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

GILBERT ALONSO-PORTILLO, Petitioner, v. RICHARD JONES, Sheriff of Butler County, *et al.*, Respondents.	Case No. 1:25-cv-00306 Judge Michael R. Barrett Magistrate Judge Kimberly A. Jolson

RETURN OF WRIT

Petitioner Gilbert Alonso-Portillo is currently in ICE custody in Butler County, Ohio pending removal proceedings pursuant to the Immigration and Nationality Act ("INA") § 236 (8 U.S.C. § 1226) and § 240 (8 U.S.C. § 1229a). Petitioner's detention pending removal proceedings is constitutionally permissible. For this and other reasons discussed below, this Court should deny the Petition.

A memorandum follows.

INTRODUCTION

Gilbert Alonso-Portillo ("Petitioner") is a native and citizen of Mexico, unlawfully in the United States, and currently in ICE custody in Butler County, Ohio. (Declaration of Luke Affholter ("ICE"), attached as Exhibit A, at 2, ¶¶3-4; Bond Memorandum, ICE Decl., Ex. 10, at 1.) Petitioner is currently in removal proceedings,

(*Id.* at 3, ¶10), and seeks release on bond from pre-order immigration detention. (Petition for Writ of Habeas Corpus, Doc. 6, PAGEID 38.)

Petitioner asserts in his Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief ("Petition") that he is unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") because of a "warrantless and unconstitutional search of his home, seizure of lawfully possessed firearms, and arrest." (*Id.* at PAGEID 38.)

Federal Respondents oppose Petitioner's release and respectfully request this Court deny the Petition. Petitioner's detention is lawful because he is currently in removal proceedings. *See* INA § 236 (8 U.S.C. § 1226).

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner has been in the United States for approximately 20 years without having been admitted or paroled. (ICE Decl., Ex. A, at 1-2, ¶4; Ex. 2, Notice to Appear, ICE Decl., Ex. 2, at 2), Petitioner, therefore, is an inadmissible alien subject to deportation. (*Id.* at 1; INA § 212(a)(6)(A)(i); § 237 (8 U.S.C § 1227(a)(1)).

In 2007, Petitioner was arrested attempting to enter the United States illegally but permitted to voluntary return to Mexico. ((ICE Decl., Ex. A, at 1-2, ¶4; April 7, 2025 Record of Deportable/Inadmissible Alien, ICE Decl., Ex. 1; 2007 Record, ICE Decl., Ex. 3.)

On April 7, 2025, HSTF Agents obtained an administrative Warrant of Arrest prior to arriving at Petitioner's residence because Petitioner was in the United States

illegally. (ICE Decl., Ex. A, at 2, ¶5; April 7, 2025 Record of Deportable/Inadmissible Alien, ICE Decl., Ex. 1, at 2; Warrant for Arrest 1, Ex. 4.)

Being inadmissible and deportable, an I-200, Warrant of Arrest of Alien was executed by an authorized immigration officer on April 7, 2025 outside of his residence. (ICE Decl., Ex. A, at 2, ¶5, Ex. 2; Warrant of Arrest 1, ICE Decl., Ex. 4; Warrant for Arrest 2, ICE Decl., Ex. 5; Notice of Custody Determination, ICE Decl., Ex. 6.)

At Petitioner's residence, he openly displayed a sign warning the public, "ATTENTION" "THE OWNER OF THE PROPERTY IS ARMED [IMAGE OF HANDGUN] AND PREPARED TO PROTECT LIFE AND PROPERTY FROM CRIMINAL OFFENSE. THERE IS NOTHING INSIDE WORTH RISKING YOUR LIFE FOR!" (FBI Decl., Ex. B, at 2, ¶5; Photograph of Armed Owner Warning Sign, attached as Ex. 1 to the FBI Declaration; ICE Decl., DHS Proposed Exhibits, ICE Decl., Ex. 7, at 3 and 6.)[1]

In response to questioning from a Homeland Security Task Force ("HSTF") member, Petitioner admitted that he illegally in the United States. (FBI Decl., Ex. B, at 2, ¶6.) Petitioner also admitted to owning a handgun and that it was located inside his residence. (*Id.* at 2, ¶8.) He verbally consented to a search of his residence by HSTF. (*Id.*)

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[1] Pursuant to 18 U.S.C. § 922(g)(5), an alien, unlawfully residing in the United States, like Petitioner, is prohibited from possessing firearms. 18 U.S.C. § 922(g)(5)(A).

During a search of Petitioner's residence, HSTF personnel located and seized the following:

1. a Beretta PX4 handgun, .40 caliber;
2. a Pioneer Arms AK-style rifle, 7.62 x 39 caliber; and
3. Over 1,100 of .40 caliber rounds of ammunition.

(FBI Decl., Ex. B, at 3, ¶¶9-10.)

On April 7, 2025, a Notice to Appear was issued for Petitioner initiating removal proceedings. (NTA, ICE Decl., Ex. 2.)

Petitioner moved for reconsideration of his detention, requesting bond, and a hearing was set for April 22, 2025. (Respondent's Memorandum in Support of Custody Determination, ICE Decl., Ex. 8; Affidavit of Petitioner, ICE Decl., Ex. 9.)

On April 22, 2025, a bond hearing was held for Petitioner where the immigration judge denied Petitioner bond because he failed to demonstrate "that he is not a danger to the community." (ICE Decl., Ex. A, at 3, ¶8, Bond Memorandum, Ex. 10, at 2, IJ Order, ICE Decl., Ex. 11.) The U.S. Immigration Judge specifically observed that 18 U.S.C. § 922(g)(5) is a felony and an aggravated felony under the INA. (Bond Memorandum, ICE Decl., Ex. 10, at 2.) At the bond hearing, Petitioner pleaded to the charges in his NTA, admitting he was removable. (ICE Decl., Ex. A, at 3, ¶9; Bond Memorandum, ICE Decl., Ex. 10, at 2.)

Petitioner has appealed the April 22, 2025 bond decision denying Petitioner's release on bond to the Board of Immigration Appeals ("BIA"), and a briefing schedule

was filed on May 21, 2025. (Bond Appeal Briefing Schedule, ICE Decl., Ex. 12.) Briefs were due and filed on June 11, 2025. (*Id.*)

On May 12, 2025, Petitioner filed the Petition for a writ of habeas corpus and other relief. (*Petition*, Doc. 6, PAGEID 36-52.)

On May 27, 2025, Petitioner filed an application for cancellation of his removal. (ICE Decl., Ex. A, at 3, ¶10; Form EOIR-42B, Application, ICE Decl., Ex. 13.) He is scheduled for hearing on the application on July 21, 2025 in Immigration Court. (*Id.*)

Petitioner has been detained by ICE since April 7, 2025, pending removal, pursuant to 8 U.S.C. § 1226(a). *See* 8 U.S.C. § 1182; 8 U.S.C. § 1226(a). Petitioner argues that he should be released from ICE custody pending removal based on the allegation that federal authorities arrested him after a warrantless and unconstitutional search of his home and seized his lawfully possessed firearms, and did so without probable cause, a valid removal order, or criminal charges. (*Petition*, Doc. 6, PAGEID 38.)

Petitioner's argument is without merit.

ARGUMENT

I. This Court Lacks Jurisdiction.

As an initial consideration, 8 U.S.C. § 1226(e) provides that an alien cannot challenge "a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release." *Jennings v. Rodriguez*, 538 U.S. 281, 295 (2018) (citations omitted). An alien may challenge the statutory framework permitting his detention. *Id.* So, to the extent Petitioner is

challenging ICE's decision to arrest and detain him, the Petition must be denied for want of jurisdiction.

District courts in the Sixth Circuit have "retained jurisdiction over due process claims where a habeas petition challenges only the constitutionality of the arrest and detention." *Diaz-Calderon v. Barr*, 535 F.Supp.3d 669, 675 (E.D. Mich. 2020) (citing *Kellici v. Gonzales*, 472 F.3d 416, 419-20 (6th Cir. 2006)); *see also Malam v. Adducci*, 452 F.Supp.3d 643,649 (E.D. Mich. 2020) (citing *Jennings v. Rodriguez*, 538 U.S. 281, 295 (2018)).

However, an alien detained seeking habeas corpus jurisdiction must first exhaust all administrative remedies prior to requesting relief in federal court. *See Leonardo v. Crawford*, 546 F.3d 1157, 1160-61 (9th Cir. 2011) (district court should have dismissed, without prejudice, a habeas challenge to an immigration judge's bond ruling where the petitioner failed to seek review of the bond ruling by the BIA prior to filing his habeas petition).

However, in the immigration context, authorities have held that courts can "waive the judge-made exhaustion requirement when (1) a long exhaustion process would create undue prejudice, (2) an administrative remedy is inadequate, such as when an agency lacks the authority to resolve the constitutionality of a statute, and (3) the appeal would be futile because the agency has 'predetermined the issue before it.'" *Hernandez v. Prindle*, Civil No. 15-10-ART, 2015 U.S. Dist. LEXIS 48091, at *3 (E.D. Ky. Apr. 13, 2015) (citing *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)).

Here, there is no delay in obtaining a ruling from the BIA because Petitioner is currently proceeding with his bond appeal. Moreover, any alleged delay does not excuse Petitioner's failure to exhaust administrative remedies. *See Fetaimia v. Ridge*, No. 3-03-CV-1596-BD (M), 2003 U.S. Dist. LEXIS 28690 (N.D. Tex. Sept. 5, 2003). In *Fataimia*, the district court dismissed a habeas petition, which, as here, challenged an immigration judge's denial of a bond hearing, for failure to exhaust administrative remedies where the petitioner's appeal to the BIA was pending. *Id.* at *5, 9-13. In so doing, the court rejected the petitioner's argument that his failure to exhaust should be excused based on delay considerations, and explained:

> The court is unwilling to create a wholesale exception to the exhaustion requirement that would allow aliens to circumvent the administrative appeal process and seek federal habeas review of detention orders without at least first attempting to exhaust available administrative remedies. Absent evidence of undue delay, the principles of exhaustion require that the BIA be given the opportunity to review bond decisions by immigration judges before a federal court exercises habeas jurisdiction. The delay in this case does not yet approach the point where petitioner will suffer irreparable injury without immediate judicial relief.

Id. at 13.

Further, Petitioner is not challenging the constitutionality of a statute, and there is no evidence that Petitioner's bond decision was "predetermined" by the agency, especially where Petitioner failed to demonstrate that he was not a danger to the community. (Bond Determination, ICE Decl., Ex. 10, at 2).

Petitioner has challenged his bond and is currently appealing that determination. Petitioner has not exhausted his administrative remedies as

required. *See Cardoso v. Reno*, 216 F.3d 512, 518 (5th Cir. 2000); *see also Wang v. Ashcroft*, 260 F.3d 448, 452-53 (5th Cir. 2001).

As a result, this Petition should be denied.

II. Petitioner's Detention is Authorized by Statute.

An alien in the United States, without being admitted, is treated as an "applicant for admission." 8 U.S.C. § 1225(a)(1). Such an alien in removal proceedings is subject to detention during those proceedings. 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 538 U.S. 281, 289 (2018).

Title 8 U.S.C. § 1226(a) provides that "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."

Petitioner claims that his detention violates the INA and Due Process Clause of the Fifth Amendment. (Petition, Doc. 6, PageID 44, 50-51.) However, because § 1226(a) gives ICE the authority to arrest and detain an alien pending removal proceedings, Petitioner's detention is statutorily permissible. *See e.g., Jennings v. Rodriguez*, 538 U.S. at 306 (2018) (recognizing an alien may be arrested and detained pending removal proceedings).

Moreover, courts have recognized "that there is 'overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens.'" *Tenorio-Serrano v. Driscoll*, 324 F. Supp. 3d 1053, 1066 (D. Ariz. 2018) (citing *Abel v. United States*, 362 U.S. 217, 233 (1960)); *see also id.* at 1066 (noting further that "Plaintiff cites no authority suggesting that ICE must seek judicial warrants in

order to arrest individuals suspected of being removable.") (footnote omitted). As in the *Tenorio-Serrano* decision, Petitioner here cites no authority suggesting that ICE must seek a criminal arrest warrant.

As a result, Petitioner's detention is authorized by § 1226(a).

III. Petitioner's Detention is Constitutionally Permissible.

A. Petitioner Received Due Process.

"Detention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 530 (2003). Also, in *Jennings v. Rodriguez*, the Supreme Court recognized that aliens who are detained pursuant to § 1226(a) may receive bond hearings at the "outset of detention." *Id.* at 306 (citing 8 C.F.R. §§ 236.1(d), 1236.1(d)). Petitioner already received a bond hearing. (Bond Memorandum, ICE Decl. Ex. 10.)

Petitioner's current detention is lawful because it is a constitutionally permissible part of the removal process, Petitioner has received due process, *i.e.*, a bond hearing, and is currently receiving due process by contesting that decision on appeal. Petitioner claims he was denied bond based solely on the presence of lawfully owned firearms in his home. (Petition, Doc. 6, PageID 44, 50-51.) Petitioner also claims the Immigration Judge failed to consider other factors, like his lack of a criminal history, community ties, and no evidence of firearms misuse. (*Id.* at PageID 51.) These claims are without merit.

"[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings." *Trump v. J. G. G.*, 604 U. S. ——, *1367-68, (2025) (*per*

curiam) (internal quotation marks omitted). "Procedural due process rules are meant to protect" against "the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). We have long held that "no person shall be" removed from the United States "without opportunity, at some time, to be heard." *The Japanese Immigrant Case*, 189 U.S. 86, (1903). Due process requires notice that is "reasonably calculated, under all the circumstances, to apprise interested parties" and that "afford[s] a reasonable time ... to make [an] appearance." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, (1950).

Because Petitioner has had a bond hearing, and he is currently appealing that decision, there is no procedural due process violation.

The purpose of a § 1226(a) bond hearing is to "ensure an alien's presence at proceedings." *In re Urena*, 25 I&N Dec. 140, 141 (BIA 2009). In the *Matter of Choc-Tut*, 29 I&N Dec. 48, 49-50 (BIA 2025), the BIA explained the requirements of bond hearings in removal proceedings. Specifically, pursuant to § 1226(a), the "burden of proof is on the [alien][2] to demonstrate 'to the satisfaction' of the Immigration Judge and the Board that his 'release would not pose a danger to property or persons,' and that the respondent is likely to appear for any future proceeding." *Matter of Choc-Tut*, 29 I&N Dec. 48, 49-50 (citing 8 C.F.R. § 1236.1(c)(8) (2025); *accord Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (BIA 1999); *see also Matter of Urena*, 25 I&N Dec.

2 *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 278-79 (3d Cir. 2018).

140, 141 (BIA 2009) ("Dangerous aliens are properly detained without bond."); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006)). Further, the "Immigration Judge has broad discretion to consider any matter he or she deems relevant when determining whether an alien's release on bond is permissible or advisable." *Id.* (citing *Matter of Guerra*, 24 I&N Dec. at 39). Significantly, § 1226(a) does not provide "detained aliens any right to release on bond." *Id.* (citing *Matter of D-J-*, 23 I&N Dec. 572, 575 (A.G. 2003)).

A district court reviewing "due process challenges to immigration bond hearings must proceed carefully, as 'it has no authority to encroach upon an IJ's discretionary weighing of the evidence.'" *Diaz-Calderon v. Barr*, 535 F.Supp.3D 669, 676 (E.D. Mich. Nov. 10, 2020) (citing *Arellano v. Sessions*, 2019 WL 3387210, *7 (W.D.N.Y. 2019)). "Instead, courts must decide whether the IJ 'relied upon proof—that as a matter of law—could not establish' that a petitioner is a danger to the community." *Id.* (citing *Judulang v. Chertoff*, 562 F.Supp.2d 1119, 1127 (S.D. Cal. 2008)).

In this case, the burden was on Petitioner to show he was not a danger to the community. Petitioner failed to do so. As explained below, Petitioner erroneously claims that he was in lawful possession of the firearms because an alien, unlawfully present in the United States, is prohibited from owning firearms. *See Infra*, C; *see also* 18 U.S.C. § 922(g)(5)(A). The Immigration Judge properly concluded that Petitioner (1) failed to show he was not a danger to the community; and (2) was unlawfully in possession of "multiple firearms and a significant amount of

ammunition," and thus properly denied his request for bond. (Bond Memorandum, ICE Decl. Ex. __, at 2.) Moreover, the IJ's reliance on Petitioner's unlawful possession of firearms with a large amount of ammunition to conclude that Petitioner is a danger to the community, together with Petitioner's failure to demonstrate that he is not a danger to the community, cannot, as a matter of law, fail to establish that Petitioner is a danger to the community. Therefore, the IJ's bond determination was not legally erroneous or unconstitutional as Petitioner was provided due process.

As a result, Petitioner's due process rights have not been violated.

B. Petitioner's Arrest and Search Complied with the Fourth Amendment.

Petitioner claims that his arrest and search of his home for firearms violated the 4th Amendment of the United States and Ohio Constitutions. (Petition, Doc. 6, at PageID 44-45, 51). He claims he was arrested without a warrant and was subjected to a warrantless search of his home by HSTF agents to recover his firearms. (*Id.* at PageID 44-45, 51.)

These claims fail. Because HSTF Agents obtained an administrative Warrant of Arrest prior to arriving at Petitioner's residence, and because Petitioner admitted that was in the United States illegally, (ICE Decl., Ex. A, at 2, ¶5; April 7, 2025 Record of Deportable/Inadmissible Alien, ICE Decl., Ex. 1, at 2), Petitioner's arrest was proper.

Petitioner admitted to HSTF Agents that he was not legally in the United States and that he possessed a handgun in his home. ((FBI Decl., Ex. B, at 2, ¶¶6, 8;

April 7, 2025 Record of Deportable/Inadmissible Alien, ICE Decl., Ex. 1, at 2.) Petitioner then consented to a search of his residence. (*Id.*)

Because Petitioner admitted to being in the United States unlawfully, admitted to possession of a firearm in his home, and consented to a search of his home, there cannot be any 4th Amendment violation.

And even if it assumed for the sake of argument that there was a 4th Amendment violation here, the Sixth Circuit has previously observed, that "[t]he exclusionary rule does not apply in immigration proceedings absent an egregious violation of the Fourth Amendment." *Nolasco-Gaspar v. Holder*, No. 13-4484, 2014 U.S. App. LEXIS 21183, at **2 (6th Cir. Nov. 3, 2014) (unpublished) (citing *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050-51 (1984)); *cf. Lopez-Rodriguez v. Holder*, 560 F.3d 1098, 1105 (9th Cir. 2009) (Bea, J., dissenting) (stating that the language from *Lopez-Mendoza*, which it characterizes as dicta, "seems to posit a conjunctive test" under which the exclusionary rule is triggered only if "the 'egregious' conduct . . . *both* (1) 'transgress[es] notions of fundamental fairness' *and* (2) 'undermine[s] the probative value of the evidence obtained.'") (emphasis in original) (citing *Lopez-Mendoza*, 468 U.S. at 1050-51).

Petitioner has not alleged facts sufficient to conclude that the search of the residence was "egregious" under the circumstances here. *See Carcamo v. Holder*, 713 F.3d 916, 918-19, 922-24 (8th Cir. 2013) (where petitioners and government disputed whether a petitioner consented to search of residence, court found no egregious Fourth Amendment violation; rejecting petitioners' argument that ICE conduct was

egregious because it involved a search of the home, was motivated by race, and a deliberate violation).

As such, Petitioner's claim of a 4th Amendment violations is without merit, and the Petition should be denied.

C. Petitioner's Second Amendment Rights and Fifth Amendment Liberty Interests Were Not Violated.

Petitioner repeatedly claims that he was in lawful possession of the firearms and ammunition in accordance with both the United States and Ohio Constitutions. (Petition, Doc. 6, at PageID 40-52). This claim is without merit because Petitioner is prohibited from possessing firearms.

Title 18 U.S.C. § 922(g)(5)(A) provides that, "it shall be unlawful for any person— (5) who, being an alien— (A) is illegally or unlawfully in the United States, . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

The Petition does not mention § 922(g)(5)(A), let alone suggest that it does not apply to Petitioner. Moreover, any such argument would fail. In this regard, § 922(g)(5)(A), has been constitutionally upheld as to aliens unlawfully present in the United States in a number of Circuit Courts of Appeal. *See United States v. Rangel-Tapia*, No. 23-1220, 2024 WL 966385, *4-*5 (6th Cir. Mar. 6, 2024). In fact, the 6th Circuit has recently found the statute constitutional in an as-applied challenge. *Id.* at *8 (rejecting appellant's as-applied challenge to § 922(g)(5)(A) under plain-error

review) ("[D]isarming unlawful immigrants . . . who have not sworn allegiance to the United States comports with the Nation's history and tradition of firearm regulations. . . . The swearing of an oath of allegiance occurs through the naturalization process, not through [] asylum applications or [] years of living in the United States.").

As such, Petitioner's claims that he was in lawful possession of firearms is without merit.

D. There is No Equal Protection Violation.

Petitioner's claim that he was subject to detention because based on conduct that would not trigger such treatment for a similarly situated U.S. citizen is baseless. (Petition, Doc. 6, PageID 4752.)

Petitioner claims that he was "treated differently from similarly situated U.S. citizens solely because of his immigration status and perceived foreignness." (*Id.* at PageID 47.) As explained above, aliens who are in the United States unlawfully are not permitted to possess firearms. *See* 18 U.S.C. § 922(g)(5). This law of generally applicability does not prohibit the possession of firearms by aliens lawfully in the United States.

Therefore, Petitioner's current detention during removal proceedings is constitutionally permissible.

IV. CONCLUSION

Based upon the above, the Federal Respondents respectfully request that this Court deny the Petition for a Writ of Habeas Corpus.

Respectfully submitted,

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