

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

Jose Rafael Hinojosa Garcia,

Petitioner,

v.

Case No.: 2:25-cv-00879-SPC-NPM

Kristi Noem, et al.,

Respondents.

PETITIONER'S REPLY AND OPPOSITION TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE AND MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS AND FOR IMMEDIATE RELIEF OR A BOND HEARING

Petitioner, by and through the undersigned counsel, hereby files his Reply and Opposition to Respondents' Response to Order to Show Cause and Motion to Dismiss Petition for Writ of Habeas Corpus and for Immediate Relief or a Bond Hearing (ECF No. 14).

I. The Court Has Jurisdiction Over Petitioner's Claims.

Contrary to Respondents' argument, Sections 1252(g) and 1252(b)(9) of the Immigration and Nationality Act (INA) do not divest this Court of jurisdiction. Furthermore, Petitioner did not fail to exhaust other remedies available to him before seeking the intervention of the District Court.

In *Jennings v. Rodriguez*, 583 US 281 (2018), the U.S. Supreme Court, in determining whether INA § 1252(b)(9) deprived it of jurisdiction, looked at cases in which another INA section with similar terms, INA § 1252(g), deprived it of jurisdiction, stated as follows:

In past cases, when confronted with capacious phrases like “arising from,” we have eschewed “uncritical literalism” leading to results that “no sensible person could have intended.” *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 319, 136 S.Ct. 936, 943, 194 L.Ed.2d 20 (2016)(interpreting phrase “relate to” in the Employee Retirement Income Security Act of 1974's pre-emption provision). *See also, e.g., FERC v. Electric Power Supply Assn.*, 577 U.S. 260, 277–278, 136 S.Ct. 760, 773–775, 193 L.Ed.2d 661 (2016)(interpreting term “affecting” in Federal Power Act); *Maracich v. Spears*, 570 U.S. 48, 59–61, 133 S.Ct. 2191, 186 L.Ed.2d

275 (2013)(interpreting phrase “in connection with” in Driver's Privacy Protection Act); *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260–261, 133 S.Ct. 1769, 185 L.Ed.2d 909 (2013)(interpreting phrase “related to” in Federal Aviation Administration Authorization Act); *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S.Ct. 1493, 131 L.Ed.2d 403 (1995)(interpreting phrase “related to” in Bankruptcy Act). In *Reno v. American–Arab Anti–Discrimination Comm.*, 525 U.S. 471, 482, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999), we took this approach in construing the very phrase that appears in § 1252(b)(9). A neighboring provision of the Immigration and Nationality Act refers to “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). We did not interpret this language 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. *American–Arab Anti–Discrimination Comm.*, *supra*, at 482–483, 119 S.Ct. 936.

The U.S. Supreme Court exercised jurisdiction in *Jennings*, noting that “respondents 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. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.” *Id.* at 294-295.

In the instant case, as the respondents in *Jennings*, Petitioner is not asking for the review of a removal order, he is not challenging the decision to seek removal proceedings, and he is not challenging any part of the process which will be used to determine his removability. Petitioner is challenging Respondents’ action of detaining him without providing a legal justification and for his continued detention without an opportunity to seek release on bond. “Section 2241 is the proper vehicle through which to challenge the constitutionality of a non-citizen’s detention without bail.” *Brito Matom v. ICE*, 2025 WL 2577424, at *1 (M.D. Fla. Sept. 5, 2025), *citing Demore v. Kim*, 538 U.S. 510, 516-17 (2003). In the instant case, Petitioner was first detained and subsequently a Notice to Appear was issued by Respondents. The court in *Brito Matom*, upon similar circumstances, determined that the government’s misconduct during the arrest “cannot be considered to arise from the decision to commence or execute removal orders.” *Id.* at *2.

Respondents further argue that Petitioner has not exhausted administrative remedies, therefore the petition should be dismissed. However, Petitioner has no administrative remedies available to him and his only remedy is by way of this judicial action. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) determined that immigration judges (IJ) lack jurisdiction to consider bond for individuals present in the US without admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). This decision effectively left Petitioner without any remedy within the administrative process.

Further, no statutory exhaustion requirements apply to Mr. Hinojosa Garcia's claim of unlawful detention. This petition raises a constitutional law issue, and the administrative agency will not address the constitutional issue. Likewise, the agency is unable to strike down its own regulation as in violation of the statute. *See Matter of G-K-*, 26 I&N Dec. 88 (BIA 2013)

II. Petitioner Adequately States a Claim of Relief

The INA distinguishes between detention of applicants for admission under 8 U.S.C. § 1225 and detention of other noncitizens under 8 U.S.C. § 1226. Under 8 U.S.C. § 1225(b)(1)-(2) noncitizens subject to expedited removal and applicants for admission who recently arrived seeking admission are subject to mandatory detention. Under 8 U.S.C. § 1226, all other noncitizens may be detained, however are eligible to a bond hearing with an IJ, except for certain noncitizens who have been arrested, charged with, or convicted of committing certain crimes. In *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), the Attorney General held that certain § 1225(b)(1) detainees transferred to § 240 proceedings remain ineligible for IJ bond. In 2025, the BIA extended this logic in *Matter of Yajure Hurtado*, holding that all individuals present without admission are applicants for admission under § 1225(a)(1) and subject to mandatory detention under § 1225(b)(2)(A), thereby foreclosing IJ bond jurisdiction. Respondents' new policy has been rejected by federal courts, both before and

after the BIA decision in *Matter of Yajure Hurtado*.¹

Contrary to Respondents argument, the plain text of the statutory provisions demonstrates that INA § 1226(a), not INA § 1225(b), applies to Petitioner. The U.S. District Court for the Middle District of Florida in *Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025), stated the following when analyzing sections 1226 and 1225:

The Supreme Court recently analyzed the interplay between § 1225 and § 1226 in *Jennings v. Rodriguez*. There, the Court observed that the decision of who may enter this country and who may remain “generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287. As relevant here, the Court explained that § 1225 “applies primarily to aliens seeking entry into the United States.” *Id.* at 297. By contrast, § 1226 “applies to aliens already present in the United States.” *Id.* at 303. “Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.” *Id.* “Section 1226(a) also permits the Attorney General to release those aliens on bond[.]” *Id.*

The Supreme Court's analysis explains the necessity for both statutes by differentiating between the detention of arriving aliens who are seeking entry into the United States under § 1225, and the detention of those who are already present in the United States under § 1226. Lower courts have adopted this same dichotomy after further analyzing the statutory text. *See, e.g., Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025). ***Against this backdrop, every court to address***

¹ *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

the question presented here has found that an alien who is not presently seeking admission and has been in the United States for an extended time, like Lopez, is appropriately classified under § 1226(a) and not § 1225(b)(2)(A). These courts have also either ordered the alien's release or required a bond hearing—the exact relief Lopez seeks. *See, e.g., Pizarro Reyes*, 2025 WL 2609425; *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).

(Emphasis added.)

Petitioner, as Lopez, is appropriately classified under INA § 1226(a) and not § 1225(b). Therefore, he is entitled to a bond hearing and has properly stated a claim for relief.

WHEREFORE, Petitioner respectfully requests that this Court deny Respondents' Motion to Dismiss and that it order his immediate release or, in the alternative, that it order Respondents to provide an individualized bond hearing.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record.

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