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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN CUEVAS GUZMAN, Petitioner, v. TONYA ANDREWS, ET AL., Respondents.	CASE NO. 1:25-CR-01015-KES-SKO RESPONDENTS' SUPPLEMENTAL OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER DATE: September 5, 2025 TIME: 11:00 a.m. COURT: Hon. Kirk E. Sherriff

SUPPLEMENTAL OPPOSITION TO MOTION FOR TRO

On August 18, 2025, the Court ordered the respondents to file "a supplemental opposition which addresses petitioner's statutory claim that he is entitled to a bond hearing under 8 U.S.C. § 1226(a)." ECF 9. Accordingly, the respondents file this Supplemental Opposition.

The Court should deny the TRO motion with respect to the bond hearing issue for three reasons. First, the petitioner is not entitled to a bond hearing under 8 U.S.C. § 1226(a). Second, even if the Court were to find that the petitioner was entitled to such a hearing, he was afforded such a hearing on July 22, 2025. And third, even if the Court found that the July 22, 2025 hearing did not provide the full process of a bond hearing, the appropriate remedy is not a TRO, it is an appeal to the Board of Immigration Appeals. Therefore, the Court should deny the TRO motion.

A. ARGUMENT

1. The petitioner is not entitled to a bond hearing under 8 U.S.C. § 1226(a), because he is subject to detention under 8 U.S.C. § 1225(b)(2)(A).

Petitioner Juan Cuevas Guzman is an alien who is present in the United States. This is undisputed. Similarly, it is undisputed that Cuevas has not been admitted to the United States. Accordingly, Cuevas is an applicant for admission. Any alien who "is present" in the United States but "has not been admitted" to the United States is "an applicant for admission." 8 U.S.C. § 1225(a)(1); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.' § 1225(a)(1).").

The fact that Cuevas is an applicant for admission resolves the dispute in this case because applicants for admission must be detained and they are not entitled to bond hearings. "Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. "And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583 U.S. at 297. Therefore, because Cuevas is an applicant for admission, he is subject to detention under 8 U.S.C. § 1225(b)(2)(A), and he is not entitled to a bond hearing.

The petitioner's claim that Cuevas is not covered by § 1225(b)(2)(A) is unpersuasive. In essence, Cuevas's claim is that DHS previously treated aliens like Cuevas as subject to § 1226(a) and not § 1225(b)(2)(A) so therefore Cuevas (and all other similarly situated aliens) must always be subject to § 1226(a). This argument fails because the fact that Executive Branch exercised discretion in one way in the past, does not transform that discretionary act into an entitlement.

Just because Cuevas was previously afforded a bond hearing, does not mean that he is thereafter entitled to a bond hearing today. In 2011, Cuevas was afforded a bond hearing pursuant to 8 U.S.C. § 1226(a). ECF 1-1, Exh. E. The petitioner was afforded

this bond hearing at the discretion of the Executive Branch. In 2011, like today, Cuevas was subject to § 1225(b)(2)(A). The Executive Branch exercised discretion differently in 2025 than it did in 2011. Inherent in discretion, is that the exercise of that discretion may change over time. Indeed, the petitioner appears to acknowledge that this is discretionary. ECF 3-1 at 18 (discussing that DHS "issued a new policy" despite previously granting bond hearings to aliens like the petitioner). Accordingly, the prior exercise of discretion in 2011 does not entitle Cuevas to force the Executive Branch's deployment of discretion in 2025.

2. <u>In the alternative, the petitioner was afforded all of the procedural protections of a bond hearing at the July 22, 2025 hearing in front of the Immigration Judge.</u>

The petitioner asks the Court to afford him a bond hearing under § 1226(a). As discussed above, the petitioner is not entitled to such a bond hearing. Even if the Court agreed with the petitioner and found that the petitioner must be afforded a bond hearing under § 1226, the Court should still deny the TRO because the petitioner has been given all of the procedural protections of a § 1226(a) bond hearing.

Release on bond under 8 U.S.C. § 1226(a) is discretionary. Under the statute, the Attorney General "may continue to detain the arrested alien" or "may release the alien." There is no right to release, and the release determination is subject to the discretion of the Executive Branch. Here, the petitioner asked for a bond hearing and he was afforded a hearing. The petitioner's disagreement with the Immigration Judge's determination does not change the fact that a hearing was held and the petitioner made arguments in favor of release. That is all that is required under § 1226(a). Thus, to the extent that the petitioner is requesting a hearing that has already happened, the TRO is moot because the petitioner got a hearing.

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3. In the alternative, even if the July 22, 2025 hearing was deficient, the appropriate remedy is an appeal to the BIA, not a TRO.

Assuming arguendo that the petitioner was required to be afforded a bond hearing under § 1226(a), that bond hearing happened on July 22. To the extent that the petitioner disagrees with the detention determination of the Immigration Judge, the challenge to that detention determination is properly handled through an appeal, not a TRO. After the immigration judge rejected the petitioner's arguments for release, the petitioner appealed the determination up to the Board of Immigration Appeals. ECF 1-1 at 5. The appeal is still pending. ECF 1-1 at 5. The petitioner is next scheduled for a hearing before an immigration judge on September 8, 2025. ECF 1-1 at 5. A TRO in conjunction with a habeas petition is not appropriate avenue to circumvent this process.

B. CONCLUSION

For the above-stated reasons, the Court should deny the motion for a temporary restraining order with respect to his request for a bond hearing under 8 U.S.C. § 1226(a).

Dated: August 27, 2025

ERIC GRANT
United States Attorney

By: /s/ JUSTIN L. LEE
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