed *retroactively* to have been admitted when they adjusted status for the limited purpose of removability for certain criminal offenses. *See, e.g.*, *Diaz Esparza v. Garland*, 23 F.4th 563, 575 (5th Cir. 2022); *Mauricio-Vasquez v. Whitaker*, 910 F.3d 134, 137 (4th Cir. 2018); *Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1052 (9th Cir. 2014). This judge-created exception is meant to avoid the "absurd result" of certain noncitizens falling into a gap in the statute by lacking a starting date to determine *deportability*. *Negrete-Ramirez*, 741 F.3d at 1052. This exception does not apply here to Petitioner or other noncitizens facing removal for being *inadmissible*, having entered without inspection.

Court must continue to see that there is a difference between fitting the mold as an applicant for admission and doing something to seek admission. There is no action here that invokes § 1225(b)(2).

II. Immediate Release Is the Appropriate Remedy.

The Court gave Respondents the opportunity to provide a warrant justifying detention under the only remaining authority enabling Respondents to hold Petitioner, that is, 8 U.S.C. § 1226(a). *See* ECF Doc. 3, at 1-2 ("Respondents' answer should include...[s]uch affidavits and exhibits as are needed to establish the lawfulness and correct duration of Petitioner's detention in light of the issues raised in the habeas petition;...[and] [w]hether Petitioner was arrested pursuant to a warrant and, if so, a copy of such warrant."). However, Respondents failed to do so. *See* ECF Doc. 6. Respondents simply state "[i]mmigration officials detained him recently" and "Federal Respondents do not admit any of the alleged details surrounding, or Petitioner's characterization of, the arrest." ECF Doc. 6, at 1. No exhibits are provided. Respondents decline to respond to the Court's order to indicate whether Petitioner was arrested pursuant to a warrant but essentially concede that there was no warrant, arguing that "[l]ack of an arrest warrant does not affect his valid detention." *Id.* at 12. As such, immediate release is the appropriate remedy.

Respondent's assertion that "[u]nder Petitioner's theory, no-one could be

detained, under any theory or INA section," *see* ECF Doc. 6, at 12, is simply disingenuous. If Respondents had issued an administrative warrant, they could certainly detain him under 8 U.S.C. § 1226(a). *See* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General …"). In that case, a bond hearing under 8 U.S.C. § 1226(a) would be appropriate. However, no such warrant was produced here, so detention under 8 U.S.C. § 1226(a) is also plainly unlawful, and immediate release is required.

"Section 1226 provides that "*[o]n a warrant issued by the Attorney General*, an alien may be arrested and detained." *Ahmed M.*, 2026 WL 25627, at *1 (citing 8 U.S.C. § 1226(a)) (emphasis in original). Thus, "[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a) [and i]t follows that absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a)." *Id.* (citing *Chogllo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *11 (D. Minn. Sept. 21, 2025)) (emphasis in original). As was the case in *Ahmed*, Petitioner "requested in his Petition that Respondents produce any warrant that might have authorized [his] arrest pursuant to § 1226[, but] Respondents have not produced any warrant." *Id.*

Given that "the record shows Respondents have not identified a valid statutory basis for detention in the first place, the remedy is not to supply one through further proceedings." *Id.* (citing *Vedat C. v. Bondi*, No. 25-cv-4642 (JWB/DTS) (D. Minn.

Dec. 19, 2025)). Thus, immediate release is required. Holding otherwise "would treat the absence of statutory power as a mere procedural irregularity rather than a substantive defect. Habeas relief requires more because it addresses the lawfulness of custody itself, not the adequacy of procedures that might attend some other, uninvoked challenge to detention." *Vedat C.*, 0:25-cv-04642-JWB-DTS, at 6 (citing *Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995)). The function of habeas corpus is to obtain release from unlawful custody. *Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995). Where detention lacks a lawful predicate, release is an available and appropriate remedy. *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Release is the appropriate remedy. *See Sebrian Reyes v. Bondi et al.*, 26-cv-5 PJS/LIB (D. Minn. Jan. 23, 2026).

III. Petitioner's APA and DJA Claims are Properly Brought.

Respondents argue that Petitioner's APA and DJA claims "have no place in a habeas proceeding." *See* ECF Doc. 6, at 13. However, the APA properly contemplates habeas corpus relief. *See* 5 U.S.C. § 703 ("including actions for…habeas corpus"). Habeas claims may challenge detention that is "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2441(c)(3). "That includes an attack on the legality of custody based on violations of the APA. Petitioner's "underlying [APA] arguments do not subsume the core of the habeas petition, simply upon mention of the APA." *Noori v. Larose*, No. 25-CV-1824-GPC-

MSB, 2025 WL 2800149, at *6 (S.D. Cal. Oct. 1, 2025) (citing *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 151-52 (W.D.N.Y. 2025)). A declaratory judgment resolves the question of which statute governs Petitioner's detention. Petitioner's habeas claims, including the APA and DJA claims, arise under 28 U.S.C. § 2441 and are properly brought.

CONCLUSION

For the reasons set forth, Respondent cannot be detained under 8 U.S.C. § 1225, and the writ of habeas corpus, requiring immediate release, or, alternatively, a prompt bond hearing, must issue. Respondent additionally requests that all his personal effects seized during his arrest be returned to him upon his release.

DATED: February 4, 2026

Respectfully submitted,

/s/ David Wilson
David L. Wilson
MN Attorney Lic. No. 0280239
Wilson Law Group
3019 Minnehaha Avenue
Minneapolis, MN 55406
(612) 436-7100 / dwilson@wilsonlg.com

/s/ Gabriela Anderson
Gabriela Anderson
MN Attorney Lic. No. 0504395
Wilson Law Group
3019 Minnehaha Avenue
Minneapolis, MN 55406
(612) 436-7100 / ganderson@wilsonlg.com

/s/ Molly McKinsey
Molly McKinsey
MN Attorney Lic. No. 0504285
Wilson Law Group
3019 Minnehaha Avenue
Minneapolis, MN 55406
(612) 436-7100 / mmckinsey@wilsonlg.com

Attorneys for Petitioner