

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DAVITI PHURTSKHVANIDZE,	Case No. 1:25-cv-00827
Petitioner,	District Judge Douglas R. Cole
v.	Magistrate Judge Stephanie K. Bowman
KEVIN RAYCRAFT, Acting Field Office Director of Enforcement and Removal Operations, Detroit, United States Immigration and Customs Enforcement, <i>et al.</i> ,	
Respondents.	

PETITIONER’S REPLY TO RETURN OF WRIT

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INTRODUCTION

This Court should grant the Petitioner's writ of habeas corpus. This Court should not require exhaustion of administrative remedies for the same reasons articulated in *Coronado v. Secretary, Department of Homeland Security*, No. 1:25-cv-831, 2025 U.S. Dist. LEXIS 258690 (S.D. Ohio Dec. 15, 2025), where this Court held that exhaustion was not required.

The Petitioner's detention is governed by 8 U.S.C. § 1226(a) because he was already present within the United States at the time of his immigration detention. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), made clear that § 1226 governs detention where a noncitizen is already inside the United States. The statutory language—particularly the phrase “seeking admission”—supports this interpretation, and the prevailing nationwide authority aligns with this reading of the statute. The statutory history, as well as the enactment of the Laken Riley Act, further demonstrates Congress's intent that § 1226 govern the detention of noncitizens already present in the country. By contrast, 8 U.S.C. § 1225(b)(2)(A) applies to noncitizens who are arriving at a port of entry and are being inspected by an immigration officer at the border.

Additionally, Respondents' actions violate the Due Process Clause of the Fifth Amendment. The Petitioner was previously detained and subsequently released when he was encountered in the United States. In the order releasing him on recognizance, his detention was expressly governed by INA § 236 (8 U.S.C. § 1226), and he was subjected to specific conditions that he was required to comply with in order to remain at liberty. The current detention, as alleged

by the Respondents under 8 U.S.C. § 1225(b)(2)(A), infringes upon a legitimate expectation and liberty interest created by the government. There have been no violations of the initial release conditions.

Finally, the Petitioner respectfully requests that this Court reconsiders its interpretation of §1225 and §1226 and recognizes the arguments presented not only by the Petitioner, but also by sister courts within the Sixth Circuit.

FACTUAL BACKGROUND

Mr. Phurtskhvanidze entered the country on December 16, 2022, after escaping his home country, Georgia, due political persecution. [REDACTED]

[REDACTED] The Petitioner was released on December 27, 2022, on his own recognizance after the Department of Homeland Security determined that the Petitioner's detention fall under section 236 of INA (8 U.S.C. § 1226). *See* Exhibit A, ICE Form I-220A, Order of Release on Recognizance; *See also* Exhibit B, DHS Form I-286 Notice of Custody Determination. The conditions for his release were:

- Presenting himself for any hearing or interview as directed by ICE and EOIR.
- Surrender for removal from the United States if so ordered.
- Report to Duty Officer at the address provided in I-831 on January 31, 2023.

The Petitioner did not violate any of these conditions during the time he was free. Mr. Phurtskhvanidze complied with all his mandatory ICE check-in appointments and all immigration court hearings. On April 20, 2023, the Petitioner timely filed for asylum and has complied with any order given by the immigration court.

On October 20, 2025, almost three years later, the Petitioner was arrested by the Respondents during one of his check-in appointments with ICE and since then has been detained in the Butler County Jail without any ability to be released for bond.

ARGUMENT

I. Exhaustion should not be required in the present case

Respondents argue that Petitioner must exhaust administrative remedies before seeking relief from this Court, asserting that other avenues for relief remain available. This argument is not grounded in practical reality since *Matter of Hurtado* took bond jurisdiction away from Immigration Judges. There are simply no alternative avenues that are left for the Petitioners to pursue. Finally, this Court has already addressed exhaustion and found no exhaustion was required.

First, Respondents contend that Petitioner is detained under 8 U.S.C. § 1225. However, the recent BIA decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), has stripped Immigration Judges of jurisdiction to hear bond requests for noncitizens present in the United States without admission. The BIA held that, under a plain reading of § 1225(b)(2)(A), Immigration Judges lack authority to grant bond to aliens, like Petitioner, who are physically present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. at 225. As a result, requiring Petitioner to request a bond hearing from an Immigration Judge or the BIA would be futile: there is no reason to believe that either would reach a different result. *Flores v. Olson*, No. 25 C 12916, at 4–5 (N.D. Ill. Nov. 3, 2025) (“[T]here is no reason to believe that an immigration judge or the BIA will decide [Petitioner’s] case differently”). Petitioner has no administrative avenue for release; the only practical remedy lies with this Court.

Second, Respondents' argument is further internally inconsistent. Respondents simultaneously assert that Petitioner must exhaust administrative remedies while also claiming that his detention classification precludes him from obtaining a bond hearing. These positions cannot logically coexist.

Third, Respondents rely on *Alonso Portillo v. Bondi*, Case No. 1:25-cv-306, 2025 WL 2483393, at 6 (S.D. Ohio Aug. 28, 2025), suggesting it demonstrates the necessity of exhausting administrative remedies. But that case is materially distinguishable: it was decided prior to *Matter of Yajure Hurtado*, and the petitioner in Portillo actually received a bond hearing because the IJ never denied jurisdiction.

In contrast, Petitioner here faces a systemic bar imposed by the BIA's precedent, further reinforced by the EOIR's nationwide directive to continue denying bond jurisdiction, despite class action challenges in California, Washington, and Michigan.¹ Given these circumstances, requiring administrative exhaustion would serve no purpose other than to delay relief, as the administrative remedies are unavailable and futile. Petitioner is therefore entitled to bypass administrative exhaustion and seek relief directly in this Court.

Fourth, Respondents cite the recent decision by Judge McFarland of this Court, *Bartolon v. Bondi*, 1:25-cv-747, LEXIS 261729 (S.D. Ohio Dec. 18, 2025). In *Bartolon*, the court concluded that the petitioner was required to exhaust administrative remedies. That conclusion, however, overlooks not only nationwide precedent holding that exhaustion is not required in habeas

¹ There was a bond hearing today, December 22, 2025, in Cleveland Immigration Court with IJ Drucker and DHS Norm Schroth, where DHS continued to argue that IJs have no jurisdiction despite December 18, 2025 final judgement on behalf of the nationwide class in Maldonado Bautista, declaring the rights of class members and setting aside the DHS policy.

proceedings challenging unlawful detention—even where ultimate habeas relief may not be granted—but also this Court’s own recent decision. Indeed, in *Coronado v. Secretary, Department of Homeland Security*, No. 1:25-cv-831, 2025 U.S. Dist. LEXIS 258690 (S.D. Ohio Dec. 15, 2025), this Court expressly found that exhaustion was not required because no statute or regulation mandated it.

The court in *Bartolon* further reasoned that “this Court has insufficient evidence before it to conclude that ‘the risk of irreparable harm to Petitioner[] outweighs the importance of requiring exhaustion under the circumstances presented.’” *Bartolon*, LEXIS 261729 at 23 (citations omitted). This reasoning similarly overlooks the constitutional interest in physical liberty itself, which the Supreme Court has recognized as a core and irreparable interest. As the Supreme Court explained in *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 Fifth Amendment] Clause protects.” Continued detention, by its nature, inflicts irreparable harm, and thus weighs heavily against imposing a judicially created exhaustion requirement absent a clear statutory mandate.

Finally, declarations from Ohio immigration practitioners confirm that the Cleveland Immigration Court continues to deny jurisdiction over bond hearings, underscoring the futility of any administrative effort. *See* Exhibit C, attorneys’ affidavits of denied bonds because of jurisdiction.

Thus, administrative exhaustion is not required where, as here, the petitioner has no realistic possibility of obtaining relief through the administrative process. The futility of

administrative remedies is clear, and judicial intervention is the only meaningful avenue for protecting Petitioner's rights.

II. Petitioner's Detention is governed by 8 U.S.C. § 1226(a)

The Respondents contend that the Petitioner's detention falls under 8 U.S.C. § 1225(b)(2). This Court should instead conclude that the Petitioner's detention is governed by 8 U.S.C. § 1226(a), based on the statutory text, the Supreme Court's interpretation, and persuasive authority from sister courts within the Sixth Circuit, and Respondent's own primary determination in 2022 that this Petitioner was governed by § 1226.

In *Coronado v. Secretary, Department of Homeland Security*, No. 1:25-cv-831, 2025 U.S. Dist. LEXIS 258690 (S.D. Ohio Dec. 15, 2025), this Court held that 8 U.S.C. § 1225(b)(2) governs detention in cases similar to the Petitioner's. For the reasons set forth below, however, the Petitioner respectfully disagrees with both this Court's and the Respondents' interpretation of the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), as well as their construction of 8 U.S.C. §§ 1225(b)(2) and 1226(a).

a. The Supreme Court clarified in *Jennings* that § 1226 governs cases of detentions such as the present

From the outset of its decision, Justice Alito drew a clear distinction between noncitizens who are *arriving* at the border and those who are *already present* within the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 285 (2018). This distinction framed the Court's interpretation of the relevant statutory provisions. In Title I, Section A of the opinion, Justice Alito expressly divided the analysis into two categories: "(1) who may enter the country and (2) who may stay here after entering." *Id.* at 286.

When interpreting the statutory provisions governing who may enter the country, Justice Alito turned to 8 U.S.C. § 1225 and clarified the circumstances under which that section applies. He explained that, “[u]nder (...) 8 U.S.C. § 1225, an alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant for admission.’” *Id.* at 287. Justice Alito further explained that applicants for admission fall into two categories: those governed by § 1225(b)(1) and those governed by § 1225(b)(2). Section 1225(b)(1) applies to noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, whereas § 1225(b)(2) is broader and functions as a catchall provision for applicants for admission not covered by § 1225(b)(1). *Id.*

Up to this point, a surface reading of *Jennings* could suggest that the Petitioner’s detention is governed by § 1225. However, the Supreme Court subsequently emphasized an important limitation on the scope of that provision. Justice Alito noted that “§ 1225(b) applies primarily to aliens seeking entry into the United States.” *Id.* at 297 (emphasis added). Before addressing what “seeking entry” means and how that concept applies in the present case, it is necessary to examine the Court’s interpretation of 8 U.S.C. § 1226 in *Jennings*.

This Court in *Coronado*, LEXIS 258690 at 26 decided the following:

“The portion of *Jennings* on which [Petitioner] (and courts like those cited above) relies in fact refers only to those aliens who are in the country *lawfully*. (...) Consider the opening sentence to that section of the opinion: “Even once inside the United States, aliens do not have an absolute right to remain here.” *Id.* That phrasing—referring to aliens who do not have an “absolute right” to remain—suggests that the sentence is directed at aliens whose entry into this country at least created a contingent right to remain—i.e., those who were lawfully admitted.”

The Petitioner respectfully differs from this reading because it omits the lines that immediately follow the cited passage. Justice Alito continued:

“For example, an alien present in the country may still be removed if he or she falls ‘within one or more . . . classes of deportable aliens.’ §1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission. See §§1227(a)(1), (2).” *Jennings*, 583 at 288.

Justice Alito’s point in *Jennings* was that noncitizens who are already present in the United States—regardless of the manner of their entry—may nonetheless have their continued presence curtailed through charges of deportability under 8 U.S.C. § 1227. This deportability framework is distinct from § 1225, which governs admissibility determinations and applies to arriving aliens.

This distinction ultimately led the Court in *Jennings* to differentiate between the detention authorities provided in 8 U.S.C. §§ 1225 and 1226:

“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) and (c)**.” (emphasis added) *Jennings*, 583 at 589.

Additional support for this interpretation of *Jennings* is found in the government’s supplemental briefing in that case. See *Jennings*, Supplemental Brief for Petitioners, 2017 WL 430387, at 12. When addressing which noncitizens were eligible for bond, the petitioners expressly stated:

Section 1226(a): Bond Hearings. Section 1226(a) governs the detention and release of other aliens arrested inside the United States. 8 U.S.C. 1226(a). This encompasses aliens in a wide variety of circumstances, including **those who are present after entering illegally**; aliens who were lawfully admitted but overstayed a visa; and aliens who committed a crime that rendered them removable (but not subject to mandatory detention). See 8 U.S.C. 1227. (Emphasis added).

These interpretations are not merely historical; they have been expressly adopted by sister district courts within the Sixth Circuit. *Sevilla v. Noem*, No. 1:25-cv-1325, 2025 U.S. Dist. LEXIS 225791, at 15 (W.D. Mich. Nov. 17, 2025) (citing *Jennings*, 583 U.S. at 289) (“Section 1226(a), on the other hand, “authorizes the Government to detain certain aliens already in the country

pending the outcome of removal proceedings.”). Similarly, in *Chavez v. Director of Detroit Field Office*, No. 4:25-cv-2061, 2025 U.S. Dist. LEXIS 224173 (N.D. Ohio Nov. 14, 2025), the court held that “[r]ather, as an immigrant arrested and detained while ‘already in the country[,]’ *Jennings*, 583 U.S. at 289, Chavez falls more aptly within § 1226(a)’s default rule.” *Id.* Finally, in *Roman v. Olson*, No. 25-169-DLB-CJS, 2025 U.S. Dist. LEXIS 230182 (E.D. Ky. Nov. 24, 2025), the court concluded that “[t]his supports this Court’s conclusion, and reaffirms the Supreme Court’s determination in *Jennings v. Rodriguez*, that § 1226(a) applies to aliens already present in the United States, while § 1225(b)(2)(A) applies to arriving aliens.”

Furthermore, as highlighted by the court in *Rodriguez v. Bostock*, No. 3:25-cv-05240, 2025 U.S. Dist. LEXIS 78395, at 1260 (W.D. Mich. Apr. 24, 2025), in discussing the congressional history underlying the enactment of IIRIRA, “Before IIRIRA passed, the predecessor statute to Section 1226(a) governed deportation proceedings for all noncitizens arrested within the United States.” Upon the passage of IIRIRA, Congress explained that the new provision—now codified at § 1226(a)—restated the existing authority of the Attorney General to arrest, detain, and release on bond a noncitizen who is not lawfully present in the United States. *Rodriguez*, 2025 U.S. Dist. LEXIS 78395, at 1260 (citing H.R. Rep. No. 104-469, pt. 1, at 229); see also *Chavez*, 2025 U.S. Dist. LEXIS 224173, at 15–16.

Accordingly, the Supreme Court’s definition and differentiation of 8 U.S.C. §§ 1225 and 1226 in *Jennings*, as reinforced by persuasive authority from sister courts and confirmed by congressional history, squarely supports the Petitioner’s interpretation.

b. What “Seeking admission” means under the statutory context

Having addressed the Petitioner’s interpretation of *Jennings* and explained why it diverges from both this Court’s analysis in *Coronado* and the Respondents’ position, it is essential to determine what the phrase “seeking admission” means in the context of 8 U.S.C. § 1225 and §1226.

In *Coronado*, this Court concluded that “the Court is not convinced that the term ‘alien seeking admission’ refers to a subset of the category ‘alien who is an applicant for admission.’ 8 U.S.C. § 1225(b)(2)(A). Rather, the Court concludes that the more natural reading is that the phrase ‘alien seeking admission’ is just another way of saying ‘alien who is an applicant for admission.’” *Coronado*, 2025 U.S. Dist. LEXIS 258690, at 22. In reaching this conclusion, the Court relied on the interpretive guidance set forth in *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017), which instructs courts to begin statutory interpretation with the plain text. Applying that approach, the Court determined that “§ 1225(b)(2) and § 1226(a) ineluctably points to the conclusion that the former, rather than the latter, controls here.” *Coronado*, 2025 U.S. Dist. LEXIS 258690, at 22.

The difficulty with this reading, however, is that it overlooks the ambiguity created when the relevant terminology is read in the context of the statute as a whole. *Sevilla v. Noem*, No. 1:25-cv-1325, 2025 U.S. Dist. LEXIS 225791, at 16 (W.D. Mich. Nov. 17, 2025) (citing *King v. Burwell*, 576 U.S. 473, 486 (2015)). As the court in *Sevilla* explained, § 1225(b)(2) first refers to “applicant for admission” and then shifts to the distinct phrase “alien seeking admission.” This “Reading of § 1225 would render the remaining qualifier of ‘an alien seeking admission’ entirely unnecessary.” *Sevilla*, 2025 U.S. Dist. LEXIS 225791, at 17. Moreover, where Congress deliberately uses different terms within the same statutory provision, it is reasonable to presume that it intended those terms to carry different meanings. *Id.* at 18; see also *Pulsifer v. United States*,

601 U.S. 124, 149 (2024) (“In a given statute, the same term usually has the same meaning and different terms usually have different meanings.”).

The Petitioner’s interpretation of 8 U.S.C. § 1225(b)(2) is consistent with that adopted by several sister courts. In the context of § 1225, the term “applicant for admission” requires that a noncitizen be actively requesting admission, because the statutory language uses the present participle “seeking.” *Sevilla v. Noem*, 2025 U.S. Dist. LEXIS 225791, at 18–19 (“The plain ordinary meaning of ‘seeking’ means ‘asking for.’ (...) It is a present participle, which ‘necessarily implies some sort of present-tense action.’ (...) However, [p]etitioner is not actively seeking to lawfully cross into the territorial limits of the United States because he already entered the United States (...)”) (citations omitted). Likewise, in *Roman v. Olson*, the court emphasized that “[t]he use of the present tense progressive term ‘seeking’ ‘implies action.’ (...) it could not be said that [p]etitioner, a noncitizen who was residing here for (...) years was ‘actively seeking admission.’” *Roman*, 2025 U.S. Dist. LEXIS 230182, at 9 (citations omitted). Similarly, in *Lopez v. Raycraft*, the court observed that “Indeed, it would distort the words of the statute to state that one who has been in the United States since 1998 is seeking to enter it.” *Lopez*, 2025 U.S. Dist. LEXIS 231264, No. 4:25CV2449, at 11 (N.D. Ohio Nov. 25, 2025).

This Court in *Coronado* previously rejected this interpretation, reasoning that “(...) the more natural reading is that the phrase ‘alien seeking admission’ is just another way of saying ‘alien who is an applicant for admission.’ After all, in normal usage, someone who is an ‘applicant for admission’ is also necessarily ‘seeking admission.’” *Coronado*, 2025 U.S. Dist. LEXIS 258690, at 22. That interpretation, however, does not account for the Supreme Court’s guidance in *Pulsifer*. Statutory construction does not always mirror the conventions of ordinary prose, and

“normal usage” alone cannot resolve the meaning of § 1225(b)(2)(A). As *Pulsifer* makes clear, the Supreme Court has not only reaffirmed that different statutory terms usually carry different meanings, but it has also recognized that Congress is not expected to draft with perfect clarity and that statutes are “routinely construed (...) to have a particular meaning even as we acknowledge that Congress could have expressed itself more clearly.” *Pulsifer v. United States*, 601 U.S. 124, 137–138 (2024) (citing *Luna Torres v. Lynch*, 578 U.S. 452, 472 (2016)).

To illustrate its interpretation, the Court in *Coronado* relied on an everyday analogy, reasoning that an “applicant for admission” to a university is necessarily “seeking admission” to that institution. *Coronado*, 2025 U.S. Dist. LEXIS 258690, at 22. That analogy, however, is inapposite. It presumes, at the outset, that the individual intends to be formally admitted and is actively pursuing that admission in the present tense. The analogy therefore assumes the very point in dispute—namely, that the individual is currently seeking admission.

By contrast, when the issue is framed through a more precise real-world comparison, courts have reached a different conclusion. In *Benitez v. Francis*, No. 12 Civ. 5937, 2025 U.S. Dist. LEXIS 157214, at 21 (S.D.N.Y. Aug. 13, 2025), the court employed the following example:

[S]omeone 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. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as “seeking admission” (or “seeking” “lawful entry”) at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there.

This reading of 8 U.S.C. § 1225(b)(2)(A) is further strengthened when the provision is considered in the context of the statute as a whole. The Supreme Court has recognized that section titles can provide insight into congressional intent. *Yates v. United States*, 574 U.S. 528, 539 (2015)

(“While these headings are not commanding, they supply cues that Congress did not intend ‘tangible object’ (...).”). The same interpretive approach was applied by the court in *Barrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 U.S. Dist. LEXIS 184356, at 8 (W.D. Ky. Sep. 19, 2025), which observed that “Section 1225 is titled: ‘Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.’ The added word of ‘arriving’ indicates that the statute governs ‘arriving’ noncitizens, not those present already.” Under this reading, the expression “seeking admission” is neither a subset of nor a replacement for “applicant for admission.” Instead, “seeking admission” functions to distinguish an applicant for admission from other noncitizens who may be present in different circumstances, such as those already within the United States.

Coronado also reasoned that, under this reading of § 1225, immigration officers would be required to make two determinations: whether the noncitizen is “seeking admission” and whether the noncitizen is entitled to be admitted. *Coronado*, 2025 U.S. Dist. LEXIS 258690, at 23. While this interpretation aligns to some degree with the grammatical plain meaning, it overlooks the practical application of the statute. In real-world scenarios at a port of entry—the situations § 1225 is designed to govern—any noncitizen appearing before an immigration officer is, by definition, seeking admission. Therefore, no separate determination is actually necessary.

Accordingly, the term “seeking admission” does not constitute a subset of “applicant for admission,” nor does it impose additional obligations on immigration officers conducting inspections under § 1225.

c. Laken Riley Act, 8 U.S.C. § 1226(c)(1) works as an interpretation support of the Petitioner's reading of § 1225 and §1226

The Laken Riley Act added the following provisions under 8 U.S.C. § 1226(c)(1)(E)(i)-(ii): “The Attorney General shall take into custody any alien who—is inadmissible under paragraph (6)(A) (...) of section 1182(a) of this title; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts with (...)”. Section 1182(a)(6)(A)(i) provides that “An alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, is inadmissible.” If Congress had intended § 1226 to apply exclusively to lawfully admitted aliens, it would not have found it necessary to carve out a specific provision within § 1226 for unadmitted aliens. Under the Respondents’ and *Coronado*’s reading, § 1225 alone would suffice, since mandatory detention already applies to unadmitted aliens, regardless of the time or place of their detention. This renders § 1226, and the modifications introduced by the Laken Riley Act, superfluous.

Coronado rejected this interpretation, explaining that “1226(c) does not merely require detention. Instead, it affirmatively instructs the Attorney General to take into custody (as well as detain) any aliens who meet the two criteria.” *Coronado*, 2025 U.S. Dist. LEXIS 258690, at 29. This distinction, however, ignores the practical reality that in the immigration context, “detention” and “take into custody” have the same operative effect. Moreover, when discussing § 1226(c), the Supreme Court has consistently treated the Attorney General’s actions as detention, without distinguishing it from “take into custody” language. *Demore v. Hyung Joon Kim*, 538 U.S. 510, 517–518 (2003) (“Section 1226(c) mandates detention during removal proceedings for a limited

class of deportable aliens (...)). Notably, although *Demore* predates the enactment of the Laken Riley Act, the language “take into custody” was already part of the statute.

Lastly, Respondents note that redundancies are common in statutory drafting. Return of Writ, ECF 7, PageID 95, citing *Barton v. Williams*, 590 U.S. at 239. That general principle, however, cannot be applied in isolation and must be evaluated in light of the statute’s structure as a whole. Here, Congress deliberately placed the provisions of the Laken Riley Act within § 1226, a section that governs the detention of noncitizens who are already present in the United States. That placement reflects an intent to address a category of aliens defined by their presence in the country, regardless of their manner of entry.

Under Respondents’ interpretation, however, the same class of unadmitted aliens already present in the United States would be fully governed by § 1225, rendering Congress’s decision to amend § 1226 superfluous. If Congress had intended merely to regulate unadmitted aliens present in the country under the existing § 1225 framework, it would have enacted the Laken Riley Act’s amendments there, rather than inserting them into § 1226. Statutory structure therefore confirms that Congress intended the Laken Riley Act to reach beyond the scope of § 1225 and to operate independently of Respondents’ redundancy-based theory.

Accordingly, the enactment of the Laken Riley Act, and its modifications to 8 U.S.C. § 1226(c), provide additional support for the conclusion that Congress intended § 1226 to govern aliens already present in the United States, regardless of the manner in which they entered the country.

d. Cases that fall under section 1225(b)(2)(A)

The Petitioner recognizes that his interpretation of §§ 1225(b)(2)(A) and 1226(a) could create questions regarding which noncitizens fall under § 1225(b)(2)(A), or whether the Petitioner's reading might render the latter provision superfluous.

As discussed *supra* and in *Jennings*, arriving aliens are the category covered by § 1225(b)(2)(A). *Jennings*, 583 U.S. at 589 (“U.S. immigration law authorizes the Government to detain certain **aliens seeking admission into the country under §§1225(b)(1) and (b)(2).**”) (emphasis added). Under the Petitioner's interpretation, § 1226(a) operates as the catch-all provision for non-admitted aliens already present in the United States, while § 1225(b)(2)(A) functions as the exception for those actively seeking admission at the border.

The Western District of Kentucky in *Ramirez v. Lewis*, No. 4:25-cv-143-RGJ, 2025 U.S. Dist. LEXIS 256601 (W.D. Ky. Dec. 11, 2025), further clarifies the scope of § 1225(b)(2)(A) while expressing disagreement with the interpretation adopted in *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 U.S. Dist. LEXIS 221830 (E.D. Mo. Nov. 10, 2025). As the court observed:

“The Olalde court ignores the text of the title, which supports a narrower view of the statute. (...) The reference to ‘arriving’ in the title, in conjuncture with the verb ‘seek’, in ‘seeking admission’ found in Section 1225(b)(2)(A) ‘reinforces what the text’s (...) verbs independently suggest.’ That is (...) [a] narrow application of Section 1225, primarily to ‘arriving’ noncitizens who are then ‘seeking’ admission.” *Ramirez*, 2025 U.S. Dist. LEXIS 256601, at 27.

This interpretation aligns with the Petitioner's view that § 1225(b)(2)(A) applies narrowly to arriving aliens actively seeking admission, while § 1226(a) covers all other noncitizens already present in the United States.

Some real-life scenarios that fall within the scope of § 1225(b)(2)(A) include the following:

- Individuals seeking parole into the United States pursuant to 8 U.S.C. § 1182(d)(5).
- Noncitizens with approved visas (e.g., tourists or students) who are being inspected by an immigration officer.
- Aliens who do not possess any form of admission document and are not seeking parole, but who are attempting to enter the United States and are being inspected by an immigration officer.

In sum, § 1225(b)(2)(A) governs any person seeking admission into the United States who is under the review of an immigration officer, who must determine whether the person is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Once a person has entered the country and is therefore outside the scope of § 1225(b)(2)(A), the applicable detention authority is § 1226(a).

III. Fifth Amendment Due Process clause

- a. Altering the Petitioner’s detention determination without any violation of the release conditions creates a risk of violating the Petitioner’s due process rights under the Fifth Amendment.**

The Respondents assert that the Petitioner’s detention is authorized under 8 U.S.C. § 1225(b)(2)(A). This assertion is flawed because the Petitioner had previously been detained and subsequently released, at which time his detention was classified under INA § 236 (8 U.S.C. § 1226(a)). When the Petitioner entered the United States on December 16, 2022, he was detained by immigration officers and an NTA was issued. (NTA, ECF 7-1, PageID 97-99). On December 27, 2022—eleven days later—he was released on his own recognizance. The document provided to him, ICE Form I-220A, clearly stated:

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions[.]

See Exhibit A, ICE Form I-220A, Order of Release on Recognizance. Moreover, the custody determination conducted by DHS back in 2022 contains the same decision that the Petitioner was detained and released pursuant of INA 236. *See* Exhibit B, DHS Form I-286 Notice of Custody Determination:

Pursuant to the authority contained in **section 236** of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case (...)

These documents clearly indicate that the detention determination under which the Petitioner was held was 8 U.S.C. § 1226(a) (INA 236). It also outlined the three conditions the Petitioner was required to comply with in order to maintain his release: (1) report for any hearing or interview as directed by ICE or EOIR; (2) surrender for removal from the United States if so ordered; and (3) report in person to a Duty Officer as directed. *See* Exhibit A, ICE Form I-220A, Order of Release on Recognizance.

This case presents a fact pattern similar to other cases involving aliens who were initially detained under § 1226, with consistent treatment, only to have the basis of their detention later shifted to § 1225. In *Aceros v. Kaiser*, No. 25-cv-06924, 2025 U.S. Dist. LEXIS 179594, at 20 (N.D. Cal. Sep. 12, 2025), the court observed:

“In 2024, the Government placed [petitioner] in normal removal proceedings under Sections §1229, not §1225(b)(1), and chose to release [petitioner] on conditional parole under §1226(a), not hold [petitioner] in detention under §1225(b)(2).”

Similarly, in *Benitez v. Francis*, No. 25 Civ. 5937, 2025 U.S. Dist. LEXIS 157214, at 14 (S.D.N.Y. Aug. 13, 2025), the court held:

“The Court cannot credit Respondents’ new position as to the basis for [petitioner]’s detention, which was adopted post hoc and raised for the first time in this litigation. (...) These facts, taken together, can support only one conclusion—that [the petitioner] was not mandatorily detained as a noncitizen ‘seeking admission’ under § 1225(b), but rather as someone ‘already in the country,’ *Jennings*, 583 U.S. at 288-89, pursuant to Respondents’ discretionary authority under § 1226(a).”

The Supreme Court has previously recognized that changes in position by administrative authorities require the issuance of a new decision before relying on new reasons. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22–23 (2020) (citing *Bowen v. American Hospital Assn.*, 476 U.S. 610, 643 (1986)). This procedure ensures “that parties and the public can respond fully and in a timely manner to an agency’s exercise of authority.” *Dep’t of Homeland Sec.*, 591 U.S. at 23.

Here, the Respondents’ change in detention determination violates the Petitioner’s due process rights under the Fifth Amendment. The Petitioner’s release under § 1226(a) “created a reliance interest in [his] continued freedom, so long as [he] abided by the terms of [his] release.” *Aceros*, 2025 U.S. Dist. LEXIS 179594, at 20. By switching the basis for detention without proper procedural protections, the Respondents infringed upon the Petitioner’s protected legitimate freedom interest under the Fifth Amendment.

IV. Sister circuit courts precedent

As discussed throughout this brief, this Court, as reflected in *Coronado*, has not followed the overwhelming trend among district courts nationwide granting writs of habeas corpus. *Coronado*, 2025 U.S. Dist. LEXIS 258690, at 19. The Petitioner respectfully requests that this Court reconsider its position in light of the decisions of sister district courts within the Sixth Circuit. The Petitioner’s interpretation not only reflects the more widely adopted view, but is also supported by multiple arguments recognized across different district courts, including, but not

limited to: *Ramirez v. Lewis*, No. 4:25-cv-143-RGJ, 2025 U.S. Dist. LEXIS 256601 (W.D. Ky. Dec. 11, 2025); *Chavez v. Director of Detroit Field Office*, No. 4:25-cv-2061, 2025 U.S. Dist. LEXIS 224173 (N.D. Ohio Nov. 14, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240, 2025 U.S. Dist. LEXIS 78395, at 1260 (W.D. Mich. Apr. 24, 2025); *Rodriguez v. Raycraft*, No. 2:25-cv-13606-TGB-KGA, 2025 U.S. Dist. LEXIS 257926 (E.D. Mich. Dec. 12, 2025); *Roman v. Olson*, No. 25-169-DLB-CJS, 2025 U.S. Dist. LEXIS 230182 (E.D. Ky. Nov. 24, 2025); and *Lopez v. Ladwig*, No. 2:25-cv-02962-SHL-ATC (W.D. Tenn. Oct. 31, 2025).

CONCLUSION

For the foregoing reasons, this Court has jurisdiction to grant habeas relief and should either release the Petitioner or, alternatively, order the Respondent to provide a bond hearing.

Respectfully submitted,

____/s//Alisher Kassym//_____

Alisher Kassym, Esq.
Counsel for Petitioner
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DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE

File No.:



Name: PHURTSKHVANIDZE, DAVITI

Date: December 27, 2022

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

- ☒ You must report for any hearing or interview as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review.
- ☒ You must surrender for removal from the United States if so ordered.
- ☒ You must report in (writing) (person) to Duty officer at See I-831 on 01/31/2023 08:30 as directed.

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

- ☒ You must not change your place of residence without first securing written permission from the officer listed above.
- ☒ You must not violate any local, State or Federal laws or ordinances.
- ☒ You must assist Immigration and Customs Enforcement in obtaining any necessary travel documents.
- ☐ Other: *Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention.*

If fitted with a U.S. Immigration and Customs Enforcement GPS tracking ankle bracelet, do not tamper with or remove the device. Under federal law, it is a crime to willfully damage or attempt to damage property of the United States. Damaging or attempting to damage the GPS tracking ankle bracelet or any of its associated equipment (including, but not limited to, the charging station, batteries, power cords, etc.) may result in your arrest, detention, and prosecution under 18 U.S.C. § 1361 and/or 18 U.S.C. § 641, each punishable by a fine, up to ten years imprisonment, or both.

- ☒ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement.

BASZTURA, MATTHEW

(Name and Title of ICE Official)

Alien's Acknowledgement of Conditions of Release under an Order of Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

(Signature of ICE Official Serving Order)

12/28/2022

Date

(Signature of Alien)

I hereby cancel this order of release because:

- ☐ The alien failed to comply with the conditions of release.
- ☐ The alien was taken into custody for removal.

(Signature of ICE Official Cancelling Order)

Date

Alien Copy

DEPARTMENT OF HOMELAND SECURITY
NOTICE OF CUSTODY DETERMINATION

Alien's Name: PHURTSKHVANIDZE, DAVITI

A-File Number [REDACTED]

Date: 12/27/2022

Event ID: [REDACTED]

Subject ID: [REDACTED]

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

- ☐ Detained by the Department of Homeland Security.
- ☒ Released (check all that apply):
- ☐ Under bond in the amount of \$ _____
- ☒ On your own recognizance.
- ☒ Under other conditions. [Additional document(s) will be provided.]

BASZTURA, MATTHEW

Name and Signature of Authorized Officer

12/27/2022 10:23 AM

Date and Time of Custody Determination

SDDO

Title

3026 Hwy 252 East PO Box 248 Folkston, GA US 31537

Office Location/Address

You may request a review of this custody determination by an immigration judge.

- ☒ I acknowledge receipt of this notification, and
- ☐ I do request an immigration judge review of this custody determination.
- ☒ I do not request an immigration judge review of this custody determination.

[Signature]
Signature of Alien

12/28/2022
Date

The contents of this notice were read to PHURTSKHVANIDZE, DAVITI in the ENGLISH language.
(Name of Alien) (Name of Language)

RINE, A 6814

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

DO

Title

DECLARATION OF Krishna J Mahadevan

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO WESTERN
DIVISION**

I, Krishna J Mahadevan, hereby declare and state as follows:

1. I am an attorney at law licensed to practice in the State of Ohio. My business address is Jorge H Martinez Attorney at Law located at 5770 Gateway Blvd Suite 202 Mason OH 45040.
2. I have been practicing immigration law for approximately 6 years. I am a member in good standing of the bar.
3. My practice primarily involves representing noncitizens in removal proceedings before the Executive Office for Immigration Review (EOIR). I regularly appear before the Immigration Courts in Cleveland and Louisville/Memphis.
4. I represent, or have attempted to represent, numerous noncitizens who entered the United States without inspection (EWI) and were subsequently apprehended by immigration officials within the interior of the United States.
5. Following the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and the Department of Homeland Security's related policy guidance, I have observed a systemic shift in how Immigration Judges adjudicate custody for this category of respondents.
6. Specifically, in multiple cases involving clients who were apprehended in the interior of the United States, I have filed Motions for Custody Redetermination (Bond) pursuant to 8 U.S.C. § 1226(a), arguing that my clients are entitled to an individualized assessment of flight risk and danger to the community.
7. In response to these motions, Immigration Judges in the Cleveland Immigration Court have denied the motion for bond categorically, issuing orders stating that the Immigration Judge lacks jurisdiction to redetermine custody because the respondent is an "applicant for admission" detained under 8 U.S.C. § 1225(b)(2), citing *Matter of Yajure-Hurtado*.
8. Based on my direct experience and practice before these Immigration Courts, it is my professional assessment that filing further requests for bond hearings for similarly situated clients (interior apprehensions classified as "arriving aliens") is futile. The Immigration Judges consider themselves bound by *Matter of Yajure-Hurtado* to deny jurisdiction, regardless of the individual equities or facts of the respondent's case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 12/05/2025

s/ Krishna J Mahadevan, Attorney at Law

Jorge H Martinez Attorney at Law

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

I, attorney Anna A. Korneeva, hereby declare and state as follows:

1. I am an attorney at law licensed to practice in the States of Ohio and Kentucky. My business address is 810 Sycamore St., Floor 3, Cincinnati, OH 45202.
2. I have been practicing immigration law for approximately 6 years. I am a member in good standing of the bar.
3. My practice involves representing noncitizens in removal proceedings before the Executive Office for Immigration Review (EOIR). I regularly appear before the Immigration Court in Cleveland, OH.
4. I represent, or have attempted to represent, numerous noncitizens who entered the United States without inspection (EWI) and were subsequently apprehended by immigration officials within the interior of the United States.
5. Following the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and the Department of Homeland Security's related policy guidance, I have observed a systemic shift in how Immigration Judges adjudicate custody for this category of respondents.
6. Specifically, in cases involving Respondents who were apprehended in the interior of the United States, I observed other attorneys argue Motions for Custody Redetermination (Bond) pursuant to 8 U.S.C. § 1226(a), arguing that their clients are entitled to an individualized assessment of flight risk and danger to the community.
7. In response to these motions, I observed that the Immigration Judges in the Cleveland Immigration Court have denied the motions for bond categorically, issuing orders stating that the Immigration Judge lacks jurisdiction to redetermine custody because the respondent is an "applicant for admission" detained under 8 U.S.C. § 1225(b)(2), citing *Matter of Yajure-Hurtado*.
8. Based on my experience and practice before the Cleveland Immigration Court, as well as based on the experience of my colleagues, it is my professional assessment that filing further requests for bond hearings for similarly situated clients (interior apprehensions classified as "arriving aliens") is futile. The Immigration Judges consider themselves bound by *Matter of Yajure-Hurtado* to deny jurisdiction, regardless of the individual equities or facts of the respondent's case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 8, 2025.



Anna A. Korneeva, Esq.

DECLARATION OF NAZLY MAMEDOVA, Esq.

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

I, NAZLY MAMEDOVA, hereby declare and state as follows:

1. I am an attorney at law licensed to practice in the State of **Kentucky**. My business address is **11260 Chester Rd, Ste 310, Cincinnati, OH 45246**.
2. I have been practicing immigration law for approximately **10** years. I am a member in good standing of the bar.
3. My practice primarily involves representing noncitizens in removal proceedings before the Executive Office for Immigration Review (EOIR). I regularly appear before the Immigration Courts in **Chicago, IL; Cleveland, OH; Conroe, TX; Memphis, TN; Indianapolis, IN, New York, NY and others**.
4. I represent, or have attempted to represent, numerous noncitizens who entered the United States without inspection (EWI) and were subsequently apprehended by immigration officials within the interior of the United States.
5. Following the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and the Department of Homeland Security's related policy guidance, I have observed a systemic shift in how Immigration Judges adjudicate custody for this category of respondents.
6. Specifically, in **multiple** cases involving clients who were apprehended in the interior of the United States, I have filed Motions for Custody Redetermination (Bond) pursuant to 8 U.S.C. § 1226(a), arguing that my clients are entitled to an individualized assessment of flight risk and danger to the community.
7. In response to these motions, Immigration Judges in the **Cleveland, OH; Conroe, TX; Memphis, TN; and Indianapolis, IN** Immigration Court have:

Denied the motion for bond categorically, issuing orders stating that the Immigration Judge lacks jurisdiction to redetermine custody because the respondent is an "applicant for admission" detained under 8 U.S.C. § 1225(b)(2), citing *Matter of Yajure-Hurtado*.

8. Based on my direct experience and practice before these Immigration Courts, it is my professional assessment that filing further requests for bond hearings for similarly situated clients (interior apprehensions classified as "arriving aliens") is futile. The Immigration Judges consider themselves bound by *Matter of Yajure-Hurtado* to deny jurisdiction, regardless of the individual equities or facts of the respondent's case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **November 25, 2025**.

Nazly Mamedova

Digitally signed by Nazly Mamedova

Date: 2025.11.25 12:11:48 -05'00'

Nazly Mamedova

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DECLARATION OF VIRAB KHACHATRYAN

United States District Court Southern District of Ohio Western Division

I, VIRAB KHACHATRYAN, hereby declare and state as follows:

1. I am an attorney at law licensed to practice in the State of **New York**. My business address is **11260 Chester Road, Cincinnati, Ohio 45246**.
2. I have been practicing immigration law for approximately **one** year. I am a member in good standing of the bar.
3. My practice primarily involves representing noncitizens in removal proceedings before the Executive Office for Immigration Review (EOIR). I regularly appear before the Immigration Courts in **Cleveland, OH**.
4. I represent, or have attempted to represent, numerous noncitizens who entered the United States without inspection (EWI) and were subsequently apprehended by immigration officials within the interior of the United States.
5. Following the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and the Department of Homeland Security's related policy guidance, I have observed a systemic shift in how Immigration Judges adjudicate custody for this category of respondents.
6. Specifically, in **four** cases involving clients who were apprehended in the interior of the United States, I did not file Motions for Custody Redetermination (Bond) pursuant to 8 U.S.C. § 1226(a), considering that, after thorough investigation, discussion with other attorneys, and conversation with other detainees, it was not moral or of good faith to charge clients for a Motion that was very unlikely to succeed.
7. Based on my direct experience and practice before these Immigration Courts, it is my professional assessment that filing further requests for bond hearings for similarly situated clients (interior apprehensions classified as "arriving aliens") is futile. The Immigration Judges consider themselves bound by *Matter of Yajure-Hurtado* to deny jurisdiction, regardless of the individual equities or facts of the respondent's case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **12/08/2025**.

Virab Khachatryan Law Office of Nazly Mamedova

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2025, I electronically filed the foregoing Petitioner's Reply to Return of Writ of Habeas Corpus and all accompanying exhibits with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record, including:

CHRISTOPHER R. YATES (0064776)
Assistant United States Attorney
Attorney for Respondents
303 Marconi Boulevard,
Suite 200 Columbus, Ohio 43215
Office: (614) 469-5715
E-mail: christopher.yates@usdoj.gov

Dated: December 22, 2025

Respectfully submitted,

____/s//Alisher Kassym//_____

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