

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case 26-20923-CIV-BLOOM**

**JOSE ALVARO LLANES FIGUEROA,**

**Petitioner,**

**v.**

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

**Respondents.**

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**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE**

Petitioner alleges that the Attorney General is unlawfully holding him under § 1225(b)(2), which mandates his detention, instead of under § 1226(a)'s discretionary detention scheme, where he could be eligible for release. As a result, his continued detention is unconstitutional. Section 1225 applies to “applicants for admission,” defined as noncitizens who are either “present in the United States” without having been admitted or who are arriving in the United States. 8 U.S.C. § 1225(a)(1).

Applicants for admission are divided into two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Relevant here is § 1225(b)(2), which establishes a mandatory detention regime for “an alien who is an applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be

admitted” for the duration of removal proceedings. 8 U.S.C. § 1225(b)(2)(A). *See Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (plurality opinion) (holding §§ 1225(b)(1) and 1225(b)(2) do not provide authority for bond hearings).

In contrast, § 1226 provides additional direction for the apprehension and detention of aliens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226(a) gives immigration authorities power to issue an administrative warrant and either “continue to detain the arrested alien” or release the alien from detention on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). However, § 1226(a) does not grant “any right to release on bond.” *Matter of D-J-*, 23 I.&N. Dec. 575 (A.G. 2003) (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)).

Immigration Judges, throughout the Nation, are following Board precedent in *Matter of Yajure Hurtado*, determining they do not have jurisdiction over any alien who has entered the United States without inspection. The sole reason for denying bond is listed as “the Court lacks jurisdiction as Respondent is an applicant for admission”.

The Petitioner need not exhaust administrative remedies if “the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000).

The government, in its reply to the Petition, acknowledges that Judges in this District have all reached the same conclusion on the legal issues presented. *See, e.g., Aguilar Merino v. Ripa*, No. 25- 23845-CIV-MARTINEZ, 2025 WL 2941609, at \*3, 8 (S.D. Fla. Oct. 15, 2025) (“§ 1226(a), not § 1225(b)(2), governs Petitioner’s detention”); *Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41, (S.D. Fla. Oct. 10, 2025) (“§ 1226 governs Petitioner’s detention”); *Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that “**prudential exhaustion requirements are excused for futility**” and finding that “**section 1226(a) and its implementing regulations govern Petitioner’s detention, not section 1225(b)(2)(A)**”); *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025) (**finding good cause to excuse Petitioner’s failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner’s request for a bond hearing or release and that Petitioner is subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge**); *Penagos Quintero v. Ripa, et al.*, Case No. 25-25746-CIV-BECERRA, ECF NO.14 (Jan. 5, 2026) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner’s detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)) – to name a few. The government’s brief details many

others.

This court continues to have jurisdiction because this action falls outside the scope of § 1252(g) and (b)(9), and exhaustion is excused because it would be futile. *Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025) and *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025).

Courts throughout Florida have already covered this ground and addressed the issues raised by the Petitioner. See *Hernandez-Lopez v. Hardin*, et al., No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at \*6 (M.D. Fla. Oct. 31, 2025). There, the Courts were satisfied with its jurisdiction and found that petitioners were being held in violation of their rights under the INA, entitling them to habeas relief.

Petitioner is seeking an individualized bond hearing consistent with 8 U.S.C. section 1226(a), not just a bond hearing to be scheduled. This Court should find that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A).

Respectfully submitted this 15<sup>th</sup> day of February 2026.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 15, 2026, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF. I further certify that the foregoing was served on all counsel of record via CM/ECF.

/s/ Juliana G. Lamardo, Esq.