


UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

JACIEL CIRRUS ROJAS (A ) )  
 )  
Petitioner, )  
 )  
v. )  
 )  
SAMUEL OLSON, Field Office Director, Chicago )  
Field Office, Immigration and Customs )  
Enforcement; SCOTT SMITH, Jail Administrator, )  
Dodge County Jail, )  
 )  
Respondents. )

Case No. 2:25-cv-01437

**REPLY TO RESPONDENT’S RESPONSE TO PETITIONER’S HABEAS PETITION**

Petitioner submits this reply to Respondent’s Response to his Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order. Petitioner continues to be detained unlawfully during his pending removal proceedings, in violation of his constitutional and statutory rights.

**A. This Court has jurisdiction over this matter and 8 U.S.C. § 1252 does not deprive this Court of jurisdiction**

This action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended (“INA”), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the “Suspension Clause”), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States. This action is brought to compel the

Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(b)(9) and (g) as Petitioner's claims do not challenge any decision to commence proceedings, adjudicate cases, or execute removal orders.

Section 1252(b)(9) provides:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added).

The Supreme Court's decision in *Jennings v. Rodriguez* is instructive here and supports Petitioner's position that this Court does have jurisdiction and that Section 1252(b)(9) does not present a jurisdictional bar.

The Supreme Court determined that the "arising from" language of Section 1252(b)(9) should not be interpreted so expansively as to include any action that technically follows the commencement of removal proceedings, because that would bar judicial review of questions of law and fact that are unrelated to the removal proceedings until a final order of removal was issued. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018). Petitioner, like the class in *Jennings*, "are not asking for review of an order of removal, they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined." *Id.* at 294-95.

Section 1252(g) provides:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear 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 against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added).

The Supreme Court's decision in *Jennings* is again instructive here related to Section 1252(g). The *Jennings* court writes that "[w]e did not interpret [section 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves." *Jennings*, 583 U.S. at 294 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)).

An immigration judge's (IJ) review of a bond determination is a distinct proceeding from an alien's underlying removal proceeding. 8 C.F.R. § 1003.19(d). It is "clear bond hearings are separate and apart from deportation proceedings." *Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982). Here, Petitioner is seeking review of his unlawful detention. He is not challenging a removal order or anything else listed in Section 1252(b)(9) and (g) which would strip this court of jurisdiction. This Court has jurisdiction over Petitioner's matter.

Further, exhaustion is not required as the Immigration and Nationality Act only mandates exhaustion in order to challenge "final order[s] of removal." 8 U.S.C. § 1252(d)(1). However, this provision does not cover challenges to preliminary custody or bond determinations, which are quite distinct from "final order[s] of removal." See *Gornicka*, 681 F.2d at 505 ("[I]t is

clear bond hearings are separate and apart from deportations hearings.... A bond determination is not a final order of deportation ... and does not effect [sic] the deportation proceeding.”). While Congress does require exhaustion for certain types of habeas petitions, but not for those petitions, such as Petitioner’s, brought under 28 U.S.C. § 2241. *See James v. Walsh*, 308 F.3d 162, 167 (2d Cir. 2002) (“Section 2254(b)(1) requires state prisoners to exhaust all available state court remedies before filing a Section 2254 petition, whereas Section 2241 contains no such exhaustion requirement.”).

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

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.

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. This argument fails for several reasons.

Prior to and since the decision in *Matter of Yajure Hurtado*, federal district courts in the First Circuit, Second Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, and Tenth Circuit have all disagreed with Respondents’ interpretation and have subsequently granted relief to habeas petitioners:

First Circuit

- *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025)
- *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)

- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
- *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)

#### Second Circuit

- *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

#### Fourth Circuit

- *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025)
- *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

#### Fifth Circuit

- *Lopez-Areveloa v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025)
- *Lopez Santos v. Noem*, 2025 WL 2642278, (W.D. La. Sept. 11, 2025)
- *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

#### Sixth Circuit

- *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025)
- *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025)
- *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025)
- *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

#### Seventh Circuit

- *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. In. Sept. 22, 2025)

#### Eighth Circuit

- *Duenas Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025)
- *Lorenzo Perez v. Kramer*, 2025 WL 2624387 (D. Neb. Sept. 11, 2025)
- *Ozuna Carlon v. Kramer*, 2025 WL 2624386 (D. Neb. Sept. 11, 2025)
- *Genchi Palma v. Trump*, 2025 WL 2624385 (D. Neb. Sept. 11, 2025)
- *Hernandez Marcelo v. Trump*, 3:25-cv-0000934 (S.D. Iowa Sept. 10, 2025)
- *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025)
- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)

- *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)

#### Ninth Circuit

- *Guerrero Lepe v. Andrews et al*, No. 1:2025cv01163 (E.D. Cal. 2025)
- *Sanchez Roman v. Noem* 2025 WL 2710211 (D. Nev. Sep. 23, 2025)
- *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025)
- *Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal Sept. 12, 2025)
- *Cuevas Guzman v. Andrews*, 2025 WL 2617256, (E.D. Cal. Sept. 9, 2025)
- *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025)
- *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at \*7 (C.D. Cal. Sept. 8, 2025)
- *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
- *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

#### Tenth Circuit

- *Salazar v. Dedos* 2025 WL 2676729 (D. NM. Sept. 17, 2025)
- *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025)

This Court is not required, and should not, give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and indeed “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court’s own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

In addition to the Supreme Court’s own analysis of the statutory language, the custody paperwork filed by DHS during the bond proceedings plainly states that Petitioner was arrested and detained pursuant to INA § 236, 8 U.S.C. § 1226. *See* Ex. 2. 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.

Respondents seemingly wish for this Court to disregard those documents stating that, even if a person is arrested based upon a warrant, the examining can still determine if section 1225(b)(2)(9) applies and hold the individual in detention without bond. Response, at 17. However, the documents that DHS have filed related to Petitioner’s custody do matter. Otherwise, the custody documents would have no meaning or authority – which is certainly not what the Supreme Court has held should be the case. In *Niz-Chavez v. Garland*, the Court discussed the nature of removal proceedings and specifically found that “...words are how the law constrains power [and that] when the federal government seeks a procedural advantage against an individual, it will at least supply him with a single and reasonably comprehensive statement of the nature of the proceedings against him. If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.” 593 U.S. 155 (2021).

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the repeated representations of the government in Petitioner’s case before the Court confirm that he is subject to section 1226(a)’s discretionary detention scheme.

### **C. The Automatic Stay Provision is Ultra Vires**

There is no process in place for Petitioner to challenge the automatic stay provision and Respondents also do not contest this in their response. Petitioner’s only method to challenge the automatic stay provision is through the subject habeas petition. *Sampiao v. Hyde, et al.* 1:25-cv-

11981-JEK (D. Mass. Sept. 9, 2025); *Zabadi v. Chertoff*, No. 05-CV-01796 (WHA), 2005 WL 1514122 (N.D. Cal. June 17, 2005); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003).

Numerous courts across the country continue to issue decisions finding that detainees being held in detention pursuant to this provision should be released. *Sampiao v. Hyde, et al.* No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Alvarez Martinez v. Noem, et al.*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. TX Sept. 8, 2025); *Herrera Torralba v. Knight, et al.*, No. 2:25-cv-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Doe v. Moniz, et al.*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Gamez Lira v. Noem, et al.*, 1:25-cv-00855-WJ-KK (D. N.M. Sept. 5, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25-cv-494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*1 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at \*14 (D. Md. Aug. 24, 2025). In addition to these recent cases, courts have also historically held that this provision violates a detainee's due process rights. *Zabadi v. Chertoff*, No. 05-CV-01796 (WHA), 2005 WL 1514122 (N.D. Cal. June 17, 2005); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003).

Courts have overwhelmingly reached this conclusion because the regulation permits unilateral government detention of a detainee without a case-by-case determination and “[d]etention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)) (emphasis added).

### CONCLUSION

For the foregoing reasons, this Court should order Respondents to release Petitioner pursuant to the bond order issued by the Immigration Judge.

Dated: October 7, 2025

Respectfully Submitted,  
Jaciell Cirrus Rojas

By: s/ Lauren McClure  
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