

United States District Court
Eastern District of Michigan

Jeffrey Ndungi Sila,

Petitioner,

Civil No. 25-13066

v.

Honorable Stephen J. Murphy, III
Magistrate Judge Curtis Ivy, Jr.

Kevin Raycraft, in his official capacity
as Immigration and Customs
Enforcement (ICE), Acting Director of
the Detroit Field Office,

Respondent.

Response to Petition for a Writ of Habeas Corpus

Respondent submits this response to petitioner's request for a writ of habeas corpus, (ECF No. 1). As described in the attached brief, respondent respectfully requests that the Court deny the petition because petitioner's detention does not violate the constitution or federal law.

Respectfully submitted,

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Dated: October 10, 2025

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**Respondent's Brief in Support of His Response to Petition for a
Writ of Habeas Corpus**

Issue Presented

- I. Should the Court find that petitioner's detention is lawful when he is detained under 8 U.S.C. § 1226(a) and he provides no authority indicating that his detention under that provision is improper?
- II. Should the Court find that it does not have personal jurisdiction over respondent because petitioner never properly served the U.S. Attorney's Office and respondents did not have adequate notice of this suit prior to the response deadline?

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Introduction

Petitioner in this case is a noncitizen with no lawful basis for remaining in the United States who was placed into removal proceedings after serving a lengthy criminal sentence. An immigration judge initially released him on bond, but he was recently re-detained when Customs and Border Protection officials apprehended him while he was attempting to leave the United States. Petitioner is currently detained under 8 U.S.C. § 1226(a), which allows the agency to detain noncitizens pursuant to administrative removal proceedings. Noncitizens like petitioner detained under § 1226(a) have the right to seek release on bond in immigration court, but petitioner has chosen not to seek release on bond at this time. The Court should reject petitioner's request for a writ of habeas corpus because his detention is lawful under § 1226(a).

Background

Petitioner Jeffrey Ndungi Sila is a citizen of Kenya who entered the United States on a tourist visa in May of 2016. (Exhibit 1 – Anderson Decl. ¶ 4). His tourist visa authorized his stay in the United States until November 28, 2016. (*Id.*).

In August 2016, while Sila was in the United States on his tourist visa, he stole \$76,000 in public funds by committing identity theft. (*See U.S. v. Sila*, Crim No. 16-00448 (N.D. Tex.), ECF No. 10, 39). In October 2016, the U.S. Attorney's Office for the Northern District of Texas indicted Sila. (*See id.*, ECF No. 10). Sila was

detained without bond during his criminal proceedings. (*See id.*, ECF Nos. 19, 22, 59, 66). On September 17, 2017, a jury convicted Sila on all counts and, after an appeal overturned one count of his conviction, the district court sentenced him to 87 months imprisonment and two years of supervised release. (*Id.*, ECF Nos. 100, 216). Sila appealed his final sentence, but the Fifth Circuit affirmed his conviction and sentence in May of 2022. (*Id.*, ECF Nos. 197, 221).

In 2021, Sila filed an I-130 petition with USCIS to designate himself as an immediate family member of a U.S. citizen. (*See* Exhibit 1 – Anderson Decl. ¶ 10). That application remains pending. (*See id.*). Even if USCIS granted that petition, it would not confer any lawful status on Sila; it would only allow him to file further applications for immigration benefits without waiting for a numerically limited visa to become available. *See* 8 U.S.C. § 1255(a); 8 C.F.R. §§ 245.1, 245.2; *see also Cika v. Holder*, 344 F. App'x 208, 216 n.9 (6th Cir. 2009) (acknowledging that an approved I-130 does not automatically entitle the beneficiary to lawful status)

In July 2022, Sila moved to vacate his criminal sentence under 28 U.S.C. § 2255 by challenging the district court's jury instructions and alleging that he received ineffective assistance of counsel. (*See Sila v. U.S.*, Civil No. 22-1340 (N.D. Tex.)). However, the district court found no merit in Sila's arguments. (*See id.*, ECF No. 23). Sila appealed, but the Fifth Circuit found that Sila failed to make the showing necessary to obtain a certificate of appealability. (*See id.*, ECF No. 27).

On November 15, 2022, Sila was released from prison. (*Sila v. U.S.*, Civil No. 22-1340 (N.D. Tex.), ECF No. 23, PageID.152). Upon his release from Bureau of Prisons custody, ICE detained Sila under 8 U.S.C. § 1226(a) until the immigration court conducted a hearing and released Sila on bond in December 2022. (Exhibit 1 – Anderson Decl. ¶ 11–12). At that time, ICE charged Sila with inadmissibility under 8 U.S.C. § 1227(a)(1) because he was present in the United States after his temporary visa expired or was revoked. (*Id.*).

In December 2022, Sila moved to administratively close his administrative removal proceedings. (Exhibit 1 – Anderson Decl. ¶ 13). An administrative closure temporarily removes a case from the immigration court’s docket but does not terminate the removal proceedings or result in a final order. (*Id.*). The immigration court granted Sila’s motion at that time. (*Id.*).

On June 3, 2025, Sila filed a petition for a writ of coram nobis in the Northern District of Texas and argued that his criminal conviction should be overturned because he was innocent. (*See Sila v. U.S.*, Civil No. 25-01708 (N.D. Tex.), ECF No. 3). That matter is fully briefed. (*See id.*, ECF No. 6).

On June 30, 2025, ICE moved to re-open Sila’s administrative immigration proceedings. (Exhibit 1 – Anderson Decl. ¶ 14). The immigration court granted the motion. (*Id.*).

On August 22, 2025, Customs and Border Protection (CBP) officers encountered Sila at the Detroit-Windsor Tunnel. (Exhibit 1 – Anderson Decl. ¶ 16; Affid., ECF No. 1, PageID.11–12). Sila claims that he arrived at the international border while attempting to drive to New York from Kansas, but he had no intention of entering Canada. (Affid., ECF No. 1, PageID.11–12). It is unclear how Sila intended to reach New York by driving through Michigan from Kansas if he did not intend to enter Canada. (*See id.*).

Sila filed this suit on September 26, 2025, and paid the filing fee six days later. (*See Pet.*, ECF No. 1).

On October 1, 2025, government appropriations for the Department of Justice lapsed and nearly all of the U.S. Attorney’s non-criminal staff were furloughed.

On October 7, 2025, Sila appeared in immigration court for a bond hearing. (Exhibit 1 – Anderson Decl. ¶ 17). Sila was represented by counsel at that hearing. (*Id.*). At that hearing, Sila withdrew his request for release on bond. (*Id.*; Exhibit 2 – IJ Bond Order).

On October 7, 2025, the Court issued an order requiring the agency to respond “no later than three days after being served with the petition.” (Order, ECF No. 3, PageID.19). The Court further ordered that the Clerk “SERVE” the U.S. Attorney’s Office “via facsimile transmission and first-class mail.” (*Id.* at PageID.19–20). On

the same day, the Court entered a docket text certificate of service indicating that the U.S. Attorney's Office had been served. (*See* Docket Text Entry dated 10/7/2025).

Sila is scheduled to appear in immigration court to address the charges of removal against him on October 28, 2025. (Exhibit 1 – Anderson Decl. ¶ 18).

Standard of Review

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241.

Argument

The Court should deny Sila's petition for a writ of habeas corpus because he is lawfully detained under 8 U.S.C. § 1226(a), his detention under that statute complies with the Due Process Clause, and the authority Sila relies on is inapposite because it relates to noncitizens detained under a different statute. The Court should dismiss Sila's petition because he has not properly served the respondent or established the Court's personal jurisdiction over the respondent.

A. Sila is Lawfully Detained

Sila has no lawful immigration status and he is in administrative removal proceedings, therefore he is properly detained under 8 U.S.C. § 1226(a). While Sila may request release on bond in the immigration court, he has not made such a request, so he cannot claim that the immigration court's failure to grant him relief

that he did not request renders his detention unlawful or unconstitutional in this habeas suit.

1. Sila is Properly Detained Under 8 U.S.C. § 1226

Under 8 U.S.C. § 1226(a), immigration officials may arrest and detain a noncitizen pending a decision by an immigration judge on whether the noncitizen will be removed.¹ *See* 8 U.S.C. § 1226(a). An immigration judge may release a noncitizen detained under § 1226(a) on bond. *See id.*; 8 C.F.R. § 236.1(d)(1). However, immigration officials may revoke a noncitizen’s bond “at any time” and “rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b). A noncitizen who has been re-detained under 8 U.S.C. § 1226(a) may request a new bond hearing from an immigration judge. *See* 8 C.F.R. § 236.1(d).

Here, the agency properly exercised its discretion to detain Sila. Sila has no lawful basis for remaining in the United States. He entered the United States in 2016 on a temporary tourist visa and that visa expired nine years ago. (*See* Exhibit 1 – Anderson Decl. ¶ 4). Sila was only able to remain in the United States after that time because he was serving a criminal sentence. (*See U.S. v. Sila*, Crim No. 16-00448 (N.D. Tex.), ECF No. 216). ICE initiated removal proceedings against him

¹ The statute refers to the Attorney General, however, the duties described in 8 U.S.C. § 1226 were transferred from the Department of Justice to the Department of Homeland Security in 2002. *See* 6 U.S.C. § 251(2); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 n.3 (2020).

immediately after he completed his criminal sentence and he has been in administrative removal proceedings since that time. (*See* Exhibit 1 – Anderson Decl. ¶¶ 11–15). An immigration court initially released Sila on bond, but the agency elected to re-detain him when Customs and Border Protection apprehended him attempting to leave the United States. (Exhibit 1 – Anderson Decl. ¶ 16; Affid., ECF No. 1, PageID.11–12). Sila’s attempt to leave the United States during his administrative removal proceedings supports the agency’s decision to re-detain him pending a bond hearing at which an immigration judge can determine whether he poses a flight risk. (*See id.*).

Sila’s continued detention is not unlawful. Under § 1226, the agency plainly has discretion to detain Sila. *See* 8 U.S.C. § 1226(a), (b). However, Sila also has the right to request a bond hearing. *See id.*; 8 C.F.R. § 236.1(d). Sila is represented by counsel in his administrative removal proceedings and he has chosen not to seek release on bond at this time. (*See* Exhibit 1 – Anderson Decl. ¶ 17). Therefore, Sila cannot claim that his continued detention under § 1226 without bond is unlawful when he has not asked the immigration court for that relief. (*See id.*).

To the extent Sila requests that the Court review the agency’s decision to revoke his bond in the first place, the Court lacks jurisdiction to engage in that exercise. By statute, the “discretionary judgment” to revoke a noncitizen’s bond is not subject to review in federal district court and federal courts lack subject matter

jurisdiction to disturb the agency's decision "regarding the detention of any alien or the revocation of or denial of bond or parole." *See* 8 U.S.C. § 1226(e).

Further, the authority on which Sila relies is inapposite. In his petition, Sila does not specifically identify any legal or constitutional defect in his detention under § 1226(a). (*See* Pet., ECF No. 1). Instead, he explains that he filed this suit because he learned of other cases in which federal district courts had released noncitizens detained during their removal proceedings. (*See id.*, PageID.3–6). However, those cases do not support Sila's petition because the noncitizens in those cases were detained under a different statute (8 U.S.C. § 1225(b)(2)) and under different circumstances, *see, e.g., Pizarro Reyes v. Raycraft*, Civil No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 8, 2025); *Lopez-Campos v. Raycraft*, Civil No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 28, 2025). Further, the considerations the court found compelling in those cases—changes in longstanding agency policy, detention without possibility of a bond hearing, and a disconnect between the statutory language and the petitioners' immigration history—do not apply to this case in any way. *See, e.g., Pizarro Reyes*, 2025 WL 2609425; *Lopez-Campos*, 2025 WL 2496379.

In addition, to the extent that anything in Sila's petition could be construed as a challenge to his removal or his administrative removal proceedings, the Court lacks

jurisdiction to hear a challenge to any aspect of Sila's removal proceedings. *See* 8 U.S.C. §§ 1252(a)(5), (g); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018).

2. Sila's Detention is Proper Under the Due Process Clause

To succeed on a due process claim, a plaintiff must show that they “have a property interest that entitles them to due process protection” and, if so, the “court must then determine ‘what process is due.’” *Leary v. Daeschner*, 228 F.3d 729, 741 (6th Cir. 2000). In the immigration context, the Supreme Court has frequently held that the process due under the constitution is coextensive with the removal procedures provided by Congress, *Thuraissigiam*, 591 U.S. at 138–140, it has confirmed that statutory provisions denying bond during administrative removal proceedings do not violate the due process clause because those proceedings have a definite end point, *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”), and it has held that even after a noncitizen is ordered removed and detention may have an indefinite end point, detention up to six months is presumptively valid under the due process clause, *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Here, Sila does not present a plausible due process claim. Sila is detained pursuant to administrative removal proceedings and the procedures Congress provided in those proceedings define his due process rights. *See Thuraissigiam*, 591 U.S. at 138–140; 8 U.S.C. § 1229a (describing the procedures available in removal

the benefit of all of the procedures provided by Congress. He was given notice of the charges against him, he has access to counsel, he has the right to request a bond hearing and has appeared for one bond hearing, he may file motions, submit evidence or testimony, and he may appeal the immigration judge's decisions. *See* 8 U.S.C. § 1229a; (Exhibit 1 – Anderson Decl. ¶¶ 11–19). Sila is not entitled to any more process than this and he has not even pursued all of the process available to him in his administrative removal proceedings. (*See id.*). Therefore, Sila's detention complies with due process.

B. Sila Has Not Established Personal Jurisdiction Over the Respondent

To obtain personal jurisdiction over a respondent, a petitioner must properly serve them. *King v. Taylor*, 694 F.3d 650, 655 (6th Cir. 2012). “And in the absence of personal jurisdiction, a federal court is powerless to proceed to an adjudication.” *Id.* (quotation omitted). To properly serve a federal agency, a petitioner must send a copy of a summons and complaint to the Attorney General, the U.S. Attorney's Office, and the agency by “registered or certified mail” or the petitioner may retain a process server to hand deliver the summons and petition. Fed. R. Civ. P. 4(i). If petitioner fails to properly serve respondents within 90 days, his suit should be dismissed. Fed. R. Civ. P. 4(m). Further, courts may dismiss claims that lack personal jurisdiction due to improper service. *See* Fed. R. Civ. P. 12(b)(2), (4), (5).

Here, the Court lacks personal jurisdiction over the respondent. The Clerk has never issued a summons and neither Sila nor the Clerk have ever delivered a copy of Sila's petition to the U.S. Attorney's Office, the agency, or the Attorney General by registered or certified mail. Instead, the Court entered an order requiring service by "facsimile" or "first-class mail" and setting a response deadline of three days after "service" by those means. (*See* Order, ECF No. 3, PageID.19–20). Immediately after the Court issued its order, it entered a docket text order certifying that service was complete at that time, which triggered the Court's three-day response deadline. (*See id.*; Docket Text Order dated 10/7/2025). However, possibly because of the government shutdown or possibly because the U.S. Attorney's Office is not equipped to receive service of new complaints by any means other than those described in the Federal Rules of Civil Procedure, no one in the U.S. Attorney's Office received the Court's transmission on that date and, as of this date, the U.S. Attorney's Office has never received a copy of Sila's petition by first class mail. The Court's order requiring improper service cannot override the requirements of the Federal Rules or establish personal jurisdiction by simply creating a new set of procedures that are more convenient for petitioner.

Similarly, Sila cannot rely on the process for service as described in the Federal Rules Governing Section 2254 Cases to establish personal jurisdiction. By their own terms, those rules do not automatically apply to habeas petitions filed

under 28 U.S.C. § 2241. *See* Rules – Section 2254 Cases, R. 1. And while those rules can be applied to § 2241 cases under certain circumstances, *see* Rules – Section 2254 Cases, R. 1(b), those rules still require proper service in accordance with the Federal Rules, *see* Rules – Section 2254 Cases, R. 4 (“the clerk must serve” the respondent), and, at a minimum, fair notice “shall be served” on the respondents “[p]rior to the hearing of a habeas corpus proceeding,” 28 U.S.C. § 2252. Meanwhile, the respondent has never been properly served in this case, which is insufficient under the Federal Rules or the Rules governing actions under § 2254 (even if those rules applied in this case). Accordingly, the Court lacks personal jurisdiction over the respondent.

Conclusion

Defendant respectfully requests that the Court deny petitioner’s request for a writ of habeas corpus.

Respectfully submitted,

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Dated: October 10, 2025

Certificate of Service

I hereby certify that on October 10, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey _____

Zak Toomey

Assistant U.S. Attorney