

court system. An immigration judge determined that Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b)(2) as an applicant for admission.

Respondents do not contest the court's jurisdiction in this case.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Petitioner argues that the exhaustion requirement is not mandated by statute in this case and can be forgiven by the court. He states that any appeal to the BIA would be futile because they are likely to deny his appeal based on their decision in *Matter of Yajure Hurtado*.

In *Matter of Yajure Hurtado*, the BIA held that noncitizens who enter the United States without inspection are considered “applicants for admission” under section 235(b)(2)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2), and are therefore subject to mandatory detention without eligibility for a bond redetermination hearing before an Immigration Judge. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 2025 WL 2674169 (BIA Sept. 5, 2025). The noncitizen, a Venezuelan national, who had entered in November 2022 without inspection and later received Temporary Protected Status (TPS) in 2024, was taken into custody after his TPS expired in April 2025 and sought a bond hearing. *Id.* The immigration judge found, and the BIA affirmed, that because he was never “admitted” or “paroled,” jurisdiction to consider bond did not lie under section 236(a) of the INA, 8 U.S.C. § 1226(a). *Id.*

The BIA reasoned that section 235(b) requires detention of all applicants for admission pending a decision on their removal and that this statutory mandate supersedes the discretionary bond authority afforded under section 236(a). *Id.* In doing so, the BIA clarified that aliens who entered without inspection remain in the legal posture of “applicants for admission” even after prolonged presence or temporary protection and fall outside the immigration judge’s bond jurisdiction. *Id.* This decision significantly narrows bond eligibility, effectively extending

mandatory detention to many noncitizens previously eligible for bond hearings, and underscores that the manner of entry—not subsequent status—controls whether the detention framework of section 235(b) or 236(a) applies. *Id.*

Because the BIA has spoken on their interpretation of the statutes at issue, waiting for a ruling in his pending appeal would simply prolong his detention without providing the possibility of relief. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (citing *Hessbrook v. Lennon*, 777 F.2d 999, 1003 (5th Cir. 1985)). Further, Respondents do not raise an argument as to exhaustion in their Response. Consequently, the court finds that further exhaustion would be futile, and his claim is properly before the court with no further requirement to exhaust administrative remedies.

SUMMARY OF ARGUMENTS

Petitioner asserts that his detention should be governed by section 1226(a), entitling him to a bond hearing with due process safeguards. He alleges that he should not be subject to mandatory detention under section 1225 because he has been residing in this country since 2021. Further, he asserts that Respondents' reliance on section 1225(b) is contrary to the INA's structure, the legislative history, decades of agency practice, and the constitutional requirements of due process.

Respondents allege that Petitioner is an “applicant for admission” and subject to mandatory detention without a bond hearing under the plain language of section 1225(b)(2). They assert that his lengthy presence in the United States makes no difference with regard to the plain reading of the statutory language because a noncitizen that is “seeking admission” and one that is “applying for admission” are synonymous—they are both applicants for admission. Because the Petitioner has not been admitted after inspection by an immigration officer, Respondents allege that he is an applicant for admission under section 1225 and subject to mandatory detention as someone who

is seeking admission. Thus, section 1225 encompasses noncitizens who are arriving to the United States and those already present without admission, perhaps for years.

DISCUSSION

1. Statutory Argument — § 1225 vs. § 1226

Respondents argue that Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1225, which states:

§ 1225. Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(b) Inspection of applicants for admission

(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of 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, the alien *shall be detained* for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien--

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

8 U.S.C.A. § 1225. Respondents state that Petitioner is an applicant for admission under the plain reading of the statutory language. In addition to *Matter of Yajure Hurtado*, Respondents point to a few other cases in their Response that support their interpretation of the statutes, including: *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, at *5 (S.D. Tex. Nov. 13, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-177-H, ECF No. 9 (N.D. Tex. Oct. 24, 2025); and *Sandoval v. Acuna*, 6:25-cv-1467-DCJ-CBW, 2025 WL 3048926, at *1 (W.D. La. Oct. 31, 2025). (Doc. #4.)

In *Cabanas*, the court held that § 1225(b)(2)(A) governs because the statutory definition of “applicant for admission” is broad and indisputably includes Petitioner, making mandatory detention applicable regardless of her long residence in the United States. *Cabanas v. Bondi*, 2025 WL 3171331, at *5. The court rejected Petitioner’s attempts to distinguish “applicants for admission” from those “seeking admission,” and found no basis to limit § 1225(b)(2)(A) only to “arriving aliens,” noting that Congress intentionally used different language in other subsections. *Id.* The court further noted that legislative history and district-court “consensus” could not override the clear statutory text. *Id.*

In *Garibay-Robledo*, the court concluded that § 1225(b)(2) applies to noncitizens encountered within the United States who have not been admitted, relying on 1225(a)(1)’s definition of “applicant for admission” and the BIA’s procedural interpretation in *Matter of Yajure Hurtado*. *Garibay-Robledo v. Noem*, 1:25-cv-177-H, ECF No. 9. Similarly, in *Sandoval*, the court concluded that individuals present without admission fall within the “applicant for admission” category and are therefore subject to mandatory detention under section 1225(b)(2). *Sandoval v. Acuna*, 2025 WL 3048926, at *1. Respondents contend that these recent decisions reflect the correct reading of the statutes and confirm that section 1225(b)(2) governs here.

Petitioner contends that he should be subject to 8 U.S.C. § 1226 and is therefore entitled to a bond hearing. This section states:

§ 1226. Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien *may be arrested and detained* pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--

(1) may continue to detain the arrested alien; and

(2) *may release the alien on--*

(A) *bond* of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but
(3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

8 U.S.C.A. § 1226. The Petitioner argues that the plain language, structure, and legislative history of the Immigration and Nationality Act show that § 1226 applies to individuals already present in the United States who are placed in full removal proceedings, not § 1225(b), which governs arriving aliens in expedited removal. Petitioner discusses in his briefing that nearly every district court to consider this issue this year has rejected the government’s reliance on § 1225(b) for long-term residents placed in full proceedings. In this circuit, the following are some of the cases that have considered this issue.

In *Lopez Santos*, the court held that the petitioner, who had resided in the United States for many years despite an entry without inspection and was placed in removal proceedings, was not subject to mandatory detention under 8 U.S.C. § 1225(b) but instead fell under the discretionary detention regime of § 1226(a) that entitles one to a bond hearing. *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *4-5 (W.D. La. Sept. 11, 2025). The court found that applying § 1225(b)(2)(A)’s “seeking admission” language to someone living internally for many years stretched the statute beyond its intended scope, effectively rendering § 1226(a) superfluous. *Id.* Because the petitioner was not an “arriving alien” and had not been plainly “seeking admission” at the time of detention, the court ordered that he be treated as detained under § 1226(a) and remanded for a bond hearing before an immigration judge. *Id.* at *5.

In *Kostak*, the court addressed the case of a Ukrainian citizen who entered the United States in 2005 without being inspected by an immigration office then later filed for asylum in 2018 and eventually was placed in full removal proceedings under § 240 of the INA in 2025. *Kostak v.*

Trump, No. 25-CV-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025). The court granted a temporary restraining order and preliminary injunction for the petitioner, finding that the government's detention under the mandatory detention statute § 1225(b) likely did not apply, and that the petitioner was entitled instead to a bond hearing under the discretionary detention statute, § 1226(a). *Id.* The court held that if an individualized bond hearing was not conducted by a specified date, the petitioner should be released. *Id.*

In *Buenrostro-Mendez*, the Southern District of Texas considered a petition for a writ of habeas corpus filed by a Mexican citizen who had entered the United States over a decade ago without inspection but was now detained under § 1225. *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *1 (S.D. Tex. Oct. 7, 2025). The court held that the applicable detention statute was 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b)(2)(A). *Id.* The court reasoned that the petitioner, having resided in the U.S. for many years and placed in full removal proceedings, did not qualify for mandatory detention under § 1225(b). *Id.* at *3. Accordingly, the court sided with the overwhelming majority of courts to consider this issue across the country and ordered that the government provide the petitioner with an individualized bond hearing under § 1226(a) by a certain date or release him. *Id.* at *3-4.

Nearly all district courts across the country that have considered this issue have rejected the Government's broad interpretation of section 1225(b)(2). *See Angel Fuentes v Lyons*, 5:25-cv-00153, ECF No. 15 (S.D. Tex. Oct. 16, 2025); *De la Caridad Mendez Velazquez v. Noem et al*, 4:25-cv-04527, ECF No. 11 (S.D. Tex. Oct. 30, 2025); *Chogllo Chafila v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *5 (D. Me. Sept. 22, 2025) (citing e.g., *Salcedo Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); *Martinez v. Hyde*, No. CV 25-

11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *R&R adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Diaz Diaz v. Mattivelo*, No. 1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025)); *see also Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (discussing the statutory text, legislative history, past application, and past agency guidance); *Rodriguez v. Bostock*, No. 3:25-cv-5240, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases and noting that “[e]very district court to address” the statutory question “has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice”); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) (joining the “chorus” of courts concluding that § 1226 applies).

This court will likewise follow the overwhelming majority of courts that have found that § 1226 (not § 1225) controls detention for noncitizens like the Petitioner who are already inside the country and placed in full removal proceedings, thereby making him eligible for a bond hearing.

2. Remaining Claims

The court will decline to decide the merits of Petitioner’s remaining claims given that the court is granting the relief he seeks based on its interpretation of the applicability of § 1226(a). If

Respondents do not provide Petitioner with a bond hearing or release him within the time allotted, he may renew these claims.

RECOMMENDATION

For the reasons discussed herein, this court recommends that the Petition for a writ of habeas corpus be GRANTED and Respondents should be ORDERED to provide Petitioner with a bond hearing under § 1226(a) within seven (7) days after the adoption of this report and recommendation by the district court, or release him. The parties are to update the court on the status of Petitioner's bond hearing no later than January 5, 2025.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(c), each party to this action has the right to file objections to this report and recommendation. Objections to this report must: (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, and (3) be served and filed within fourteen (14) days after being served with a copy of this report. *See* 28 U.S.C. § 636(b)(1)(c) (2009); FED. R. CIV. P. 72(b)(2). A party who objects to this report is entitled to a *de novo* determination by the United States district judge of those proposed findings and recommendations to which a specific objection is timely made. *See* 28 U.S.C. § 636(b)(1) (2009); FED R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this report, within fourteen (14) days of being served with a copy of this report, bars that party from: (1) entitlement to *de novo* review by the United States district judge of the findings of fact and conclusions of law, *see Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of any such findings

of fact and conclusions of law accepted by the United States district judge, *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, at 1428–29 (5th Cir. 1996) (en banc).

SIGNED this the 3rd day of December, 2025.

A handwritten signature in black ink, appearing to read 'C. Stetson', written over a horizontal line.

Christine L Stetson
UNITED STATES MAGISTRATE JUDGE