UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

GERMAN ANTONIO LOPEZ-SANTOS (A[redacted], *Petitioner*	)	
v.	)	Case No. 3:25-CV-01193
KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA JO BONDI, in her official capacity as Attorney General of the United States TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; STANLEY CROCKETT, in his official capacity as Field Director of the ICE New Orleans Field Office; WARDEN, JACKSON PARISH CORRECTIONAL CENTER, in their official capacity, *Respondents*	)	

REPLY IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Mr. Lopez Santos does not challenge Respondents' authority to bring removal proceedings against him. Nor is he seeking outright release from detention pending those proceedings. He is simply seeking the opportunity to apply for bond—an opportunity that noncitizens, like Mr. Lopez Santos, who have resided in the United States for years have long been granted as a matter of right. In response, Respondents ask the Court to defer to an interpretation of the Immigration and Nationality Act (INA) that it adopted a month and a half ago, in a complete reversal of three decades of prior practice, and hold that Mr. Lopez Santos is not entitled to a bond hearing. This Court should join the numerous courts that have almost universally rejected this novel interpretation. Further, the Court has jurisdiction to decide Mr. Lopez Santos's petition.

Respondents cannot argue that Mr. Lopez Santos has failed to exhaust his administrative remedies when Respondents themselves claim that those remedies are unavailable to him. Finally, the Court should reject Respondents' jurisdictional arguments, which run counter to Supreme Court precedent. For these reasons, Mr. Lopez Santos's Amended Petition for writ of habeas corpus should be granted.

ARGUMENT

A. This Court Has Jurisdiction to Hear Mr. Lopez Santos's Claims.

Neither of the jurisdictional bars cited by Respondents strip this court of jurisdiction to hear Mr. Lopez Santos's claims. Section 1252(g) bars courts from hearing "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." 8 U.S.C. § 1252(g). Consistent with the plain statutory language, the Supreme Court has adopted a "narrow reading" of 1252(g), holding that "the provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination*, 525 U.S. 471, 482, 487 (1999) (emphasis in original). Mr. Lopez Santos challenges none of those discrete decisions or actions. He does not challenge or claim that the Government does not have the right to place him in removal proceedings. He does not claim that Respondents may not adjudicate his case. And he has no removal order to execute. Mr. Lopez Santos merely challenges the Government's authority to detain him without the ability to seek release on bond pending those removal proceedings. *See Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (holding that § 1252(g) does not bar claims that challenge "detention while the administrative process lasts.").

In response Respondents argue that "an alien's detention throughout [his removal] process arises from the Attorney General's decision to commence proceedings." Resp. 3 (quoting *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)). But this argument runs headlong into the Supreme Court's holding in *Reno* and its later decision in *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Like Mr. Lopez Santos, the petitioners in *Jennings* argued under the INA that they were entitled to a bond hearing. The Court held that § 1252(g) did not apply, reaffirming that it "did not interpret th[e statutory] language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [it] read the language to refer to *just those three specific actions themselves*." 583 U.S. 281, 294 (2018) (citing *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 482-483) (emphasis added). Accordingly, this Court should reject Respondents' argument which extends the scope of 8 U.S.C. § 1252(g) beyond the limits set by the Supreme Court and the statute's plain language.

Respondents' argument that § 1252(b)(9) bars this Court's review fares no better. Section 1252(b)(9) works in conjunction with 8 U.S.C. § 1252(a)(5) to channel review of "questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" through a petition for review of a final order of removal filed with an appropriate court of appeals. 8 U.S.C. §§ 1252(a)(5), (b)(9); *see Aguilar v. U.S. Immigr. & Customs Enforcement*, 510 F.3d 1, 11 (1st Cir. 2007) (describing § 1252(b)(9) as "a judicial channeling provision, not a claim-barring one"). Respondents argue that Mr. Lopez Santos "challenges the government's decision to detain him," which they consider an "action taken . . . to remove [him] from the United States." Resp. 4 (alteration in original). Yet Respondents again mischaracterize Mr. Lopez Santos's claim and confusingly rely on *Jennings*—a holding that squarely forecloses their argument. *See id.*

As explained above, Mr. Lopez Santos does not argue that he may not be detained, he argues simply that he cannot be detained without the bond hearing that due process and the INA require. As it did with § 1252(g), the Court in *Jennings* concluded that § 1252(b)(9) does not bar such claims. 583 U.S. at 292-94. In *Jennings* the Court "assume[d] for the sake of argument that the actions taken with respect to the aliens in the certified class constitute[d] 'action[s] taken to remove [them] from the United States.'" *Id.* at 292-93. But it held that the legal questions concerning their entitlement to bond hearings did not "arise from" the actions taken to remove them. *Id.* As the Court noted, "[i]n past cases, when confronted with capacious phrases like 'arising from,' [it has] eschewed 'uncritical literalism' leading to results that 'no sensible person could have intended.'" *Id.* at 293-94 (quoting *Gobeille* v. *Liberty Mut. Ins. Co.*, 577 U. S. 312, 319 (2016)). Recognizing the "staggering results" that would flow from an interpretation of § 1252(b)(9) that encompasses any claim that could arguably be traced back to the noncitizen's initial detention and the absurdity of "cramming judicial review of those questions into the review of final orders of removal," the Court held that § 1252(b)(9) did not bar petitioners' claim that they had been unlawfully denied a bond hearing. *Id.* at 293. It follows that § 1252(b)(9) does not bar similar claims raised by Mr. Lopez Santos.

Finally, Respondents argue that he has failed to exhaust administrative remedies. But Respondents cannot have it both ways, arguing that Mr. Lopez Santos's habeas petition should be denied for failure to exhaust administrative remedies that they themselves argue he is not entitled to. True, bond determinations made by an immigration judge pursuant to 8 U.S.C. § 1226(a) are appealable to the Board of Immigration Appeals (BIA). 8 C.F.R. § 236.1(d)(3). Yet here the immigration judge did not make a custody determination under § 1226(a). He held that statute, and by extension the implementing regulations that allow Mr. Lopez Santos to seek review before the

BIA, do not apply to him. *See* ECF No. 5-6. Respondents took that same position at his bond hearing, *see* ECF No. 8-1, at 4 (holding that Mr. Lopez Santos is subject to mandatory detention under § 1225), and again in their response, *see* Resp. 8. Thus, by their own estimation, further review before the BIA is not only futile, but unavailable to Mr. Lopez Santos.

A district court in the Fifth Circuit recently held in a similar case that a petitioner was not required to seek review before the BIA of a constitutional challenge to his immigration detention under 8 U.S.C. § 1226(c), arguing that the refusal to consider him for a bond violated his substantive and procedural due process rights. *Hniguira v. Mayorkas*, No. 23-cv-3314, 2024 U.S. Dist. LEXIS 49720, at *11-12 (S.D. Tex. Mar. 20, 2024). Citing BIA precedent stating that it lacks authority to adjudicate constitutional questions, the district concluded that it would be futile to require the petitioner to seek review before the BIA. *Id.* So too here where Mr. Lopez Santos argues that the refusal to consider him for bond violates his substantive and procedural due process rights. *See* Am. Pet. 13-16. Further, *Hniguira* is consistent with other cases that have held exhaustion is excused in cases raising "substantial constitutional questions" like those raised here. *Postels v. Peters*, No. 99-cv-2369, 2000 U.S. Dist. LEXIS 3356, at *17 (E.D. La. Mar. 15, 2000) (citing *Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992)). Thus, the Court should allow Mr. Lopez Santos's petition to proceed.

B. Mr. Lopez Santos Has Stated a Fourth Amendment Claim as ICE Officers Lacked Reasonable Suspicion for Its Investigatory Stop

Respondents' Fourth Amendment argument focuses on Mr. Lopez Santos's arrest and ignores the threshold question of whether the initial stop complied with the Constitution. It did not. Mr. Lopez was driving to a friend's house to drop off a trailer when he was stopped by ICE officers. Respondents have failed to provide "specific articulable facts" known to the officers at the time of the stop that would have given rise to a reasonable suspicion that Mr. Lopez had

violated the immigration laws of the United States. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). In the absence of reasonable suspicion of an immigration violation, the stop violated Mr. Lopez Santos's Fourth Amendment rights. *Id.*

Mr. Lopez Santos further disputes Respondents' contention that his warrantless arrest complied with statutory and regulatory requirements. A warrantless arrest must be supported by probable cause that the individual has violated the immigration laws *and* that he is likely to escape before a warrant can be obtained. 8 U.S.C. § 1357(a); 8 C.F.R. § 287.8(c)(2)(ii). Respondents did not satisfy those requirements here. Mr. Lopez has lived in the community for twenty years. He provided his identification showing a fixed address in Maryland. There is no reason why the officers could not have obtained and returned with a warrant for Mr. Lopez's arrest.

C. Respondents' Due Process Claims Lack Merit.

Mr. Lopez Santos's continued detention without the opportunity to seek bond violates his substantive and procedural due process rights. As the Supreme Court held in *Zadvydas v. Davis*, the substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings. 533 U.S. 678, 690 (2001). The Court further affirmed that immigration detention violates the Due Process Clause unless "a special justification, such as harm-threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

Respondents do not offer any meaningful opposition to Mr. Lopez Santos's substantive due process claim. Instead, they misconstrue his citation to *Zadvydas* to support the unremarkable proposition that he may not be arbitrarily detained as an effort to raise a *Zadvydas* claim challenging the lawfulness of post-order detention. Trying to shoehorn Mr. Lopez Santos's claim into that framework, they rightly point out that he has not received a final order of removal. Resp.

7. But that has no bearing on whether the substantive due process principles set forth in *Zadvydas,* which dealt with post-order detention, may be applied to Mr. Lopez Santos's case challenging his arbitrary, pre-order detention. They can be. And here, DHS denied Mr. Lopez Santos a bond hearing to determine whether a "special justification," such as flight risk or danger to the community, justifies his continued detention. Absent such a special justification, his continued detention is arbitrary and violates his substantive due process rights.

Respondents' procedural due process argument also lacks merit. First, Mr. Lopez nowhere claims that he has "an absolute right to release on bond." Resp. 8. Rather, the issue is the deprivation of his liberty without adequate process in the form of an individualized bond hearing to demonstrate that his continued detention is justified. But the bigger issue is Respondents' reliance on the very bond procedures that it has *denied* Mr. Lopez Santos as proof that due process has been satisfied. Respondents argue that if "DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the alien may request a [bond hearing] before an immigration judge." Resp. 7. Mr. Lopez Santos agrees that a bond hearing would satisfy due process. That is the very relief he seeks and the process that has been denied to him. Indeed, in the next paragraph Respondents argue that he is subject to mandatory detention and ineligible for bond. *Id.* at 7-8. In short, Respondents essentially prove Mr. Lopez Santos's point, highlighting a procedure that would satisfy due process but arguing that he is not entitled to it.

D. Mr. Lopez Santos's Detention is Governed by § 1226(a), not § 1225(b).

Mr. Lopez Santos is subject to discretionary detention under § 1226(a) and therefore entitled to the individualized bond hearing he has thus far been denied. Respondents' argument that he is subject to mandatory detention under § 1225(b)(2) relies on cherry-picked language from *Jennings*, an incomplete reading of the INA, and marks a stark reversal from a statutory

interpretation that the government has embraced for three decades. *See* ECF No. 5-1 (providing "notice that DHS, in coordination with the Department of Justice, has revisited its legal position on detention and release authorities").

The INA defines an applicant for admission as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted . . .)." 8 U.S.C. § 1225(a)(1). Yet not all applicants for admission are subject to mandatory detention. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained." 8 U.S.C. § 1225(b)(2). The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4). An individual like Mr. Lopez who has resided continuously in the United States for decades, worked and paid taxes here, cannot reasonably be described as "seeking admission." *See Benitez v. Francis*, 2025 U.S. Dist. LEXIS 153952, at *16 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde,* No. 25-cv-11613, 2025 U.S. Dist. LEXIS 141724, at *2 (D. Mass. Aug. 14, 2025).

Further, to apply the statute to "all applicants for admission" regardless of whether they are "seeking admission," as Respondents urge, *see* Resp. 9, would render the phrase "seeking admission" redundant. *Martinez,* 2025 U.S. Dist. LEXIS 141724, at *2. And to "treat[] the terms 'applicant for admission' and 'alien seeking admission' as synonymous [would] violate[] the principle that Congress is presumed to have acted intentionally in choosing different words in a

statute, such that different words and phrases should be accorded different meanings." *Benitez*, 2025 U.S. Dist. LEXIS 153952, at *19-20.

Respondents reading would also nullify recent amendments to the INA in the Laken Riley Act, now codified at 8 U.S.C. § 1226(c). Among other things, the act mandates detention for noncitizens who are subject to certain inadmissibility grounds *and* meet certain criminal criteria. 8 U.S.C. § 1226(c)(1). Such a statute would be entirely redundant if, as Respondents argue, a noncitizen's inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *Benitez*, 2025 U.S. Dist. LEXIS 153952, at *22.

Respondents rely on *Jennings* to support their argument, but *Jennings* affirms the well-settled proposition that § 1225 applies to noncitizens seeking admission while § 1226 applies to those who have already entered the United States, even illegally. 583 U.S. at 303 ("While the language of §§1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, §1226 applies to *aliens already present in the United States.*") (emphasis added). Recognizing that "once inside the United States, aliens do not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission," *Jennings* clarified that "Section 1226 generally governs the process of arresting and detaining *that group of aliens pending their removal.*" *Jennings*, 583 U.S. at 288 (emphasis added).

For these reasons and more, courts across the country have overwhelmingly rejected DHS's novel statutory interpretation. *See, e.g. Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 U.S. Dist. LEXIS 165015, at *25 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25-cv-3161, 2025 U.S. Dist. LEXIS 160314, at *5 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-cv-3142, 2025 U.S. Dist. LEXIS 158321, at *30-32 (D. Minn. Aug. 15, 2025); *Jimenez v. Kramer*,

No. 4:25-cv-3162, 2025 U.S. Dist. LEXIS 157245, at *5 (D. Neb. Aug. 14, 2025); *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 U.S. Dist. LEXIS 163975, at *7 (N.D. Cal. Aug. 22, 2025): *Arostegui Castellon v. Kaiser*, No. 1:25-cv-00968 JLT EPG, 2025 WL 2373425, at *9 (E.D. Cal. Aug. 14, 2025); *Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 U.S. Dist. LEXIS 160622, at *24-25 (D. Mass. Aug. 19, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at *17 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. 25-cv-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *21-22 (D. Ariz. Aug. 11, 2025). This Court should join the growing chorus, hold that Mr. Lopez Santos's detention is governed by § 1226(a), and grant him the bond hearing he is entitled to.

CONCLUSION

For the foregoing reasons, the Court should grant the Amended Petition for Writ of Habeas Corpus.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 27, 2025, I filed the foregoing document using the CM/ECF system, which will provide service to all counsel of record in this matter.

/s/Kevin Hirst
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