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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Harold Herrera-Ramirez,

Petitioner,

v.

The United States of America, Michael Bernacke, Director, Salt Lake City Field Office, U.S. Immigration and Customs Enforcement, Patrick J. Lechleitner, Acting Director if Immigration Customs Enforcement, Kerri Ann Quihuis, Immigration Customs Enforcement Field Officer Director, Kristi Noem, Secretary of Homeland Security, Pamela J. Bondi, Attorney General of the United States,

Respondents.

Case No. 2:25-cv-01749-MMD-EJY

Respondents' Response to Petition for Writ of Habeas Corpus and Motion to Dismiss

I. Introduction

Respondents Michael Bernacke, Patrick Lechleitner, Kerri Quihuis, Kristi Noem, and Pamela J. Bondi ("Respondents"), though undersigned counsel, Sigal Chattah, Acting United States Attorney for the District of Nevada, and Summer A. Johnson, Assistant United States Attorney, hereby file this response to the Petition for Writ of Habeas Corpus filed by Harold Herrera-Ramirez ("Petitioner"). As set forth below, Petitioner's continued detention is lawful under the Immigration and Nationality Act ("INA") and controlling Supreme Court and Ninth Circuit precedent. Petitioner is detained pursuant to 8 U.S.C. §

1226(a) while his petition for review of his final removal order remains pending before the Ninth Circuit. He has already received the process to which he is entitled: an individualized custody redetermination hearing before an Immigration Judge ("IJ"), appellate review by the Board of Immigration Appeals ("BIA"), and the opportunity to seek further review of any material change in circumstances. Because the statutory and regulatory scheme governing Petitioner's custody satisfies both statutory and constitutional due process requirements, the Petition should be dismissed for lack of jurisdiction or, in the alternative, denied on the merits.

II. Factual Background

Petitioner Harold Herrera-Ramirez is a native and citizen of Columbia. ECF No. 1 at ¶1, 12. He is currently detained at the Nevada Southern Detention Center. *Id.* Petitioner entered the United States at or near El Paso, Texas on or about October 21, 2023 without being admitted or paroled. See Exhibit A. Petitioner was charged with removal pursuant to section 212(a)(6)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), as an "alien present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General." *Id.*

Due to lack of space, Petitioner was released on his own recognizance and ordered to appear on October 5, 2026 at an Immigration Court in West Valley, Utah. Exhibit A at 1, 4. On March 26, 2024, Petitioner filed an Application for Asylum and Withholding of Removal. *See* Exhibit B at 2.

On December 3, 2024, Petitioner was detained by agents of Enforcement and Removal Operations, Immigration and Customs Enforcement (ERO-ICE). *See* Exhibit B. On January 3, 2025, a Notice of Custody Redetermination hearing was issued by the Immigration Court in Las Vegas, Nevada, notifying Petitioner that a Custody Redetermination hearing would take place on February 10, 2025. *See* Exhibit C.

On February 10, 2025, a custody redetermination hearing was held. The Immigration Judge ("IJ) denied Petitioner's custody redetermination on the grounds that his two convictions in Columbia which resulted in lengthy convictions for each offense,

"indicates that the respondent constitutes a danger to the community." *See* Exhibit D. Additionally, the Court found that Petitioner's convictions "constitute serious non-political offenses that limit his available relief from removal." *Id.* Because of the limited available relief from removal, the court also found Petitioner to be a flight risk. *Id.*

On February 10, 2025, Petitioner also appeared for his merits hearing on the underlying removal proceedings. The IJ found Petitioner inadmissible under section 212(a)(6)(A)(i) of the INA. *See* Exhibit E. The IJ further denied Petitioner's applications for asylum, withholding of removal under INA section 241(b)(3), and protection under the Convention Against Torture. *Id.* at 4. Accordingly, the IJ ordered Petitioner removed to Colombia, and Petitioner reserved his right to appeal. *Id.*

Petitioner appealed the IJ's bond order to the BIA. The BIA "affirm[ed], without opinion, the result of the [IJ's] decision." *See* Exhibit F. Petitioner also appealed the IJ's removal decision to the BIA. In June 2025, in a lengthy opinion, the BIA examined each of Petitioner's claims and ultimately upheld the IJ's decision to order removal to Columbia. *See* Exhibit G.

In July 2025, Petitioner filed a Petition for Review at the Ninth Circuit Court of Appeals (currently pending as Case Number 25-4313). On September 24, 2025, the Ninth Circuit issued an order staying Petitioner's removal to Columbia pending the outcome of his appeal from the BIA's decision upholding the removal order. *See* Exhibit H. The Court set a briefing schedule: Petitioner's opening brief is due November 12, 2025 and the answering brief is due December 12, 2025. *Id.*

On September 18, 2025, Petitioner filed the instant Petition for Writ of Habeas Corpus. ECF No. 4. Petitioner requests that the Court order the Immigration Judge to hold a new bond hearing; hold a hearing, if warranted, make a determination that Petitioner's detention is not justified, and issue a declaration that his ongoing detention violates the Due Process Clause of the Fifth Amendment and the Eighth Amendment. *Id.* at 18-19.

Respondents were ordered to respond by October 8, 2025, which was subsequently extended to October 10, 2025. ECF Nos. 3, 6. Respondents now file this timely response.

III. Legal Standards

A. Jurisdiction and Burden of Proof in Federal Habeas Petitions

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020).

Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n. 16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

Section 2242 states that habeas petitions "shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known." 28 U.S.C. § 2242. The "one proper respondent" in a § 2241 immigration proceeding challenging continued detention is "the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *See Doe v. Garland*, 109 F.4th 1188, 1195 (9th Cir. 2024) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S. Ct. 2711, 159 L. Ed. 2d 513 (2004)). The Court lacks jurisdiction over a § 2241 petition that fails to name the proper respondent. *Gurmeet Singh v. Field Office Dir., S.F. Field Office*, No. 24-cv-03472-RMI, 2024 U.S. Dist. LEXIS 161826, at *2 (N.D. Cal. Sep. 9, 2024).

B. Detention and Removal Under 1226(a)

Noncitizens are removable if they fall within any of several statutory classes of removable individuals. *Avilez v. Garland*, 69 F.4th 525, 529 (9th Cir. 2023) (citing 8 U.S.C. § 1227(a)). Four statutes grant the Government authority to detain noncitizens who have been placed in removal proceedings: 8 U.S.C. §§ 1225(b), 1226(a), 1226(c), and 1231(a).

Id. A noncitizen's place within this statutory framework determines whether his detention is mandatory or discretionary, as well as the review process available to him if he wishes to contest the necessity of his detention. *Rubin v. United States Immigr. & Customs Enf't Field Off. Dir.*, 2024 WL 3431914, at *4 (W.D. Wash. June 28, 2024), report and recommendation adopted, 2024 WL 3431163 (W.D. Wash. 2024)(internal citations and quotations omitted).

Federal immigration law, under Section 1226(a), empowers the Secretary of Homeland Security to arrest and detain a deportable noncitizen pending a removal decision, and it generally gives the Secretary the discretion either to detain the noncitizen or to release him on bond or parole. 8 U.S.C. § 1226(a); *Nielsen v. Preap*, 586 U.S. 392, 397 (2019). Under Section 1226(a), a noncitizen is entitled to a bond hearing at which an Immigration Judge considers whether the noncitizen is a flight risk or a danger to the community. *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. See 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)."). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. If Petitioners receive an adverse ruling, they "may appeal the immigration judge's decision to the Board of Immigration Appeals (BIA)." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28, 141 S. Ct. 2271, 210 L. Ed. 2d 656 (2021). In addition, following a showing of "change of circumstances," Petitioner can seek an additional bond redetermination hearing. *Diaz v. Garland*, 53 F.4th 1189, 1197, 1209 (9th Cir. 2022)("Rodriguez Diaz has had the right to seek an additional bond hearing if his circumstances materially change. See 8 C.F.R. § 1003.19(e).")

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IV. Argument

A. The Court Lacks Jurisdiction Over this Habeas Matter Because the Warden has Not been Named.

As noted above, the required respondent in a habeas matter must be "the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *See Doe v. Garland*, 109 F.4th at 1195. Petitioner is currently housed at the Nevada Southern Detention Center. ECF No. 4 at 2. John Mattos is the current warden of the place in which Petitioner is confined[1] and he is not named in this action (nor is the facility.) As a result, the Court lacks jurisdiction over a § 2241 petition and this matter should be dismissed.

B. ICE is Authorized to Detain Petitioner Pending the Resolution of His Appeal

1. Petitioner's Detention is Governed by § 1226(a) and not § 1231(a)

When an alien receives a removal order, the Attorney General has 90 days to remove him from the United States. 8 U.S.C. § 1231(a)(1)(A). This "removal period" begins on the latest of three dates: "[t]he date the order of removal becomes administratively final"; "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order"; and "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* § 1231(a)(1)(B). The removal period is extended beyond 90 days if the alien fails to make good-faith efforts to obtain necessary travel documents or otherwise "acts to prevent [his] removal." *Id.* § 1231(a)(1)(C).

However, where an alien has appealed his order of removal from the BIA to the Ninth Circuit, the alien's detention is governed by § 1226(a) and not §1231. In *Prieto-Romero v. Clark*, 534 F.3d 1053, the court held that "[a]lthough § 1231(a) does not authorize the Attorney General to detain aliens such as Prieto-Romero, the Attorney General still retains discretionary detention authority under § 1226(a), which permits detention 'pending a decision on whether the alien is to be removed from the United

[1] https://www.corecivic.com/facilities/nevada-southern-detention-center (last accessed October 10, 2025).

States.' It is reasonable to consider the judicial review of a removal order as part of the process of making an ultimate 'decision' as to whether an alien 'is to be removed.' Because Prieto-Romero filed a petition for review and our court entered a stay, his detention is governed by § 1226(a); only if we enter a final order denying his petition for review will the statutory source of the Attorney General's detention authority shift from § 1226(a) to § 1231(a)." *Prieto-Romero v. Clark*, 534 F.3d at 1062.

Here, Petitioner has appealed his order of removal from the BIA to the Ninth Circuit Court of Appeals. In doing so, Petitioner's detention is governed by the discretionary detention permitted by § 1226(a) (detention permitted "pending a decision on whether the alien is to be removed from the United States.").

2. Under section 1226(a) Petitioner Has Exercised his Right to a Bond Hearing

After an alien is detained, the DHS district director makes an initial custody determination and may allow the alien's release on bond. *See* 8 C.F.R. § 236.1(d). If the alien objects to the director's bond determination, he may request a bond redetermination hearing before an IJ at any time before the issuance of an administratively final order of removal. *See id.*; *see also* 8 C.F.R. § 1003.19(c). If at this hearing the detainee demonstrates by the preponderance of the evidence that he is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk," the IJ will order his release. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). If the IJ denies the request for a bond, the alien may appeal the IJ's bond decision to the BIA, *see* 8 C.F.R. § 236.1(d)(3), but discretionary decisions granting or denying bond are not subject to judicial review, *see* § 1226(e). Additionally, an individual detained pursuant to § 1226(a) may request an additional bond hearing whenever he experiences a material change in circumstances. *See* 8 C.F.R. § 1003.19(e). The same procedures apply to this new hearing, and its outcome is also appealable to the BIA. *See generally id.* § 1003.19.

Here, as noted above, Petitioner availed himself of the process afforded under 8 U.S.C. § 1226(a) and the implementing regulations by requesting a bond redetermination hearing before an IJ. *See* Exhibit D. At that hearing, Petitioner was provided the opportunity to present evidence and argument bearing on the statutory and regulatory

factors governing custody, including whether he posed a danger to the community or a risk of flight. After consideration of the record and arguments presented, the IJ denied Petitioner's request for release on bond. Exhibit F at 3. Consistent with the procedures outlined in 8 C.F.R. § 236.1(d)(3), Petitioner then exercised his right to appeal the IJ's bond decision to the BIA. The BIA subsequently dismissed the appeal, thereby rendering the IJ's custody determination administratively final. *See* Exhibit F at 2.

Accordingly, Petitioner has received the full measure of process provided under § 1226(a) and its corresponding regulations—an initial custody determination by DHS, a bond redetermination hearing before an IJ, and an appellate review by the BIA.

C. Petitioner Has Been Afforded the Due Process to Which He is Entitled

In determinizing whether there has been a violation of a detainee's constitutional due process for detentions under section 1226(a), the Ninth Circuit's decision in *Diaz v. Garland* provides dispositive guidance on the due process requirements for immigration bond proceedings for detainees. 53 F.4th 1189 (9th Cir. 2022). In *Diaz*, the court addressed whether petitioners who had received bond hearings before an immigration judge, with the opportunity to appeal adverse decisions to the Board of Immigration Appeals, had been afforded constitutionally adequate process. *Id.* at 1194-95. The court concluded that they had, holding that "so long as the government follows reasonable, individualized determinations to ensure that the alien is properly in removal proceedings, due process does not require more bond hearings even after a prolonged period." *Id.* at 1218 (Bumatay, P. concurring.)

The *Diaz* court emphasized that due process does not guarantee any particular outcome, but rather ensures access to adequate procedures for contesting detention. *Id.* at 1213. The court noted that petitioners had a right to and received bond hearings before an immigration judge and possessed "the right to appeal to the BIA." *Id.* at 1209. This procedural framework, the court held, satisfied constitutional requirements because it provided a neutral decisionmaker, an opportunity to be heard, and appellate review of adverse determinations. *Id.* at 1210.

The instant matter is procedurally indistinguishable from Diaz. Petitioner received a bond redetermination hearing before an immigration judge, wherein he was afforded the opportunity to present evidence, call witnesses, and contest the grounds for his continued detention. *See* Exhibit F at 3. Following an adverse determination, Petitioner exercised his right to appeal that decision to the BIA. *See id.* at 1. This procedural posture mirrors precisely the circumstances in *Diaz*, where the Ninth Circuit held that such procedures satisfy constitutional due process requirements.

Under *Diaz*, the relevant inquiry is not whether Petitioner prevailed in his bond proceedings, but whether he received constitutionally adequate process to challenge his detention. 53 F.4th at 1194. The record establishes that he did. Petitioner appeared before an immigration judge who independently evaluated the evidence and applicable legal standards. He was permitted to present testimony and documentary evidence, and afforded the opportunity to challenge the government's basis for detention. Upon receiving an unfavorable decision, he pursued appellate review before the BIA, thereby exhausting the administrative procedures available to him.

The Constitution guarantees procedural safeguards, not substantive outcomes. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (establishing framework for evaluating procedural due process claims). *Diaz* makes clear that when an immigration detainee receives a bond hearing before an immigration judge with the opportunity for BIA review, "1226(a)'s procedures satisfy due process both facially and as applied." *Id.* at 1213. Petitioner has received exactly this process.

Moreover, *Diaz* forecloses any argument that continued detention following a bond hearing and appeal constitutes a constitutional violation. The Ninth Circuit explicitly rejected the notion that due process entitles immigration detainees to release on bond; rather, due process entitles them only to adequate procedures for contesting detention. *Id.* at 1209. Petitioner received those procedures. That the immigration judge and BIA ultimately determined that his continued detention was warranted does not transform an adequate process into an inadequate one. Because Petitioner has received precisely this

process, his due process rights have been vindicated, and habeas relief on this ground is unwarranted.

D. Petitioner's Claims of Overlong Detention Are Not Supported by the Record

In *Diaz*, the Ninth Circuit held that an 18-month period of detention during which Diaz had two bond hearings and sought BIA appeal did not violate due process, as the petitioners had received constitutionally adequate procedures to contest their detention. 53 F.4th at 1213. By comparison, Petitioner's eight-month detention since his last bond hearing in February 2025 falls well short of the duration found constitutionally permissible in *Diaz*. Moreover, in light of his ability to seek a bond redetermination under 8 C.F.R. § 1003.19(e), Petitioner's claim that his continued detention violates due process is unjustified. *Diaz v. Garland*, 53 F.4th at 1209 ("Rodriguez Diaz has had the right to seek an additional bond hearing if his circumstances materially change. See 8 C.F.R. § 1003.19(e).")

V. Conclusion

For the foregoing reasons, Petitioner's continued detention is authorized by 8 U.S.C. § 1226(a) and fully comports with the Due Process Clause. Petitioner has received all process due under the Immigration and Nationality Act and binding precedent, including the opportunity to contest his detention before a neutral decisionmaker and to seek administrative appellate review. Moreover, the Court lacks jurisdiction over this Petition because Petitioner has failed to name the proper respondent. Accordingly, Respondents respectfully request that the Court dismiss the Petition for Writ of Habeas Corpus in its entirety or deny the Petition on its merits.

Respectfully submitted this 10th day of October, 2025.

SIGAL CHATTAH
Acting United States Attorney

/s/ Summer A. Johnson
SUMMER A. JOHNSON
Assistant United States Attorney

Certificate of Service

I, Summer A. Johnson, hereby certify that a copy of the foregoing **Respondents' Response to Petition for Writ of Habeas Corpus and Motion to Dismiss** was served via the CM/ECF Electronic File and Serve system, and to the following individuals by the stated service methods:

Via U.S. First Class Mail:
Harold Herrera-Ramirez
Alien No. [redacted]
Nevada Southern Detention Center
2190 East Mesquite Avenue
Pahrump NV 89060

Dated this 10th day of October 2025.

/s/ Summer A. Johnson
SUMMER A. JOHNSON
Assistant United States Attorney