

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOSE DUARTE ESCOBAR,

Petitioner,

v.

PAUL PERRY, *et al.*,

Respondents.

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Case No: 3:25-cv-758

**PETITIONER'S LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

TABLE OF CONTENTS

INTRODUCTION	1
LEGAL BACKGROUND	1
STANDARD OF REVIEW	3
STATEMENT OF UNDISPUTED MATERIAL FACTS.....	3
ARGUMENT.....	4
I. Exhaustion of administrative remedies is not required.	6
II. Petitioner is subject to detention under 8 U.S.C. § 1226(a).....	6
a. Section 1225(b)(2) does not apply to Petitioner based on the statute’s plain text.	6
b. Applying § 1225(b)(2) to Petitioner would conflict with the statutory structure and would render other provisions superfluous.	7
III. Petitioner’s continued detention without a bond hearing violates the INA, federal regulations, and due process.	9
CONCLUSION	10

INTRODUCTION

This motion turns on a single, dispositive legal question that can be resolved as a matter of law: whether Petitioner's detention is governed by 8 U.S.C. § 1226(a) or by § 1225(b)(2). As a longtime resident of the U.S. who was apprehended by Immigration and Customs Enforcement ("ICE") on September 9, 2025, in Washington, D.C., Petitioner argues that he can only lawfully be detained pursuant to 8 U.S.C. § 1226(a), which affords him the right to request release on bond. However, following the Board of Immigration Appeals' ("the Board's") precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Petitioner has been unlawfully subjected to mandatory detention under 8 U.S.C. § 1225(b)(2) without access to a bond hearing.

Petitioner filed a Petition for a Writ of Habeas Corpus alleging that he can only lawfully be detained pursuant to 8 U.S.C. § 1226(a), and that his continued detention without a bond hearing violates the Immigration and Nationality Act ("INA") (Count I); his right to a bond determination hearing pursuant to 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 (Count II); and his due process rights (Count III). ECF No. 9.

The plain meaning of the statute, the statutory structure, canons of construction, and the legislative history overwhelmingly support Petitioner's argument. The Court should therefore grant Petitioner's motion for summary judgment, hold that he can only be detained pursuant to § 1226(a), find that his continued detention without a bond hearing is unlawful, and order that he either be released from custody or be given a bond hearing.

LEGAL BACKGROUND

This case concerns which statutory framework governs the detention of noncitizens who entered the U.S. without inspection, were not apprehended upon arrival, and are subsequently apprehended in the interior of the U.S. and held in ICE custody. At issue are two statutes: 8 U.S.C.

§ 1226(a), which affords discretionary detention and the opportunity for noncitizens to request release on bond, and § 1225(b), which mandates detention without bond.

As the Supreme Court has explained, Section 1226(a) sets forth “the default rule” for detaining noncitizens “already present in the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). Noncitizens detained pursuant to § 1226(a) may be released by ICE on bond or conditional parole. 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If ICE denies a noncitizen’s request for release, the noncitizen is entitled to a bond hearing before an immigration judge (“IJ”), unless subject to mandatory detention under § 1226(c). *See* 8 U.S.C. §§ 1226(a), 1226(c) (listing grounds for mandatory detention); *see also* 8 C.F.R. §§ 1003.19(a), 1236.1(d). An IJ can order the noncitizen’s release on bond upon a showing that the noncitizen does not pose a flight risk or a danger to the community. *See Matter of Guerra*, 24 I.&N. Dec. 37, 40 (BIA 2006).

In contrast, 8 U.S.C. § 1225(b) mandates detention of certain noncitizens while removal proceedings are pending. Section 1225(b)(2) applies to “an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” Under § 1225(a)(1), an applicant for admission is defined as an “alien present in the United States who has not been admitted or who arrives in the United States []whether or not at a designated port of arrival.” The INA defines “admission” as the “lawful entry of the alien into the United States.” 8 U.S.C. § 1101(a)(13)(A).

For decades, noncitizens apprehended in the interior of the country were detained pursuant to § 1226(a) and afforded a bond hearing. However, earlier this year, the Department of Homeland Security (“the Department”) departed from longstanding practice and began asserting that all noncitizens who entered the U.S. without inspection were subject to mandatory detention under § 1225(b)(2). *See Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720, at *2–3 (D. Colo. Oct. 17,

2025) (detailing policy change). Shortly thereafter, on September 5, 2025, the Board issued a precedential decision adopting this interpretation and holding that any noncitizen who is present in the U.S. without having been inspected and admitted is subject to mandatory detention under § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

STANDARD OF REVIEW

Summary judgment is appropriate where “there is no genuine dispute as to any material fact” and the movant shows that they are “entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). On summary judgment, “[a] court views the evidence and reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.” *Trustees of Columbia Univ. in the City of New York v. Symantec Corp.*, 390 F. Supp. 3d 665, 673 (E.D. Va. 2019); *see also Sedar v. Reston Town Ctr. Prop., LLC*, 998 F.3d 756 (4th Cir. 2021).

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Petitioner is a citizen of Honduras. *See* Ex. 1, Affidavit of Petitioner ¶ 1; ECF No. 13-1 ¶ 4.
2. Petitioner entered the U.S. without inspection in 2008. Ex. 1 ¶ 2.
3. On September 9, 2025, Petitioner was apprehended by Immigration and Customs Enforcement (“ICE”) in Washington, D.C. Ex. 1 ¶ 3; ECF No. 13-1 ¶ 5.
4. Petitioner has been detained since then, first at the Caroline Detention Facility and now at the Port Isabel Service Processing Center. Ex. 1 ¶ 4; ECF No. 13-1 ¶¶ 6–11; ECF No. 9-2.
5. On September 23, 2025, Petitioner was issued a Notice to Appear for removal proceedings pursuant to section 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a. ECF No. 13-1 ¶ 15; ECF No. 9-1 (Notice to Appear).
6. Petitioner was charged as an “alien present in the United States who has not been admitted

or paroled.” ECF No. 13-1 ¶ 16; ECF No. 9-1 (Notice to Appear).

7. Petitioner has not been arrested for or convicted of any crime. Ex. 1 ¶ 5.

ARGUMENT

The material facts are not in dispute: Petitioner is a Honduran citizen who entered without inspection, was later apprehended by ICE in Washington, D.C. on September 9, 2025, and has been in ICE custody since. Based on these facts, this Court should find that Petitioner can only be detained pursuant to 8 U.S.C. § 1226(a) and cannot lawfully be subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), as *Matter of Yajure Hurtado* would require.¹

Petitioner is therefore entitled to summary judgment, and this Court should find that his continued detention without a bond hearing violates the INA (Count I); his right to a bond determination hearing pursuant to 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 (Count II); and his due process rights (Count III). As such, this Court should grant his Petition and either order his release from custody or that he be given a bond hearing.

Courts nationwide, including this one, have overwhelmingly rejected the argument that § 1225(b)(2) applies in these circumstances and have consistently found that 8 U.S.C. § 1226(a) authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. *See, e.g., Hasan v. Crawford*, No. 1:25-CV-1408 (E.D. Va. Sept. 19, 2025); *Quispe Ardiles v. Noem*, No. 1:25-cv-01382 (E.D. Va. Sept. 30, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Teyim v. Perry*, No. 1:25-cv-01615 (E.D. Va. October 15, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720 (D. Colo.

¹ Under the Supreme Court’s recent decision in *Loper Bright v. Raimondo*, 603 U.S. 369 (2024), this Court should independently interpret the statute and give the Board’s interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent.

Oct. 17, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. Jul. 24, 2025); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Giron Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampaio v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Jimenez v. FCI Berlin, Warden*, No. 1:25-cv-00326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 3:25-cv-06921, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, No. 3:25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-03172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:2025cv01093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *J.O.E. v. Bondi*, No. 25-cv-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Samb v. Joyce*, No. 1:2025cv06373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 1:25-cv-05937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025);

Rosado v. Figueroa, No. 2:25-cv-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

I. Exhaustion of administrative remedies is not required.

Exhaustion of administrative remedies is not required because it would be futile. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999). Given the BIA’s recent decision in *Matter of Yajure Hurtado*, which holds that any individual who entered without inspection is now deemed an “applicant for admission” subject to mandatory detention under § 1225(b)(2), pursuing administrative relief would be futile. *See also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA’s decision in *Yajure Hurtado* renders exhaustion futile).

II. Petitioner is subject to detention under 8 U.S.C. § 1226(a).

a. Section 1225(b)(2) does not apply to Petitioner based on the statute’s plain text.

Section 1225(b)(2)(A) authorizes mandatory detention only if three conditions are met: the individual must be (1) an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt entitled to be admitted.” *See, e.g., Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025)). Although Petitioner may satisfy the first requirement as an “applicant for admission,” he does not satisfy the second. He is not seeking admission, under the plain meaning of that term, as he has already been physically present in the U.S. for seventeen years. Courts have consistently recognized that “seeking admission” necessarily requires present-tense conduct, and this section can therefore not apply to an individual like Petitioner who has long resided in the U.S. *See Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, at *8 (E.D. Cal. Sept. 23, 2025) (“the use of a present participle, ‘seeking,’ necessarily

implies some sort of present-tense action.”) (internal quotations and citations omitted). As one judge aptly explained, “someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be described as already present there.” *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803, at *7 (S.D.N.Y. Aug. 8, 2025).

The facts before this Court show that Petitioner was already in the U.S. when ICE apprehended him and that he had been for seventeen years. Notably, ICE’s own charging document identifies Petitioner as an “alien present without admission or parole,” not as an arriving alien. ECF No. 13-1 ¶ 16; ECF No. 9-1 (Notice to Appear). Under the plain language of the statute and the facts before this Court, Petitioner cannot be found to be “seeking admission” and cannot be subject to mandatory detention under § 1225(b)(2).

b. Applying § 1225(b)(2) to Petitioner would conflict with the statutory structure and would render other provisions superfluous.

As this Court has previously recognized, applying § 1225(b)(2) to Petitioner conflicts with the Supreme Court’s interpretation of §§ 1225 and 1226 in *Jennings v. Rodriguez* 583 U.S. 281 (2018). See *Quispe-Ardiles*, No. 1:25-cv-01382 at *13 (citing *Jennings*, 583 U.S. at 289). The Supreme Court explained in *Jennings*, “U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a).” 583 U.S. at 289. The legislative history also supports this understanding, as the Conference Report stated twice that § 1225 would apply to “aliens arriving in the United States.” H.R. Conf. Rep. No. 104-828 at 208, 209 (1996).

Moreover, reading § 1225(b)(2) to encompass all noncitizens who entered without

inspection would render multiple provisions of § 1226 superfluous. *See Hasan*, 2025 WL 268225 at *22; *Quispe-Ardiles*, No. 1:25-cv-01382 at *12. “[O]ne of the most basic . . . canons” of statutory interpretation is that “a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (internal brackets omitted). There are multiple provisions in § 1226(c) that mandate detention for certain inadmissible noncitizens, including § 1226(c)(1)(A), which applies to noncitizens who have committed or been convicted of certain criminal offenses; § 1226(c)(1)(D), which applies to noncitizens who are inadmissible for having engaged in specified terrorist activity; and § 1226(c)(1)(E), which was enacted earlier this year as part of the Laken Riley Act and applies to noncitizens who entered the U.S. without admission and were thereafter charged with, arrested for, convicted of, or admitted committing various offenses. As this Court noted in *Quispe-Ardiles*, “If § 1225(b) already required mandatory detention of all noncitizens who have not been admitted, these provisions would be meaningless.” 2025 WL 2783800 at *16.

Finally, the title of § 1225 – “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing” – further indicates that Congress intended § 1225 to apply only to noncitizens apprehended upon arrival. *See Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (“This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.”) (internal quotations omitted).

Accordingly, the statutory text, statutory structure, and case law compel the conclusion that Petitioner may only lawfully be detained pursuant to § 1226(a).

III. Petitioner's continued detention without a bond hearing violates the INA, federal regulations, and due process.

Because Petitioner can only be detained pursuant to 8 U.S.C. § 1226(a), his continued detention without bond violates the INA, federal regulations, and due process.

Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. §§ 236.1(d) & 1003.19(a)-(f). The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and therefore violates both the INA and its implementing regulations.

Moreover, Petitioner's continued detention without a bond hearing violates due process. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors that this Court order Petitioner's release or that he be given a bond hearing before a neutral adjudicator. 424 U.S. 319 (1976).

Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

The risk of erroneous deprivation is exceptionally high. Petitioner has never been arrested and has deep ties to the community.

The government's interest in detaining Petitioner without due process is minimal.

Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Furthermore, the “fiscal and administrative burdens” of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant Petitioner’s Motion for Summary Judgment and grant his Petition for a Writ of Habeas Corpus.

Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, as well as all attachments thereto, to this Court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to counsel of record for the respondents. Additionally, pursuant to Fed. R. Civ. Pro. 5, on October 20, 2025, I mailed the foregoing by certified mail to the attorney for all respondents at:

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Respectfully Submitted,

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