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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

R.S., Petitioner, v. ERNESTO SANTACRUZ JR., et al., Respondents.	No. 5:25-cv-02594-MWC-SK **FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER**[1] Honorable Michelle Williams Court

[1] Federal Respondents first received notice of Petitioner's Application for a Temporary Restraining Order when it was personally served at the United States Attorney's Office's Civil Intake Window on October 1, 2025 at 4:12 p.m. Declaration of Jasmin Yang ¶ 2. Federal Respondents are filing this Opposition as soon as practicable and in less than 24 hours of service.

I. INTRODUCTION

Petitioner R.S. has filed a Petition for Writ of Habeas Corpus (Dkt. 1) challenging his detention pending the resolution of removal proceedings. Dkt. 1 ("Petition" or "Pet."). Petitioner has filed an *ex parte* application for a Temporary Restraining Order (Dkt. 2) requiring his immediate release. Dkt. 3 (the "TRO Application"). The TRO Application should be denied because Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2). To the extent that Petitioner disagrees and wishes to obtain a bond hearing before an Immigration Judge, he can do that the same way numerous other litigants have in this District: Seeking a bond hearing pursuant to Section 1226(a). Petitioner states that the BIA's September 5, 2025 order in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) found that detainees like him were not entitled to such bond hearings because they are detained under 8 U.S.C. § 1225(b)(2). Dkt. 1 ¶ 19. That is indeed the government's position. But Petitioner neglects to mention that District Judges in the Central District of California have nonetheless ruled that detainees are entitled to a bond hearing under § 1226(a), *Matter of Yajure* notwithstanding. *See e.g. Henberto Arreola Armenta, et al. v. Kristi Noem, et al.,* 5:25-cv-02416-JFW-SP, Dkt. no. 7 (September 16, 2025 decision by Hon. Judge Walter granting TRO and ordering §1226(a) bond hearing); *Moises Salomon Zaragoza Mosqueda et al. v. Kristi Noem et al.*, 5:25-cv-02304-CAS-BFM (September 8, 2025 decision by Hon. Judge Snyder granting TRO and ordering § 1226(a) bond hearing).

Remedies sought by preliminary injunctive relief must be narrowly tailored to the harm at issue, rather than granting the requested ultimate relief by TRO at the very outset of the case. *See e.g. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) ("And we note that even when there are deficiencies in individual § 1226(a) proceedings, they may be redressable through means short of major changes to the burden of proof."). Here, if any relief would be appropriate, it would be determining whether Petitioner has a right to a bond hearing in Immigration Court.

That point of basic remedy law is particularly critical here given that the Petitioner

was detained back on **June 30, 2025**. *See* Dkt. 1, ¶ 6. In filing an *ex parte* TRO Application on **September 30, 2025**, he has waited well over three months after his detention date to bring his application for a temporary restraining order. He facially does not meet the demanding standard for seeking *ex parte* TRO relief relative to his putatively unlawful detention.

Petitioner cites *Zadvydas v. Davis*, 533 U.S. 678 (2001), but that case involved post-removal order detention, and held that up to six months of such detention was presumptively reasonable. Here, Petitioner has been detained for far less time.

Petitioner appears to argue that ICE's decision, five or six days after he entered the United States on December 22, 2022, to release him on his own recognizance requires an extensive pre-arrest hearing if the government ever thereafter decided to arrest him again. But the law does not impose such an elaborate pre-arrest proceeding, nor would it make sense to impose such a negative consequence on ICE for deciding to release somebody on their own recognizance. Petitioner was not previously ordered released by an Immigration Court, over ICE's objection. Instead, he was released by ICE, at its own discretion. The government has very broad authority to revoke release, and it has broad authority to detain noncitizens pursuant to removal proceedings. There does not appear to be any appellate authority authorizing the imposition of pre-detention Immigration Court hearings, particularly when the noncitizen was not released by a finding of an Immigration Judge, but rather by ICE's discretion.

Accordingly, the TRO Application should be denied.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner is a citizen of Iran (Dkt. 1 ¶ 19), who entered the United States on approximately December 22, 2022, crossing the United States-Mexico border and entering without inspection. *Id.* ¶ 2. Petitioner requested asylum and was detained for five or six days and was released on December 27, 2022 on his own recognizance. *Id.* ¶ 3. On February 22, 2023. Petitioner was served with a Notice to Appear and placed in removal proceedings; ICE charged Petitioner with being inadmissible under 8 U.S.C.

§ 1182(a)(6)(A)(i) as someone who entered the United States without inspection. *Id.* ¶ 4. Petitioner alleges that, on June 30, 2025, he was detained by ICE at his home and was taken to the Adelanto ICE Processing Center. *Id.* ¶ 6.

Petitioner filed the instant Petition and TRO Application on September 30, 2025. Dkt. 1, 3.

III. STATUTORY BACKGROUND

A. Detention under 8 U.S.C. § 1225

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.;* 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates either an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien with "a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens

arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland Security ("DHS") has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[2] By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). 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.

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

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[2] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

IV. ARGUMENT

A. The Court Lacks Jurisdiction under 8 U.S.C. § 1252.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claim that he should have received a "pre-deprivation . . . hearing" prior to being detained. Section 1252(g) deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[3] Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the DHS Secretary chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Here, Petitioner challenges the government's decision and action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d

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[3] Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). Moreover, Petitioner cannot show the exigency required to obtain TRO relief, because Petitioner was detained over three months ago. Thus, the Court should deny the TRO for lack of jurisdiction under § 1252(b)(9).

B. Petitioner Is Lawfully Detained Pending the Resolution of His Removal Proceedings.

Petitioner should not obtain an order of immediate release, because he is lawfully detained pending the resolution of his removal proceedings. The Supreme Court has recognized that "detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

C. Detention Under § 1225(b)(2) and Detention Under § 1226(a)

In response to Petitioner's underlying request for a bond hearing, the government reiterates here the legal position it stated in its opposition to the *ex parte* TRO application filed in *Bautista v. Noem*, 5:25-cv-01873-SSS-BFM, which the government filed on July 24, 2025 as Docket no. 8.[4] The same legal issue has also been raised in this District in other cases including *Henberto Arreola Armenta, et al. v. Kristi Noem, et al.*, 5:25-cv-02416-JFW-SP, *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-ADS, *Jorge Arrazola-Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-01789-ODW-DFM, and *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS. In each case, however, Respondents acknowledge that the court ordered the United States to provide a bond hearing under 8 U.S.C. § 1226(a) within seven days, which the government then provided, thereby mooting the habeas petitions at issue.

[4] The District Court granted the *ex parte* TRO application in *Bautista* via order issued on July 28, 2025 [Dkt. 14]. Shortly thereafter, an amended complaint asserting putative class claims for similarly situated petitioners was filed in *Bautista* [Dkt. 15].

Petitioner argues (Pet. ¶ 20) that the Board of Immigration Appeals (BIA) recently ruled the opposite way on this issue in its September 5, 2025 order in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission "because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.*

The Federal Respondents contend that Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), consistent with *Matter of Yajure*, and for the reasons stated therein. Should the Court disagree, however, the proper remedy would then be to order a prompt bond hearing pursuant to 8 U.S.C. § 1226(a), thereby mooting the Petition.

D. Petitioner's Arguments that he is Entitled to a Pre-Arrest Hearing Are Defective

Petitioner was not previously ordered released by an Immigration Judge in an Immigration Court. Instead, as the Petition alleges, he was released by ICE, at its discretion, five or six days after he entered the country.

Petitioner argues that he thereby acquired a right to prevent the government from arresting and detaining him in the future absent a hearing. But no Immigration Court had ordered his release in the first place. That was ICE's discretion. Section 1252 insulate the decision to arrest and detain Petitioner in connection with his removal proceedings. It does not provide that this this right is instantly lost if the government, five days after the noncitizen is apprehended, elects not to keep him in immediate custody. Indeed, to impose such a consequence would threaten to eliminate such discretion.

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA does not provide for a pre-detention hearing. Petitioner appears to argue that

there does not appear to be good reason for his recent re-detention, given that he was previously released on his own recognizance. But the government's authority to revoke release and re-detain individuals previously released by ICE is discretionary, and it does not require the type of intensive threshold evidentiary procedure that Petitioner suggests. "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation "when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original).

Petitioner cites unpublished District Court decisions imposing barriers to redetention, but those decisions generally (a) involve prior Immigration Court decisions granting release prior to the government's decision to arrest the individual again; and (b) are not supported by appellate law.

Other District Courts have recognized that an alleged lack of sufficient release revocation and redetention process does not establish a right to habeas relief. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited redetention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of

Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

To imply into existence a non-statutory requirement for an elaborate pre-arrest hearing process simply because ICE (not an Immigration Court) had previously granted the noncitizen release on their own recognizance is not adequately supported by law, and it would set a poor precedent at a systematic level.

V. CONCLUSION

For these reasons, Federal Respondents respectfully request that the Court deny the TRO. If the Court is inclined to rule in Petitioner's favor, however, the appropriate remedy would be to order a prompt bond hearing before an Immigration Judge under 8 U.S.C. § 1226(a), consistent with what other District Courts have done.

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Federal Respondents, certifies that this brief contains 3,060 words, which complies with the word limit of L.R. 11-6.1