

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. 5:25-CV-01329-OLG

**\*Corrected\*<sup>1</sup> Federal Respondents' Response to Petition for Writ of Habeas Corpus**

Federal<sup>2</sup> Respondents provide the following timely response to Petitioner's habeas petition. ECF No. 11. 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**

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<sup>1</sup> This corrected copy removes the prior reference to the Court's Order that does not relate to this case. This information was mistakenly included in the Introduction section of Respondents' filing [ECF No. 16].

<sup>2</sup> The Department of Justice represents only federal employees in this action.

Petitioner primarily seeks release from custody and disputes various orders of the immigration judge. *See* ECF No. 1, 15. However, Petitioner has already received a bond hearing under 8 U.S.C. § 1226 and the immigration judge determined he poses a danger and denied bond. *See* Exh. A. This Court is divested of jurisdiction to review such a challenge to his detention as it is a discretionary judgment related to the Attorney General's decision on whether to release Petitioner. 8 U.S.C. § 1226(e); *see Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)

## **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. Petitioner's 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,

Justin R. Simmons  
United States Attorney

By: /s/ Anne Marie Cordova

Anne Marie Cordova  
Assistant United States Attorney  
Texas No. 24073789  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
(210) 384-7100 (phone)  
(210) 384-7312 (fax)  
Anne.Marie.Cordova@usdoj.gov

Attorneys for Federal Respondents

**Certificate of Service**

On December 30, 2025, I directed a copy of this filing to be mailed to Petitioner, at the below address.

Diego Agüero Avila



South Texas ICE Processing Center  
566 Veterans Drive  
Pearsall, Texas 78061

/s/ Anne Marie Cordova  
Anne Marie Cordova  
Assistant United States Attorney