

United States District Court
Western District of Texas
San Antonio Division

Diego Alejandro Aguero Avila,
Petitioner,

v.

Kristi Noem, in her official capacity as
Secretary of Homeland Security
Security *et. al.*,
Respondents.

No. 1:25-CV-01329-OLG

Federal Respondents’ Response to Petition for Writ of Habeas Corpus

Federal¹ Respondents provide the following timely response to Petitioner’s habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, and this Court should deny this habeas petition as moot without the need for an evidentiary hearing.

Moreover, Federal Respondents respectfully submit that the instant case is not at all similar or governed by the same analysis that this Court and other Courts within the Western District have applied regarding habeas petition grounded in issues stemming from *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner in this case is detained pursuant to 8 U.S.C. 1226 and NOT 8 U.S.C. 1225 This detention decision is unreviewable by the district court. 8 U.S.C. § 1226(e)

Therefore, the petition should be granted on jurisdictional grounds.

I. Introduction

This Court has granted Petitioner’s Motion for TRO, ICE avers that Petitioner has received

¹ The Department of Justice represents only federal employees in this action.

his bond hearing. Pursuant to the Court's Order entered on, November 5, 2025, the immigration judge conducted a bond hearing in which DHS held the burden of persuasion. The immigration judge denied bond and found Petitioner to be a flight risk. As such, he remains detained.

Though this Court has made a preliminary finding of facts and issued preliminary relief, said relief was the ultimate relief sought by Petitioner in this petition. Federal Respondents maintain that the Court lacks jurisdiction under 8 U.S.C. § 1226(e) to review the immigration judge's discretionary decision.

Additionally, the exact process that this Court found to be necessary under the Constitution to satisfy due process, has been provided to the Petitioner. That the outcome may not be what the Petitioner envisioned is neither here nor there. The process has been provided and there is no longer a live controversy and as such this petition is moot.

For these reasons and those that follow, this Court should deny this habeas petition and lift the TRO.

II. Relevant Facts and Procedural History

Petitioner is a native and citizen of Venezuela. ECF No. 15 at 19. Petitioner concedes he entered on a B-2 visa on October 30, 2014, and remained beyond April 29, 2015, without authorization. *Id.* at 56-57. On July 7, 2025, Petitioner was provided a bond hearing pursuant to the detention authority found in 8 U.S.C. § 1226. *See* Exh. A (IJ Bond order). Petitioner was found to be a danger to the community and bond was denied. *Id.* Petitioner reserved appeal. *Id.* On August 21, 2025, Petitioner had his final hearing before the immigration judge and all relief was denied and he was ordered removed. Exh. B (IJ removal order). Petitioner reserved appeal and filed an appeal. Exh. C (Briefing Schedule at BIA). He is currently detained in ICE custody pending his appeal of removal.

III. Argument

A. Petitioner Does Not Overcome Jurisdictional Hurdles.

Petitioner was provided with a bond hearing pursuant to 8 U.S.C. § 1226. Petitioner cannot now use this petition as a vehicle to dispute the immigration judge's discretionary findings. 8 U.S.C. § 1226(e). 8 U.S.C. § 1226 strips this Court of jurisdiction to hear such a challenge. Section 1226(e) states:

“(e) Judicial review

“The Attorney General's discretionary judgment regarding the application of this section **shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.** [emphasis added]”

The bar to judicial review was discussed and analyzed by the Supreme Court and also found that 8 U.S.C. § 1226(e) barred challenges to discretionary decisions. *See Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (explaining that 8 U.S.C. § 1226(e) bars an alien's challenge to “a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release” (internal quotation marks omitted)); *Pensamiento*, 315 F. Supp. 3d at 688 (“Congress has eliminated judicial review of discretionary custody determinations); *See Blandon v. Barr*, 434 F. Supp. 3d 30, 36 (W.D.N.Y. 2020) (while the Court may consider whether the IJ complied with the Court-ordered procedural protections, it does not reweigh the evidence nor consider whether it would have made the same determination as the IJ).

Petitioner's detention is governed by 8 U.S.C. 1226 and the immigration judge's decision to detain is discretionary. The immigration judge did not base his finding on any statutory or

jurisdictional issues regarding *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). To the extent that Petitioner asks the Court to second-guess the IJ's weighing of the evidence, that claim is directed solely to the IJ's discretion and is unreviewable.

B. Petitioners Detention Comports with Due Process.

Section 1226 provides for a bond hearing, and Petitioner was given said bond hearing. The Supreme Court's reasoning in *Department of Homeland Security v. Thuraissigiam*, 59 U.S. 103 (2020) further supports this notion. Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *Id.*; *see also Jennings*, 583 U.S. at 297–303. He has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5). Petitioner is taking full advantage of the due process provided by congress, and this Court does not have jurisdiction to provide more.

Furthermore, he cannot use his appeal to the BIA and this due process as both a shield and a sword. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

IV. Conclusion

The Court is stripped of jurisdiction to review the discretionary determination of the immigration judge and may not consider whether it would have made the same finding. 8 U.S.C. § 1226(e).

As such the Court no longer has jurisdiction on the matter, and there is no longer a live controversy regarding the procedural protections provided to the Petitioner. Due process has been

provided.

Respectfully submitted,

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