

United States District Court
Western District of Texas
El Paso Division

Angel Alfredo Leiva Garcia,
Petitioner,

v.

Todd Lyons, Acting Director Immigration
Customs and Enforcement *et. al.*,
Respondents.

No. 3:25-CV-00242-DCG

**Federal Respondents' Response to
Petitioner's Writ of Habeas Corpus**

Federal Respondents timely submit this response per this Court's Order dated July 3, 2025, directing service and ordering a response by July 14, 2025. *See* ECF Nos. 5. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Garcia ("Petitioner") seeks release from civil immigration detention, claiming that his one week of immigration detention was unlawful. *See* ECF No. 1.

Petitioner's three-count complaint alleges first that ICE violated their own regulations by failing to assign him an alien number within 48 hours, failing to set a bond for his release, and failing to issue him a Notice to Appear (NTA) in immigration court. *Id.* at 7. Second, Petitioner claims that his arrest was in violation of the Fourth Amendment, because he was allegedly arrested by unidentified "bounty hunters." *Id.* Finally, Petitioner claims his detention violates the Fifth Amendment, because he was arrested and detained without due process. *Id.* In his Prayer for Relief, Petitioner seeks an order for Respondents to: (1) "immediately process and assign [him] an A-number;" (2) "immediately set bond hearing and notice to appear;" (3) "release Petitioner from custody after proper processing and payment of bond;" (4) "prohibit removal until proper

immigration proceeding”; (5) “transfer petitioner back to original facility” in Los Angeles, California, and (6) grant any other relief the Court deems just and proper. *Id.* at 8.

This petition should be denied. As shown in the attached records, Respondents have already processed Petitioner and issued him an A-number. *See* Ex. A (I-286). Respondents also issued him a Notice of Custody Determination, notifying him of ICE’s decision to detain him under INA § 236 (8 U.S.C. § 1226(a)), 8 C.F.R. § 236, “pending a final administrative determination,” and further notifying him that he “may request a review of this custody determination by an immigration judge.” *Id.*¹ Respondents have also issued, served, and filed an NTA with the immigration court with the initial hearing set for July 28, 2025. Ex. B (NTA). Indeed, Petitioner’s counsel confirmed via email shortly before this filing that Petitioner filed a Motion for Bond Redetermination this evening with the Otero Immigration Court.

Respondent is lawfully detained and with a pending bond motion, which requires the exhaustion of administrative remedies. As such, the relief he seeks in this habeas petition is either moot, premature for failure to exhaust administrative remedies, or unreviewable.

I. Facts and Procedural History

Petitioner is a native and citizen of Honduras. ECF No. 1 at ¶ 1. Petitioner entered the United States unlawfully in October 2003. *See* Ex. B (NTA). He is lawfully detained in immigration custody without bond in the exercise of ICE’s discretion under 8 U.S.C. § 1226(a) pending his removal proceedings. *See* Ex. A (Form I-286). Only July 14, ICE issued and served²

¹ Exhibit A (Form I-286) does not contain Petitioner’s signature, but it does indicate that he acknowledged receipt of the notification and requested review by an immigration judge. Ex. A (I-286). At the time of filing this Response, it is unclear whether a finalized (signed) version of the form exists. Due to the emergent nature of this response, Respondents respectfully request to supplement the record should additional evidence become available.

² Mr. Garcia refused to sign to acknowledge personal service. Ex. B (NTA).

Mr. Garcia with Form I-862 (NTA), superseding a previously issued NTA dated July 6, 2025. Ex. B (NTA). The NTA charges Mr. Garcia with being subject to removal under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and orders him to appear before an Immigration Judge in Otero, New Mexico, on July 28, 2025, at 8:30am to show why he should not be removed from the United States as charged on the NTA. *Id.*

II. ICE's Detention Authority During Removal Proceedings Is Well Settled under 8 U.S.C. § 1226(a).

The legality of ICE's pre-removal-order detention authority under 8 U.S.C. § 1226(a) is a question of law that is firmly settled, and no argument to the contrary will prevail. Not only will Petitioner be afforded an opportunity to apply for any relief from removal available to him under the law, but he already has a motion for bond reconsideration pending with the Immigration Court. *See* 8 U.S.C. § 1226(a); *see also Jennings v. Rodriguez*, 583 U.S. 281, 289, 306 (2018); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527–28 (2021) (reviewing relevant regulations). Assuming the Immigration Judge finds there is no risk of flight or danger to the community, the Immigration Judge may set a bond, with or without conditions, to order Petitioner's release from custody while he pursues relief from removal on the non-detained docket. *Id.* Any adverse custody decision may be appealed administratively to the Board of Immigration Appeals (BIA). *Id.*

Petitioner is lawfully detained based on his own conduct, namely, unlawfully entering the United States without inspection in 2003 and remaining in the United States without authorization in violation of 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner will have a full opportunity to challenge his arrest, detention, and his removability through the proper administrative procedures. *Id.* § 1226(a).

III. There is No Colorable Claim for Relief as a Matter of Law.

The government's discretionary detention decisions are not subject to review. 8 U.S.C. § 1226(e). No court, even in habeas review, may set aside any decision regarding the detention or

release of an alien or the grant, revocation, or denial of bond or parole. *Id.* § 1252(a)(5). ICE's decision to detain Petitioner during removal proceedings rather than release him on bond is an unreviewable discretionary decision.

While "the Fifth Amendment entitles aliens to due process of law in deportation proceedings, ... this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in this habeas petition that § 1226(a), as applied to Petitioner, is unconstitutional. *See, e.g., Jennings*, 583 U.S. at 312. Petitioner is being lawfully detained and charged with removability for unlawfully entering and remaining in the country without authorization. 8 U.S.C. § 1182(a)(6).

Still, Petitioner argues that his detention violates due process on the ground that he is entitled to a bond. ECF No. 1 at 7. He is not, however, entitled to a bond, although he is entitled to bond *hearing* with an immigration judge. Section 1226(a) provides review of his "detention by an officer at the Department of Homeland Security and then by an immigration judge (both exercising power delegated by the Secretary)." *Nielsen v. Preap*, 586 U.S. 392, 397–98 (2019) (citing 8 CFR §§ 236.1(c)(8) and (d)(1), 1003.19, 1236.1(d)(1) (2018)). These "regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Accordingly, any claim by Petitioner that Petitioner is entitled to a bond or otherwise lacks an opportunity to contest his detention is contradicted by the record and the regulations.

Petitioner further claims his arrest by unidentified "bounty hunters" violated his Fourth Amendment rights. ECF No. 1 at 7. First, any Fourth Amendment claim is not cognizable in

habeas, because the claim concerns only the arrest, not the underlying basis of detention. In other words, it attempts to raise a civil claim concerning the nature of his arrest—not a challenge to his ongoing detention. “Although the scope of the writ of habeas corpus has been extended beyond that which the most literal reading of the statute might require, the Court has never considered it a generally available federal remedy for every violation of federal rights.” *Lehman v. Lycoming Cty. Children’s Servs. Agency*, 458 U.S. 502, 510, (1982). Petitioner is validly detained under § 1226(a), and his Fourth Amendment claim challenges only the nature of his arrest, not his ongoing detention under the INA. As such, it is not cognizable under habeas.³

Moreover, the Court lacks subject matter jurisdiction over the Fourth Amendment claim. 8 U.S.C. § 1252(g) is a jurisdiction-stripping provision in the INA, which provides that

[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). Section 1252(g) applies “to three discrete actions that the Attorney General may take: [the] ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.’” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The decision to arrest Petitioner is intertwined with the decision to commence removal proceedings against him. As such, Petitioner’s Fourth Amendment claim should be denied for lack of subject matter jurisdiction.

³ The Fifth Circuit has also declined to recognize a Fourth Amendment cause of action in this context under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). See *De La Paz v. Coy*, 786 F.3d 367, 375-76 (5th Cir. 2015). In any event, any Fourth Amendment claim can be raised directly with the immigration judge at the first master calendar hearing scheduled on July 28, 2025. See *id.* at 376.

IV. Conclusion

Petitioner is lawfully detained, and his claims are either moot, unreviewable, or premature.

Accordingly, the Court should deny this petition.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Lacy L. McAndrew

Lacy L. McAndrew
Assistant United States Attorney
Florida Bar No. 45507
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (phone)
(210) 384-7312 (fax)
lacy.mcandrew@usdoj.gov

Attorneys for Respondents