

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HARSH PATEL (A [REDACTED])
Petitioner,)
v.)
KRISTI NOEM, Secretary, U.S Department of) Case No. 25-cv-11180
Homeland Security; and)
SAMUEL OLSON, Field Office Director, Chicago) Hon. Jeffrey I Cummings
Field Office, Immigration and Customs)
Enforcement,)
Respondents.)

PETITIONER'S REPLY TO
RESPONDENTS' SUPPLEMENTAL MEMORANDUM

The Petitioner, HARSH PATEL, by and through his own and proper person and through his attorneys, KRIEZELMAN BURTON & ASSOCIATES, LLC, files this reply to Respondents' Supplemental Memorandum, and in support thereof, states as follows:

A. The Court has jurisdiction over this matter.

This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(b)(9) and (g). Petitioner refers the Court to his prior response discussing jurisdiction. *See* Dkt. 6.

By way of review, Section 1252(b)(9) prevents judicial review of an action “arising from any action taken or proceeding brought to remove an alien from the United States” and Section 1252(g) prevents judicial review of an action “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.”

As explained in Petitioner's prior response discussing jurisdiction, Petitioner's claim does not fall under any of these types of actions. Petitioner is not challenging the initial decision to detain him, he is not challenging a removal order, he is not challenging the decision to commence proceedings. *See* Dkt. 6.

The Ninth Circuit case that Respondents claim is "on point" here, *Sissoko v. Mukasey*, 509 F.3d 947 (9th Cir. 2007), actually misses the mark, as that case involved a noncitizen who was an arriving alien and which challenged the decision to commence expedited removal proceedings, neither of which circumstances are present here.

Respondents' arguments are further undermined by the **twenty-nine** decisions that Petitioner cited in his prior response and the additional **thirty-seven** decisions cited below from district courts across the country, that have determined that the court has jurisdiction, that have found that 8 U.S.C. § 1252(b)(9) and (g) are inapplicable, and that have ultimately granted Petitioner relief.

Aside from the numerous cases from other circuits, within the Seventh Circuit, on September 22, 2025, the District Court for the Southern District of Indiana, in *Campos Leon v. Forestal*, Case No. 1:25-cv-01774 (S.D. Ind. September 22, 2025), also rejected the government's arguments that it did not have jurisdiction under Sections 1252(b)(9) and (g) and ultimately granted petitioner relief.

The circumstances in all of these cases are similar to the ones here: that Petitioner is a noncitizen who entered the United States without being inspected or admitted and was later detained within the United States.

For the foregoing reasons, and reincorporating by reference Petitioner's prior response discussing jurisdiction (Dkt. 6), this Court has jurisdiction over Petitioner's claims.

B. Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

By way of review, 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of “Applicants for Admission.” Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. The Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge’s authority to hear a bond request for any noncitizen present in the United States without having been inspected and admitted and who are later apprehended.

Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. *See* Dkt. 13 at pages 7-11. This argument fails for several reasons.

First, the arrest warrant for Petitioner that Respondents submitted to this Court plainly states that Petitioner was arrested and detained pursuant to INA § 236, 8 U.S.C. § 1226. *See* Dkt. 7, Ex. 3. The arrest warrant states that “any immigration officer authorized pursuant to section 236...to serve warrants of arrest for immigration violations.” *Id.* To now argue that Petitioner is now subject to mandatory detention under 8 U.S.C. § 1225(b)(2) entirely contradicts the plain language of the arrest warrant.

Next, district courts across the country have unanimously rejected *Matter of Yajure Hurtado* new interpretation that those who entered unlawfully and are later apprehended are now subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The parties appeared before this

Court for a hearing on September 19, 2025, during which the Court acknowledged that Petitioner had provided the Court with a number of decisions (twenty-nine total) from federal district courts across the country that have recently granted habeas relief to Petitioners and have disagreed with the *Matter of Yajure Hurtado* decision. The Court provided Respondents with an opportunity to provide the Court with any decisions holding the opposite and supporting their position.

In response, Respondents have only provided *two decisions*, which they purport to support their interpretation that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2). Those cases are: *Florida v. United States*, 660 F. Supp. 3d 1239 (N.D. Fla. 2023) and *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025). See Dkt. 13 at page 7.

Respondents' inclusion of these two cases here to support their position is misplaced as they involve different issues and sets of facts than those here. Indeed, the government has cited to these exact two cases to support their position in habeas petitions in other district courts, but those courts have rejected that these two cases have any relevance.

In *Beltran Barrera v. Tindall*, the District Court for the Western District of Kentucky disagreed with the government's inclusion of *Florida v. United States* to support their argument and determined that that case "centered around noncitizens who were apprehended at the Southwest border. *Not* noncitizens who are present without admission and already residing in the United States such as [petitioner]." Case No. 3:25-cv-00541 at 5 (W.D. Ky. September 19, 2025); *see also* *Singh v. Lewis*, Case No. 4:25-cv-00096 (W.D. Ky. September 22, 2025) (incorporating by reference the reasoning and decision in *Beltran Barrera v. Tindall*). Here, Petitioner was not apprehended at the southwest border. He is present in the United States without admission and already residing in the United States for nearly three years before he was detained.

In *Arce v. Trump*, the District Court for the District of Nebraska disagreed with the government's inclusion of *Pena v. Hyde* to support their argument and stated that "the issue in that case was not whether § 1225 or § 1226 applied—indeed, the court did not even discuss § 1226(a)." Case No. 8:25-cv-520 (D. Neb. September 18, 2025)

In further support of Petitioner's position, Petitioner has identified the following additional **thirty-seven** decisions that have recently rejected the new interpretation that those who entered unlawfully and are later apprehended are now subject to mandatory detention under Section 1225(b)(2):

First Circuit

- *Chafla v. Scott*, Case No. 2:25-cv-00437 (D. Me. September 21, 2025)
- *Tamay v. Scott*, Case No. 2:25-cv-00438 (D. Me. September 21, 2025)
- *Lema v. Scott*, Case No. 2:25-cv-00439 (D. Me. September 21, 2025)
- *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- *Hilario Rodriguez v. Moniz*, No 25-12358 (D. Mass. September 18, 2025)

Fourth Circuit

- *Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025)
- *Leal-Hernandez v. Noem*, No. 1:25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

Fifth Circuit

- *Martinez v. Noem*, No. 5:25-CV-01007, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025)
- *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. September 11, 2025)

Sixth Circuit

- *Beltran Barrera v. Tindall*, Case No. 3:25-cv-00541 (W.D. Ky. September 19, 2025)
- *Singh v. Lewis*, Case No. 4:25-cv-00096 (W.D. Ky. September 22, 2025)

Seventh Circuit

- *Campos Leon v. Forestal*, Case No. 1:25-cv-01774 (S.D. Ind. September 22, 2025)

Eighth Circuit

- *Arce v. Trump*, Case No. 8:25-cv-520 (D. Neb. September 18, 2025)
- *Giron Reyes v. Lyons*, Case No. C25-4048 (N.D. Iowa September 23, 2025)
- *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025)
- *Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025)

- *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025)
- *Lorenzo Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025)
- *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025)
- *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)
- *Mohammed H. v. Trump*, No. CV 25-1576, 2025 WL 1692739 (D. Minn. June 17, 2025)
- *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025)
- *Hernandez Marcelo v. Trump*, 3:25-cv-00094 (S.D. Iowa September 10, 2025)
- *Brito Barrajas v. Noem*, No. 4:25-cv-00322 (S.D. Iowa September 23, 2025)
- *Ozuna Carlon v. Kramer*, 4:25-cv-03178 (D. Neb. September 11, 2025)
- *Genchi Palma v. Trump*, 4:25-cv-03176 (D. Neb. September 11, 2025)

Ninth Circuit

- *Vazquez v. Feeley*, No. 2:25-CV-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025)
- *Herrera Torralba v. Knight*, No. 2:25-CV-01366, 2025 WL 2581792 (D. Nev. Sept. 5, 2025)
- *Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal. July 28, 2025)
- *Benitez et al. v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025)
- *Sanchez Roman v. Noem*, 2:25-cv-01684 (D. Nev. September 23, 2025)

Tenth Circuit

- *Garcia Cortes v. Noem*, 1:25-cv-02677 (D. Colo. September 16, 2025)
- *Salazar v. Dedos*, 1:25-cv-00835 (D.N.M. September 17, 2025)

Petitioner specifically draws the Court's attention to a decision from earlier this week within the Seventh Circuit out of the District Court of the Southern District of Indiana, *Campos Leon v. Forestal*, Case No. 1:25-cv-01774 (S.D. Ind. September 22, 2025), which granted Petitioner's petition and rejected that Petitioner was subject to detention under 8 U.S.C. § 1225(b)(2).

Here, Petitioner is detained under 8 U.S.C. § 1226(a), INA § 236(a), and requests that this Court compel Respondents to conduct a bond hearing to ensure his due process rights.

CONCLUSION

For the foregoing reasons, this Court has jurisdiction over this matter, Petitioner is detained under 8 U.S.C. § 1226 and this Court should grant him relief by directing the Respondents to schedule a bond hearing for Petitioner and accept jurisdiction to issue a bond order.

Respectfully Submitted,

/s/ Nicole Provax

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