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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JUAN A. VILLATORO, *Petitioner*, v. YOLANDA PITTMAN, *et al.*, *Respondents*.	HON. MADELINE COX ARLEO Civil Action No. 25-13472 (MCA)

ANSWER TO HABEAS CORPUS PETITION

On the Brief:

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PRELIMINARY STATEMENT

Petitioner Juan Antonio Villatoro is a native and citizen of El Salvador who entered the United States unlawfully at an unknown time and place. On August 2, 2019, Petitioner pleaded guilty to Endangering the Welfare of a Child, Sexual Conduct with a Child by a Caregiver, in violation of N.J. Stat. Ann. §§ 2C:24-4A(1) and was sentenced to a term of imprisonment of five years. On April 23, 2021, U.S. Immigration and Customs Enforcement ("ICE") served Petitioner a Form I-862 Notice to Appear ("NTA") charging him as removable from the United States based on his conviction for a crime of child abuse pursuant to Section 237(a)(2)(E)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2)(E)(i).

On April 5, 2022, ICE arrested the Petitioner following his release from state custody. On August 22, 2022, an immigration judge denied the Petitioner's applications for relief and ordered Petitioner's removal from the United States to El Salvador. On September 3, 2022, Petitioner filed an appeal to the Board of Immigration Appeals ("BIA") and the BIA remanded the proceedings back to immigration court on June 21, 2023. His removal proceedings are still pending.

On April 25, 2023, ICE released Petitioner from custody to an Order of Recognizance ("OREC"), but Petitioner violated the terms of his release. Specifically, on January 23, 2024, Petitioner enrolled in the Compliance Reporting Terminal ("CART") program, which requires him to report to the ICE Newark Field Office every three months. On August 2, 2024, Petitioner failed to report to the ICE Newark Field

Office, and ICE deactivated him from CART and referred him to ICE Newark Fugitive Operations for re-arrest.

A year later, on July 17, 2025, ICE arrested Petitioner. ICE is lawfully detaining Petitioner under INA § 236(a), 8 U.S.C. § 1226(a), the provision of the INA that grants immigration officials discretionary authority to detain aliens during the pendency of their removal proceedings. Despite being eligible to apply for bond, Petitioner has failed to seek a bond hearing. Rather, on July 17, 2025, Petitioner petitioned this Court for a writ of habeas corpus. Petitioner argues that his detention is unconstitutional and seeks his immediate release. Petitioner asserts that his detention violates his procedural due process rights, the INA, and the Administrative Procedure Act ("APA").

The Court should dismiss the habeas petition. First, under Supreme Court precedent, Petitioner bears the burden to justify his release at a § 1226(a) custody redetermination hearing and he has failed to request one. Second, Petitioner's pending Form I-130, filed by his citizen son, and application for Cancellation of Removal for Lawful Permanent Resident, do not prohibit detention, and Petitioner cites no law to the contrary. Finally, Petitioner cannot make a viable claim under the APA.

BACKGROUND

Petitioner is a native and citizen of the El Salvador who entered the United States at an unknown time and place other than as designated by the Department of Homeland Security. *See* Declaration of Supervisory Detention and Deportation

Officer Paul Silva ("Silva Decl."), at ¶ 3. On May 12, 2011, Petitioner's status was adjusted to that of a lawful permanent resident pursuant to INA § 245. *Id.* at ¶ 4.

On August 2, 2019, Petitioner was convicted upon a plea of guilty to the offense of Endangering the Welfare of a Child, Sexual Conduct with a Child by a Caregiver, in violation of N.J. Stat. Ann. §§ 2C:24-4A(1), and was sentenced to a term of imprisonment of five years. *Id.* at ¶ 5. On or about September 22, 2020, ICE encountered the Petitioner while he was detained at the Southern State Correctional Faculty in Delmont, New Jersey. *Id.* at ¶ 6.ICE lodged a Form I-247 Immigration Detainer on the Petitioner. *Id.* On April 23, 2021, ICE served Petitioner a Form I-862 NTA charging him as removable from the United States based on his conviction for a crime of child abuse pursuant to INA § 237(a)(2)(E)(i). *Id.* at ¶ 7. Petitioner's removal proceedings were initially placed on the Institutionalized Hearing Program Docket, a docket that allows individuals to adjudicate their removal proceedings while serving their federal or state criminal sentences. *Id.*

On April 5, 2022, ICE arrested the Petitioner following his release from the Southern State Correctional Faculty. *Id.* at ¶ 8. Petitioner was taken into ICE custody and initially held at the Elizabeth Contract Detention Facility ("ECFD") for about one day before transferring him to the Moshannon Valley Processing Center in Philipsburg, Pennsylvania. *Id.*

On August 22, 2022, an immigration judge based out of Clevland, Ohio denied the Petitioner's applications for relief from removal and ordered Petitioner removal from the United States to El Salvador. *Id.* at ¶ 9. On September 3, 2022, the Petitioner

filed an appeal of the immigration judge's decision to the BIA. On June 21, 2023, the BIA remanded proceedings back to the immigration court. *Id*. at ¶ 10.

On April 25, 2023, ICE released Petitioner from custody to an OREC, with instructions to ICE Newark Field Office when ordered to do so. *Id*. at ¶ 11. The terms of Petitioner's OREC required him to follow all reporting requirements or face re-detention.

> 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 in (writing) (person) to Duty officer at see I - 831 on 05/02/2023 11,00 as directed.
> . . . .
> Any violation of these conditions may result in you being taken into ICE custody and you being criminally prosecuted.

See Declaration of Brooks E. Doyne ("Doyne Decl."), Exhibit A, Order of Release On Recognizance at 1, 4. As part of his OREC, on January 23, 2025, Petitioner was enrolled in the CART program, which requires him to report to the ICE Field Office every three month. *Id*. at ¶ 12.

On August 2, 2024, the Petitioner failed to report to the ICE Newark Field Office as instructed, and ICE deactivated him from CART. ICE referred Petitioner to ICE Newark Fugitive Operations for re-arrest. *Id*. at ¶ 13. On July 17, 2025, the Petitioner was arrested by ICE and initially housed at the EDCF while awaiting bed space at another facility. *Id*. at ¶ 14. ICE served Petitioner a Form I-200, Warrant of Arrest for Alien, list of Pro Bono Legal Service Providers, and the Online Detainee

Locator System ("ODLS") with the Privacy Statement for Detainees, both in the English and Spanish languages. *Id.* ICE officers advised the Petitioner of his right to exercise a free call to the consulate of his origin, but he refused to respond. *Id.* During intake processing, the Petitioner invoked his right to counsel and refused to answer questions or sign any documents. *Id.* ICE Officers afforded Petitioner the opportunity to make phone calls, which he accepted. *Id.* On July 23, 2025, ICE transferred Petitioner from ECDF to the Adelanto ICE Processing Center in Adelanto, California, where he remains at the present time. *Id.* at ¶ 15.

On July 17, 2025, Petitioner petitioned this Court for a writ of habeas corpus. ECF 1. Petitioner argues that his detention is unconstitutional and seeks his immediate release. Petitioner asserts that his detention violates his procedural due process rights, the INA, and the APA. On August 6, 2025, the Court ordered the Respondents to file an answer to the petition. ECF 7.

LEGAL ARGUMENT

I. Petitioner's Due Process Claim Fails

In Count Two, Petitioner claims his detention violates the due process clause. Specifically, he argues that "Respondents have not offered a permissible statutory purpose for Petitioner's detention, and his detention is not rationally related to any immigration purpose." Pet. ¶ 50. He also argues he "was not afforded sufficient process or notice prior to his detention by ICE." *Id.* at ¶ 51.

At the outset, ICE has lawfully detained Petitioner under 8 U.S.C. § 1226(a), which is rationally related to his pending removal proceedings. For more than a century, the immigration laws have authorized immigration officials to charge aliens

as removable from the country, arrest aliens subject to removal, and detain aliens for removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232-37 (1960). The Supreme Court repeatedly has "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also id.* at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings.") (emphasis in original); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Indeed, removal proceedings "would be [in] vain if those accused could not be held in custody pending the inquiry into their true character." *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Within the current framework of the INA, 8 U.S.C. § 1226(a) provides DHS with "broad discretion" to either detain or release most aliens during the pendency of their removal proceedings.[1] *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019). At the threshold, "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). But DHS may also, in its discretion, release the alien, "provided that *the alien* must

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[1] In contrast, if the alien has been convicted of certain enumerated criminal offenses, 8 U.S.C. § 1226(c) mandates detention during removal proceedings (though the alien may be released for certain witness-protection reasons). 8 U.S.C. § 1226(c)(1)(A)-(D), § 1226(c)(2); *Demore v. Kim*, 538 U.S. 510, 513 (2003)).

demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8) (emphasis added). If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2).

If DHS determines that an alien should remain detained during the pendency of removal proceedings, the alien may request a custody redetermination hearing before an Immigration Judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). "The immigration judge is authorized to exercise the authority in section 236 of the Act . . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released." 8 C.F.R. § 236.1(d)(1). Upon a custody redetermination, the Immigration Judge may continue detention of the alien or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). However, the alien does not have any *right* to release on bond under INA § 236(a). *Matter of D-J-*, 23 I. & N. Dec. 572, 575 (BIA 2003); *Matter of Guerra,* 24 I. & N. Dec. 37, 39 (BIA 2006).

Here, Petitioner's procedural due process claim fails because he has not exhausted his administrative remedies by requesting a bond hearing. Nor has Petitioner alleged that he or his counsel were denied notice or an opportunity to be

heard at the custody redetermination hearing. Should Petitioner seek a bond hearing, he will be afforded the opportunity to be heard by an Immigration Judge.

Courts generally require immigration detainees to exhaust administrative remedies before seeking habeas relief in federal court. *See Jean-Claude W. v. Anderson*, No. 19-16282 (KM), 2021 WL 82250, at *2 (D.N.J. Jan. 11, 2021) ("To have jurisdiction to consider whether [petitioner] was denied due process, . . . I must confirm that [petitioner] has exhausted all available administrative remedies; if he has not, then I cannot review the merits of his claim." (*citing Yi v. Maugans*, 24 F.3d 500, 503-04 (3d Cir. 1994). "Because the exhaustion requirement is jurisdictional, the failure of a habeas petitioner to present his claims first to the immigration courts is 'fatal to the District Court's jurisdiction over [his] habeas petition.'" *Jelani B. v. Anderson*, No. 20-6459 (SDW), 2020 WL 5560161, at *2 (D.N.J. Sept. 17, 2020) (quoting *Duvall v. Elwood*, 336 F.3d 228, 233 (3d Cir. 2003)). Because Petitioner has not exhausted his remedies by seeking a bond hearing, his due process claim fails. *See also Garcia v. Green*, No. 16-0565 (KM), 2016 WL 1718102, at *3 (D.N.J. Apr. 29, 2016) (noting that remedy for being wrongfully denied a hearing is not release but rather ordering a curative bond hearing).[2]

Second, Petitioner's claim that he was not given prior notice of his re-detention fails. The basic elements of due process are notice and an opportunity to be heard.

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[2] Further, if Petitioner claims that he did not need to seek a redetermination hearing because he is asserting a due process challenge here, the Court should reject that argument. Although exhaustion "is not always required when the petitioner advances a due process claim," courts should look beyond the "due process label," and instead consider whether a purported due process claim "amounts to a procedural

See Mathews v. Eldridge, 424 U.S. 319, 333 (1976). Here, Petitioner was on OREC, and was aware of the express terms, which Petitioner signed, that made his obligations and repercussions clear: noncompliance will result in re-detention. Given this, Petitioner's requested relief should be denied. *But see Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) (finding revocation of supervised release required at least informal interview per agency regulations.)

II. Petitioner's Pending Filings Do Not Prohibit Detention

In Count One, Petitioner argues that his detention violates the INA because he has a pending motion for cancelation of removal and a pending I-130 application for family-related benefits. Pet. ¶¶ 45-46. He also argues that his detention effectively forecloses lawful family reunification and impose an irreparable harm to the integrity of the family unit. *Id.* ¶¶ 2, 31, 39-43 and 45. However, this argument lacks merit because a pending motion for cancelation of removal and a pending I-130 application does not prohibit detention, and Petitioner cites no law to the contrary.

An applicant seeking to file a I-130 application is notified, "Submitting Form I-130, Petition for Alien Relative, is the first step to help an eligible relative apply to immigrate to the United States and apply for a Green Card. The filing or approval of this petition does not give your relative any immigration status of benefit. *See* https://www.uscis.gov/i-130 (last visited on September 11, 2025). Furthermore, while

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error correctible through the administrative process"; if so, then exhaustion is required. *Khan v. Attorney General*, 448 F.3d 226, 235-36 n.8 (3d Cir. 2006). Couching a claim "'in the language of procedural due process' does not qualify it for th[e] exception" from the exhaustion requirement. *See Okorafor v. Attorney General*, 787 Fed. Appx. 808, 810 (3d Cir. 2019) (*quoting Bonhometre v. Gonzales*, 414 F.3d 442, 448 (3d Cir. 2005)).

Petitioner appears to argue that he has a right to release via an I-130 petition, the regulations governing the provisional waiver process do not provide such an entitlement. *See Henry M.C. v. Wolf*, No. 19-20399, 2020 U.S. Dist. LEXIS 66789, *9-13 (D.N.J. April 9, 2020) (finding that a petitioner does not have a right to a stay of removal while he pursued the provisional waiver process). Accordingly, Petitioner cannot show that his pending I-130 application prohibits detention.

The same is true for his pending application for cancelation of removal. Petitioner argues that his detention is improper because of a pending application for Cancellation of Removal for Lawful Permanent Resident before the Immigration Court. *See* ECF 1 *passim*. Furthermore, Petitioner argues the INA does not mandate detention of individuals with pending cancellation applications who do not pose a danger or flight risk. *Id.* at ¶ 47. However, Petitioner's pending cancellation application does not prevent this Court from dismissing this habeas petition. *See, e.g.*, *Michael v. United States Dep't of Homeland Sec*, No. 14-7429, *7 (finding petitioner's detention was in part attributable to a pending application for cancellation of removal and dismissal was appropriate). Accordingly, Petitioner cannot show that his pending cancellation application prohibits detention.

III. Petitioner Fails to Show an APA Violation

Petitioner argues that his detention violates the APA because ICE has not complied with its purported practice of granting discretionary release to noncitizens with pending applications for relief. *See* Pet. ¶ 59 ("ICE routinely exercises custody discretion for individuals with pending immigration relief, including those in

proceedings before EOIR, and especially where viable family-based petitions are underway"). This argument fails because Petitioner has provided no factual support to his claim that such a policy or practice exists. And, even if he could, this Court would lack jurisdiction over the claim nonetheless because custody decisions are within the sole, nonreviewable discretion of the Secretary of Homeland Security. *See, e.g.*, *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 453 (D.N.J. 2004) (dismiss challenge to custody determination for lack of jurisdiction, and noting, "[u]nder Sections 1226(a) and (b), the Attorney General has the discretionary authority to arrest and detain, or release, or revoke the bond or parole status of an alien. Under Section 1226(e), no court has jurisdiction to set aside these discretionary determinations by the Attorney General.").

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

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