UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Cesar Janicso Mejia-Acosta Petitioner, v. **PAM BONDI**, US Attorney General; **KRISTI NOEM**, Secretary, Dept. of Homeland Security; **TODD LYONS,** Acting Director, US Immigration and Customs Enforcement; **LETICIA DIAZ,** San Antonio Field Office Director for Detention and Removal, US Immigration Customs and Enforcement; **FRANCISCO DIAZ,** Warden, El Valle Detention Center, Respondents.	§	Cause No. _1:25-cv-00138_ **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. §2241** Hon. Karen Betancourt, United States Magistrate Judge, Southern District of Texas

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

INTRODUCTION

On October 27, 2025, Respondents submitted their Motion to Dismiss Petitioner's Petition for Writ of Habeas Corpus filed on April 21, 2025. Petitioner seeks declaratory and injunctive relief from detention because DHS's bond revocation is unreasonable and unlawful.

DHS itself had determined that Petitioner was not a flight risk more than once throughout the proceedings. See Respondent's Motion to Dismiss at page 2, ¶¶ 4 (and Respondent's Exhibit 2), 7, 8, 9, and 10. There have been no changes in Petitioner's circumstances other than DHS's enforcement priorities. *See Valdez v. Joyce*, 2025 1707737 (SDNY) June 18, 2025 ("The law requires a change in relevant facts, not just a change in attitude." On page 6, note 6.) A determination of Petitioner's flight risk and danger to the community had already been made by a neutral arbiter in 2019, a proceeding which DHS was not able to show that Petitioner had any gang affiliation and a decision which DHS did not appeal.

FACTS IN DISPUTE

Gang Affiliation

Petitioner denies that he is now or has ever been a member of MS-13. DHS has never been able to prove this in Petitioner's proceedings. DHS has never charged Petitioner with inadmissibility based on this allegation. DHS has failed to convince any immigration judge connected to this case of gang affiliation. Respondent's Motion to Dismiss, ¶ 13.

The government implies that a change in attitude of the current administration is equivalent to a change in substantive law. It is not. Prior to 2025, gang membership was still a ground of inadmissibility. See 8 USC § 1182(a)(2)(E) and (3)(A)(ii). The substantive law regarding inadmissibility for gang or terrorist organization affiliation did not change in 2025. If DHS had been able to successfully argue that Petitioner was an MS-13 affiliate at any point in these proceedings, it would be reflected in the decision of the many immigration judges involved in the long history of Petitioner's case. Not one immigration judge to date found that Petitioner is indeed a gang affiliate. Furthermore, if DHS had been convinced of Petitioner's gang affiliation, it could have been included in the grounds of inadmissibility on the Notice to Appear (NTA).

Likewise, DHS could have appealed the bond determination if they had a true reason to believe that Petitioner is a gang member.

The government relies on the 2025 designation of MS-13 as a change in circumstances that outweighs Petitioner's constitutional rights. Yet, DHS did not think to amend the NTA to include a charge under 8 USC § 1182(a)(3)(B) or (F). While mentioned in the hearing for relief from removal, the immigration judge did not base his denial on gang affiliation.

Petitioner is not subject to a final order of removal

Petitioner is not subject to a final order of removal. The government admits that the case remains on appeal, yet erroneously characterizes the July 22, 2025 Order of the Immigration Judge as a final order of removal. Respondent's Motion to Dismiss, ¶¶ 24, 43.

The finality of removal orders is governed by statute and regulation. Under 8 USC § 1101(a)(47)(B)(i), an order of removal is not final until a determination by the Board of Immigration Appeals (BIA) affirming such an order. *See also* 8 CFR § 1241.1 (an order of removal is final upon dismissal of an appeal by the BIA) and 8 CFR § 1003.39 (removal orders issued by an immigration judge are final except when certified to the BIA).[1]

Petitioner is not subject to mandatory detention under 8 USC § 1225(b)

Petitioner is not subject to mandatory detention under 8 USC § 1225(b)(2)(A). Respondent's Motion to Dismiss, ¶ 24.[2] At no point in the removal proceedings has DHS taken the statutory and regulatory steps to initiate proceedings under 8 USC § 1225(b)(2)(A). To the

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[1] Respondents appear to acknowledge that Petitioner is not under a final order of removal in footnote 7, which recognizes that Petitioner was illegally removed from the U.S. despite his case being on appeal.

[2] Respondents make statements in ¶ 44 of their motion to dismiss, however, that suggest that Petitioner is detained under § 1226, referring to subsection (e) for the proposition that any discretionary determination by DHS is unreviewable by a federal court.

contrary, Petitioner's NTA alleges that he arrived to the United States with the immigration judge's annotation "1998;" Petitioner's administrative warrant cites authority under "INA 236" (8 USC § 1226); Petitioner's Notice of Custody Determination Form I-286 states that he will be held under authority of "INA 236" and that he may request an immigration judge review the custody determination. *See* Petitioner's Exhibit A in Support of his petition for Writ of habeas Corpus.

The expedited removal process is primarily concerned with noncitizens seeking entry. *See Jennings v. Rodriguez*, 138 U.S. 830, 842 (2018). The statute itself is tiled; "Inspections by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." 8 USC § 1225. The statute focuses on recent arrivals: subsection (b)(1) refers to noncitizens presently "arriving," while subsection (b)(1)(A)(iii)(II) specifically exempts from processing under § 1225 noncitizens who can show continuous physical presence for the 2 years immediately preceding the determination of inadmissibility. This 2-year physical presence exception is echoed in the regulations. *See* 8 CFR § 253.3(b)(1)(ii).

The reference to inadmissible noncitizens in 8 USC § 1226, the statute which governs Petitioner's proceedings, further undercuts the claim that Petitioner is in § 1225 proceedings and therefore subject to mandatory detention. For example, § 1226(a) refers to noncitizens subject to grounds of both inadmissibility and deportability. Section 1226(c) repeatedly refers to inadmissible noncitizens; the most recent addition being § 1226(c)(1)(E) in 2025 by virtue of the Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025). If every inadmissible noncitizen were subject to § 1225, as the government suggests, then these references would be surplusage.

No documentation in the A-file supports the assertion that Petitioner is in expedited removal proceedings under 8 USC § 1225(b). There is no record of procedural regularity that the

statute and regulations require. Under 8 CFR § 253.3(b)(2)(i), titled "Record of proceeding," the examining officer is required to record testimony of the noncitizen regarding the suspected ground of inadmissibility utilizing form I-867A, and issue form I-860, Notice of Order of Expedited Removal. None of these documents are present in Petitioner's A-file. The record is devoid of evidence that Petitioner's proceedings are pursuant to § 1225; all available evidence shows that Petitioner's proceedings were initiated under § 1226, such designation never having changed, and therefore not subject to mandatory detention.

RESPONSE TO RESPONDENT'S POSITION ON JURISDICTION

Petitioner maintains that his detention is in violation of the statutes and regulations of the Immigration and Nationality Act, and in violation of his rights to due process. Petitioner was granted bond by an immigration judge, DHS failed to appeal to the BIA, over four years later the bond was summarily revoked despite no change in circumstances, and the government now characterizes Petitioner's detention as falling under the mandatory detention regime of § 1225 despite all evidence to the contrary. Respondent's Motion to Dismiss, ¶ 44. Petitioner's due process claims are clearly regarding his detention, not regarding the underlying removal proceedings, which as stated above is ongoing. The government asserts that there is "no longer a case or controversy" in this matter based on the erroneous assumption that a final order of removal has been issued in this matter. Respondent's Motion to Dismiss, ¶43.

Respondent's position that Petitioner's plea for review arises directly from the decision to commence or adjudicate removal proceedings against is erroneous. The government invokes the language of 8 USC § 1252(g). Respondent's Motion to Dismiss, ¶ 44. However, Petitioner has clearly stated that he is not seeking review of any of the three discrete actions that the statute describes ("to commence proceedings, adjudicate cases, or execute removal orders"). 8 USC §

1252(g). He is seeking review of the lawfulness of his detention which is merely one of several components in Petitioner's extensive immigration proceeding. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (noting there are other actions involved in the immigration enforcement process, "[i]t is implausible that the mention of 3 discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings."). *See also Hernandez v. Gonzalez*, 424 F.3d 42 (1st Cir. 2005) (ordering transfer to district court of a petition challenging detention instead of removal, as no final removal order had issued).

The government also cites 8 USC § 1252(e)(2) for the proposition that habeas review in this matter is limited only to whether Petitioner is a foreign national, *whether he was ordered removed under section 1225(b)(1)*, and whether Petitioner is a lawful permanent resident. Respondent's Motion to Dismiss, ¶ 46 (emphasis mine). Section 1252(e)(2) relates only to noncitizens ordered removed under § 1225(b)(1), and as demonstrated above, Petitioner is not properly subject to § 1225; he has always been under § 1226 proceedings. No deference to the government's determination of Petitioner's detention under § 1225 is due. *See Loper Bright Enterprises., Inc. v. Raimundo*, 603 U.S. 369, 413 (2024).

Executive power is not absolute. *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). Habeas has always been available to review the legality of executive detention. *INS v. St. Cyr*, 533 U.S. 289, 305 (2001). Even § 1226(e), cited by the government in support for the lack of judicial review (despite earlier maintaining that § 1225 applies), does not preclude a challenge to the statutory framework that permits a noncitizen's detention without bond. *Jennings v. Rodriguez*, 138 U.S. 830, 841 (2003), citing *Demore v. Kim*, 538 U.S. 510, 516 (2003). Due process applies to all persons in the U.S., citizen or not. *See Reno v. Flores*, 507 U.S. 292, 306 (1999). In this

case, the due process afforded to Petitioner in the process of DHS's bond revocation has been none.

CONCLUSION

Petitioner's ongoing detention is a result of unlawful actions on the part of DHS that have no grounds in the statute or regulation. Any discretionary decisions made to revoke Peitioner's bond were likewise unlawful and due no deference. Seeking affirmation of his rights under the U.S. Constitution, Petitioner respectfully asks this Court to exercise jurisdiction over the petition for habeas and order his release.

Respectfully submitted on 9th day of November 2025,

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CERTIFICATE OF SERVICE

I, Jacqueline Watson, hereby certify that this Petitioner's Response in Opposition to Respondent's Motion to Dismiss was filed via the court enabled electronic filing system which has served a copy to all parties on November 9, 2025.

/S/ Jacqueline L. Watson