

United States District Court
Western District of Texas
San Antonio Division

FILED

APR 01 2026

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WESTERN DISTRICT OF TEXAS
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Gustavo Adolfo Galdamez
Petitioner

v.

Pamela Bondi, attorney
General, et al.,
Respondents

Civil Action No.

SA-26-CV-00655-FB

Response TO Respondents

I. Factual Background

My name is Gustavo Adolfo Galdamez, I am a native and citizen of Honduras. I entered the United States near Brownsville, Texas on February 12, 2005 and arrived in the City of San Antonio Texas. I arrived with my family and started working in Construction Building Stoco from February 13, 2005 until August 24, 2025.

In 2013 I was arrested for DWI in Bexar County and turned over to I.C.E., after that I was put under probation "Under Supervision" where I reported to I.C.E. every 6 months. In September 2015 I was involved on a fight with my brother-in-law

and it was reported to the police and charges were filed in November 2015. I reported to I.C.E. "Check-in" as part of the agreement. I was then arrested on a arrest warrant for the fight that happend in September and I was later handed over to the local police and then found guilty on the charges of "AGG Assault with a deadly weapon", then I was released on Bail and "Community Supervision" for 18 months and given "Alternative treatment". I was in the incarceration program then I continued checking-in to immigration every 6 months since 2013, providing all my information including my phone number and addresses where I lived.

I was detained at the I.C.E. offices at 3523 Crosspoint, San Antonio, Texas on August 25, 2025 and then transferred to the South Texas Detention Center on August 26, 2025 and have been detained since for the past 7 months.

II

ICE violated their own regulations on Aug 25, 2025 while reporting to ICE for mandatory check-in and there I have been detained and transferred to South Texas ICE

Processing Center where I am still being held currently. I did not receive any notice of why I have been detained. The pleading filed by respondents make no meaningful points and includes multiple assertions that are not supported by either the facts of this case or any legal authority. To highlight this point, for example submit that "the detention authority in this case is lawful under constitution and applicable provisions of the INA" without ever identifying which portions of the INA applies to my case.

My detention is not pursuant to 8 U.S.C. § 1225 but instead § 1226 who is not admitted and resided in U.S. for over ten years.

III

I disagree with respondents claim that I am to subject to mandatory detention because I contend that respondents have violated INA by including me in the mandatory detention

provisions set forth in 8 U.S.C. § 1225(b)(2). Respondents, however, contend that I meet every element for detention under § 1225(b)(2) and that the statute's structure and history support respondents' interpretation.

The courts conclude that § 1226(a) and not § 1225(b)(2)(A) governs noncitizens, such as me, who have resided in the U.S. for more than ten years when detained and arrested for the reasons set forth by the court's statutory analysis in each of the following cases;

Antela Cobik v. Reynald No. 1:25-cv-1009,
Concheta Bastides v. Noem No. 1:25-cv-1528,
Aleuna Sanchez v. Noem No. 1:25-cv-1442,
Pemagos Robles v. U.S. D.H.S. No. 1:25-cv-1578.

IV. Due Process claims.

My Petition raises three questions:

1. Whether a person living in the U.S.

after entering the country unlawfully is detained under 8 U.S.C. § 1225(b)(2)(A) or under 8 U.S.C. § 1226(a).

2. If a § 1226(a) is the relevant detention provision, whether ICE

detention of a petitioner, undertaken without any individualized consideration, violates my Due Process Rights.

3. If there are due process violations, whether the appropriate remedy is a bond hearing or immediate release. I am detained under 8 U.S.C. § 1226(a) not the mandatory detention provisions of 8 U.S.C. § 1225(A)(1)(A) as respondents argue. Further since I am detained under § 1226(a) my continued detention without any individualized process violates my Due Process Rights. Therefore I must be released immediately from detention.

V Exhaustion of Administrative Remedies

Respondents argue that the proper remedy is a bond hearing before an Immigration Judge and that petitioner must first pursue a challenge before BIA for exhaustion is found to be detained under section 1226(a). However "There is no statutory requirement that

a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."

Rivera Esperanza 2025 U.S. Dist.

Lexis 283384, 2025 WL 3573983 *8

(quoting *Araujo Centas v Shenahan*,
35 F. Supp. 3d 533, 538 (S.D.N.Y. 2012))

Response to opposition to petition
of Habeas Corpus considering recent
Fifth Circuit Proceedings

VI Violation of APA

Respondents violated APA when they revoked my (OSUP) and detained me without notice or explanation.

I am no longer an "arriving non-citizen after having resided in U.S. for over 10 years." In addition, beyond the fact that I have been present in this country for a ten year period (OSUP). Also I have been released and admitted to us. on (OSUP). Therefore, I could not be a subject to § 1225.

VII

The significant liberty interest stake. The high risk of erroneous deprivation and respondents failure to demonstrate my detention was required to advance any legitimate government interest in preventing danger to the community or insuring appearance to removal proceedings. Respondents failure to provide me with notice or an interview with an opportunity to be heard, violates my Fifth Amendment Right to procedural due process. Thus, my detention was unlawful from its inception. Not with standing respondents efforts to postpone rationalization based on its expansive interpretation of section 8 U.S.C. § 1225(b)(2). See Lopez Benitez 795 F. Supp. 3d at 486; Rueda Torres, 2025 WL 3168759 * 5. Respondents violated my due process by never serving me with Notice of Revocation of (OSUP), until this response from respondents to my Habeas Corpus petition. I have not been informed of the reasoning behind my detention.

VIII Basis of my detention.

Sections 1225 and 1226 are the two statutes of issue in my case. are the primary provisions of the U.S. code that governs the detention of non citizens prior to an order of removal. Section 1226 "generally governs the process of arresting and detaining (non-citizens present in U.S.) pending their removal" *Tennings v Rodriguez*, 538 U.S. 281, 288, 138 S. Ct. 838, 200 L. Ed. 2d 172 (2018) under section 1226 "an immigrant may be arrested and detained pending a decision on whether the (immigrant) is to be removed from U.S." 8 U.S.C. § 1226 (a). Detention is therefore discretionary and non-citizen may be released upon application on either bond or "conditional parole." 8 U.S.C. § 1226 (a) (2) (b) Critically under 8 C.F.R. 2 1236.1 (d) (1) a non-citizen detained under 1226 may appeal an initial custody determination including the setting of bond by an Immigration Judge. *Benitez v Francis* 795 F. Supp. 3d 175, 484 (S.N.W.Y. 2025)

The distinction (between these two provisions) has great significance because detention under 1225 (b) (2) (A) is with rare exceptions not relevant here are mandefory Cardenas v Almodovar No. 25-CV-9169, Tumba v Francis No. 25-CV-8110, by contrast, extension pending adjudication and allows non-citizens detained thereunder the right to an initial determination as to eligibility for release and the opportunity for a bond hearing upon detention.⁹ Cardenas, 2025 U.S. Dist. Lexis 228008, 2025 WL 325573, at *1 question Tumba, 2025 U.S. Dist. Lexis 219101, 2025 WL 3079014, at *2 (alteration in original) Under administrations of five Presidents including this one in 2016-2020 Section 1225 applied to non-citizens at or near the border. Section 1226 on the other hand applied to those non-citizens found in U.S. without legal status and therefore subject to removal.

Alvarez Ortiz v Fredorn No. 25-CV-960, However on July 8, 2025 ICE's policy shifted radically Berce Moreador v Francis No. 25-CV-8582

"(T)he acting director of ICE, instructed ICE agents that § 1225(b) and not § 1226(a) is applicable immigration authority for all applicants for admission." *Id.*

Since ICE change in position, a growing number of events across the country have confronted the statutory question of whether § 1225 also mandates the detention of non-citizens who are physically present and already living in U.S. In response to this question an overwhelming majority of opinions in this District and others across the country have held that § 1226 not § 1225, governs the process of arresting and detaining non-citizens who are already present in U.S.

Lopez Benitez 795 F. supp. 3d at 484-491,

T.G.O. v Francis No. 25-cv-7233,

Romero v Francis No. 25-cv-8112,

Cay Comes v DeLeon No. 25-cv-9283,

As such in the context of a petition brought under § 1225(b)(1) see

Sidqui v Almondoovar No. 25-cv-9349,

§ 1225(b) applies to an assessment of individuals at the U.S. borders and

ports of entry for individuals seeking admission into the Country, i.e. presenting at arrival not those already in the Country pending the outcome of removal proceedings, which are instead governed by § 1226(a).

More than 160 Federal District Judges in 50 Districts across the Country have addressed this question in more than 350 presenting same facts, "and more than 350 decisions... have now rejected ICE's reading".

Yao, 2025 U.S. Dist. Lexis 281200, 2026 WL 3653433, at *3, *8

I am an Alien residing in U.S. with pending immigration proceedings and according to ICE is a subject to mandatory detention without any Due Process. Thus, I am being detained under the discretionary provisions of § 1226(a).

IX Conclusion

Based on the facts and reasons above, I Plead Your Honor to protect my Due Process and Grant me this Petition of Writ of Habeas Corpus, and Immediately release me

from ICE's custody. Subject
to any conditions of release that
existed prior to my current
detention. Thank you for your
time and consideration.

Respectfully

Gustavo Adolfo Galdames L

03.27.2026

Gustavo Adolfo Galdamez.



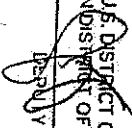
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Gustavo Galarza
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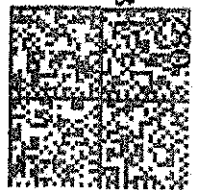
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