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UNITED STATES DISTRICT COURT
FEDERAL DISTRICT COURT OF IDAHO

Joaquin Ortiz Gonzalez,

Petitioner,

v.

Jason KNIGHT, Field Office Director of Enforcement and Removal Operations, Salt Lake City Field Office, Immigration and Customs Enforcement; Kenneth PORTER, Acting Director of the Boise U.S. Immigration and Customs Enforcement Field Sub-Office; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Jarrod THOMPSON, Sheriff of Mini-Cassia County,

Respondents.

Case No. 1:25-cv-00602-BLW

RESPONSE TO RESPONDENTS' OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND WRIT OF HABEAS CORPUS

Petitioner hereby submits this reply to Respondents' Response to the Petition for Habeas Corpus (Resp.).

I. THIS COURT HAS JURSIDICTION TO REVIEW PETITIONER'S DETENTION

a. The District Court's Jurisdiction is Not Stripped by 8 U.S.C. § 1252(g).

Respondents' contention that 8 U.S.C. § 1252 bars judicial review of Petitioner's claim is based on an overly broad reading of the scope of the petition. Petitioner does not seek any relief from removal from this Court, and the actions of Respondent to initiate removal proceedings are not challenged in his petition.

Removal proceedings were initiated more than a year and a half prior to Petitioner's current arrest and detention without cause. Porter Decl. at 3; Dougherty Decl. at 2. Petitioner and his family have applied for asylum before the Immigration Court and are scheduled for an individual hearing on the merits. Dougherty Decl. at 3. Petitioner does not seek the Court's interference with the adjudication of his pending removal proceedings. Petitioner only challenges his civil detention, without the opportunity to request release on bond, subject to Respondents' incorrect designation of 8 U.S.C. § 1225(b) as the statute of detention, rather than section 1226(a).

b. The Supreme Court Has Unequivocally Found Judicial Jurisdiction in Challenges to Civil Immigration Detention Brought in Habeas.

Respondents' opposition seeks to attack the reasoning of other district courts which have found jurisdiction over identical claims, specifically asserting:

> In *Vasquez Garcia v. Noem*, the District Court for the Southern District of California determined that Section 1252(g) did not bar jurisdiction over claims related to detention, relying on *Nielsen v. Preap*, 586 U.S. 392 (2019) and *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788 (9th Cir. 2020).

Resp. at 7, n. 1 *citing Vazquez Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025). Their Response goes on to attack the authority of *Nielsen* as a plurality decision, and to argue that *Gonzalez* is distinguishable. *Id.*

Respondents misstate the *Vazquez Garcia* decision. That court did not rely on *Nielsen v. Preap* or *Gonzalez v. ICE* in finding that 1252(g) was inapplicable, but rather in their analysis that 1252(b)(9) was not a jurisdictional bar. *Vazquez Garcia*, 2025 LX 390497, at *7. Both *Nielsen* and *Gonzalez* deal with jurisdictional challenges to detention under 1252(b)(9), rather than 1252(g). *See Nielsen*, 586 U.S. at 402-04; and, *Gonzalez*, 975 F.3d at 810-11.

Respondents' attempt to distinguish the 9th Circuit's holding in *Gonzalez* on the grounds that it pertained to detainers is a distinction without relevance. The *Gonzalez* panel reasoned that "challenges to detention" are "squarely outside §1252(b)(9)'s scope", and it is of no importance that detention was secured with or without a detainer. *Gonzalez*, 975 F.3d at 810-11. (internal citations omitted).

Respondents' citation to the 9th Circuit's decision in *J.E.F.M.* as supportive of their position employs a misleading selective quotation, where in parentheticals they quote the *J-E-F-M-* Panel as "noting §1252(b)(9) is 'breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to proceedings". Resp. at 8, *quoting J. E. F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016). However, the *J.E.F.M.* panel's decision went on to specifically exclude challenges to administrative detention in habeas from the scope of 1252(b)(9). *J. E. F.M.*, 837 F.3d at 1032 ("[section] 1252(b)(9) 'does not apply to federal habeas corpus provisions that do not involve final orders of removal.'") (quoting *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th Cir. 2006)).

Respondents have not and cannot cite to any controlling precedent that supports their position that section 1252 strips this Court of jurisdiction to adjudicate Habeas claims challenging immigration detention. The question of the legality of Petitioner's continued detention without meaningful opportunity to obtain release is wholly separate from removal proceedings, and as such, outside the narrow scope of 1252. *See* *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018) (Where detainees did not ask for review of an order of removal, challenge an initial decision to detain or seek removal, or challenge the process by which removability is determined, 1252(b)(9) did not present a jurisdictional bar).

II. PETITIONER'S DETENTION IS GOVERNED BY § 1226(a).

a. Respondents Have Already Designated Petitioner as Subject to Detention Under § 1226(a).

At the time of the initiation of removal proceedings in 2024, Petitioner was detained pursuant to section 1226(a), not 1225, as shown by his release by DHS on an Order for Release on Recognizance citing 1226(a). The decision to release Petitioner reflects a determination that he does not pose a flight risk or a danger to the community. *See* *Saravia*, 280 F. Supp. 3d at 1176; 8 C.F.R. § 1236.1(c)(8).

Respondents rely solely on *Chavez v. Noem*, et. al., No. 3:25-cv-02325, 2025 WL 2730228 (S. D. Cal. Sept. 24, 2025) and *Vargas Lopez v. Trump*, No. 8:25-cv-00526, WL 2780351 (D. Neb. September 30, 2025) for district court authority supporting their proposition that 8 U.S.C. § 1225(b) properly governs Petitioner's detention. These cases are not supportive of Respondents' position. The *Chavez* court has not resolved the issue at hand, and the *Vargas Lopez* court pithily disposed of the issue based on the petitioner's poor development of the record.

The *Chavez* court has not reached a decision on the merits of the legal argument as to whether § 1225 or § 1226 properly encapsulates individuals like Petitioner. Respondents rely on language from the court's order in that case denying an Ex Parte Application for a TRO. *Chavez v. Noem,* 2025 WL 2730228. The *Chavez* Court's decision has only found that the petitioner had not met their burden to show that the case is likely to succeed on the merits, sufficient to be granted an injunction, but has not issued a decision denying the petition.[1]

Section 1226(c)(1)(E) does not remove such discretion for all noncitizens charged with such crimes; it only removes discretion for those who have entered the United States without inspection and admission or parole. 8 U.S.C. § 1226(c)(1)(E)(i) (referencing aliens inadmissible under paragraph (6)(A) . . . of § 1182(a)); 8 U.S.C. § 1182(a)(6)(A) (aliens inadmissible as "present in the United States without being admitted or paroled"). The *Chavez* court, and Respondents who rely upon it, seemed to misunderstand the petitioner's argument. See Resp. at 13 ("the addition of Section 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific crimes.")

Under Respondent's interpretation of the statutory scheme, all noncitizens who entered without inspection and admission or parole are subject to mandatory detention with no "discretion to release" which could be abrogated by section 1226(c)(1)(E), rendering the detention requirements specifically applied by Congress to individuals inadmissible under section1182(a)(6)(A), in enacting the Laken Riley Act, superfluous and without meaning.

[1] While the court in *Chavez* has not decided the ultimate outcome of the case, it has found that it has jurisdiction pursuant to *Jennings v. Rodriguez*, and that exhaustion would be futile based on *Yajure Hurtado*.

Statutes should be construed as a whole, giving effect to all of their provisions, and amendments to a statute must be read in harmony with their agency's longstanding construction. *See Vazquez v. Bostock* et. *al.*, No. 3:25-cv-05240 at *37 (W.D. Wash. September 30, 2025).

The *Vargas Lopez* court disposed of proceedings based upon deficiencies in the pleadings. *Vargas Lopez,* 2025 WL 2780351, at *1-2. The court alternatively concluded that Vargas Lopez was detained under § 1225(b)(2), but in addressing the overlapping nature of 8 U.S.C. § 1225 and 8 U.S.C. § 1226, the Court applied no canon of statutory construction in concluding that the statutes are not in conflict, writing that "[e]ven if Vargas Lopez might fall within the scope of § 1226(a), he certainly fits within the language of § 1225(b)(2) as well." *Id*. Because Respondent's interpretation of 8 U.S.C. §§ 1225 and 1226 renders the applicability of the discretionary detention statute and the exception to it in § 1226 superfluous and without effect, this Court should reject their interpretation.

III. ADMINISTRATIVE EXHAUSTION IS FUTILE

a. Petitioner Falls Under the Jurisdiction of the Portland Immigration Court.

Respondents claim that Petitioner is outside the jurisdiction of any court and immigration judge that could hold a bond redetermination hearing. Resp. at 14. This is incorrect. Control of all Idaho residents' cases belongs to the Portland Immigration Court.[1] Undersigned counsel appeared on behalf of an Idaho resident, detained in Idaho, as recently as July of this year, 2025.[2] While it may be the *practice* of ICE to move Idaho detainees to Nevada for their detention hearings, that does not mean those in Idaho are held in purgatory, out of reach of a court which can adjudicate their legal claims. If Petitioner *could* prevail in a bond hearing, he could request it from where he is currently detained. However, there is no Immigration Court in the Country, no matter where Petitioner is detained, which recognizes its jurisdiction to grant bond.

b. Petitioner Could Not Prevail in a Bond Redetermination Hearing Under Binding BIA Case Law.

Respondents claim that Petitioner has not given an Immigration Judge the opportunity to adjudicate his claim "based on law in that district." Resp. at 15. This argument is disingenous as Respondents are aware that there is no Immigration Court that will find jurisdiction for a Bond Argument, without a District Court ordering them to do so, on a case by case basis, at this time. Binding immigration law in every district includes precedential BIA decisions, and Ninth Circuit Case law; however, decisions of the District Courts are not binding on the Immigration Court except with regard to named parties. 8 C.F.R. § 1003.1(g); *Matter of K-S-,* 20 I&N Dec. 715, 719 (BIA 1993) (the Board is not bound to follow the published decision of a United States district court in cases arising within the same district). *Yajure Hurtado* is therefore binding precedent and every single Immigration Judge in the Country is bound by law to follow it.

In fact, the Tacoma Immigration Court has continued to deny bond, citing *Matter of Yajure Hurtado*, despite a declaratory judgment by the Western District of Washington, barring Immigration judges at the Tacoma Immigration Court from finding they have no jurisdiction over such aliens as described in *Yajure Hurtado* as aliens encapsulated within 8 U.S.C. § 1225(b).[2]

Even those cases cited by Respondents in support of their position, *Chavez* and *Vargas Lopez,* have agreed that exhaustion would be futile for the reasons outlined, and concluded proceedings on the merits without addressing futility, respectively. *Chavez v. Noem*, et. al., No. 3:25-cv-02325, 2025 WL 2730228 at 6-7 (S. D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*,

[2] Ellen M. Banner, *Federal Court Ruling Doesn't Stop Washington State Immigration Judges' Bond Denials*, **The Chronicle** Oct. 28, 2025, https://www.chronline.com/stories/federal-court-ruling-doesnt-stop-washington-state-immigration-judges-bond-denials,389980

No. 8:25-cv-00526, WL 2780351 at (D. Neb. September 30, 2025). There is, therefore, no court which has agreed with Respondents that exhaustion should be required in this case.

IV. RELEASE IS THE APPROPRIATE REMEDY

Respondents have not stated their specific interest in detaining Petitioner, only arguing that detention is required by statute. If their interest is solely to seek Petitioner's removal, that does not require detention, and absent an indication of flight risk or danger to the community, the interest in detention is insignificant.

Many district courts faced with the same issue in this action have in recent weeks determined to order the immediate release of immigration habeas petitioners. *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 LX 473521, at *39 (W.D. Tex. Oct. 1, 2025) *citing J.U. v. Maldonado,* No. 25-cv-4836, 2025 U.S. Dist. LEXIS 191630, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025)*; Zumba v. Bondi,* No. 25-cv-14626, 2025 U.S. Dist. LEXIS 190052, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025)*; Sampiao v. Hyde,* No. 25-cv-11981, 2025 U.S. Dist. LEXIS 175513, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025)*; Rosado v. Figueroa,* No. 25-cv-2157, 2025 WL 2337099*,* at *19 (D. Ariz. Aug. 11, 2025)*; M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025*)*. In the majority of these cases, the Court found that the government had no or an insignificant interest in detaining the petitioner. *Santiago,* 2025 LX473521 at *39 *citing J.U.,* 2025 U.S. Dist. LEXIS 191630, 2025 WL 2772765, at *10; *Zumba,* 2025 U.S. Dist. LEXIS 190052, 2025 WL 2753496, at *10*; Rosado,* 2025 WL 2337099, at *14*, 18; Sepulveda Ayala v. Bondi ("Sepulveda Ayala II")*, 25-cv-1063, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025). Respondents have not argued that Petitioner is a flight risk. Petitioner has demonstrated his compliance with the requirements of his removal proceedings, having complied with all orders of the Court, as well as the Order of Release on

own Recognizance that was issued to him in 2024. He has work authorization, and an application for relief pending, and until that application is adjudicated, he is not subject to removal from the United States. As there is no demonstrable flight risk, and no known criminal history by Mr. Porter's own admission (Docket No. 7-1, p. 2), Respondents' interest in keeping Petitioner detained is insignificant, and an order granting his release is appropriate.

V. THE COURT'S ORDER BARRING TRANSPORT SHOULD NOT BE LIFTED.

a. This Court Properly Issued its Order Barring Transport.

A court "has the inherent authority and responsibility to protect the integrity of its proceedings which [are] undoubtedly impacted" when a habeas petitioner is transferred to a detention facility outside of the district. *Ozturk v. Trump*, 779 F. Supp. 3d 462, 496 (D. Vt. 2025), amended sub nom. *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025). Under this authority, a court may order injunctive relief prohibiting the government from transferring a petitioner out of the district while habeas corpus proceedings are ongoing. See *Oliveros v. Kaiser*, No. 25-CV-07117-BLF, 2025 U.S. Dist. LEXIS 183943, 2025 WL 2677125, at *8-9 (N.D. Cal. Sept. 18, 2025).

Respondents admit that they regularly transfer immigration detainees out of the jurisdiction. As such, it is appropriate for the Court to safeguard the status quo, and enjoin such relocation, pending a decision in this matter.

b. 8 U.S.C. §§ 1231(g) and 1252(a)(2)(B)(ii) Do Not Prevent the Court from Barring Transportation of Petitioner.

Respondents argue that 8 U.S.C. § 1231(g)(1) and 8 U.S.C. § 1252(a)(2)(B)(ii) together "unambiguously strip courts of jurisdiction to adjudicate the Government's determination of where a noncitizen should be housed pending removal proceedings." Section 1231(g)(1) only says that the Attorney General shall "arrange for appropriate places of detention" of aliens, not

that they shall have total discretion as to in which of these appropriate places of detention an individual must be detained. 8 U.S.C. § 1231(g)(1); *see also, Oliveros v. Kaiser* at 22 ("'1231(g) does not address transfers of noncitizen detainees *at all'* and surely does not '*explicitly grant* the Attorney General or the Secretary of Homeland Security discretion with respect to transfers.'") (quoting *Ozturk v. Hyde*, 136 F.4th 382, 396 (2d Cir. 2025))

Moreover, this court is not reviewing the decision of the Attorney General to detain Petitioner in Idaho or anywhere else – this court is reviewing the question of law pertaining to whether Petitioner is statutorily eligible for a bond redetermination hearing, and in so facilitating that review, has determined it is advantageous and appropriate to stay the transportation of Petitioner during its pendency. *See Öztürk v. Hyde*, 2025 U.S. App. LEXIS 24301, at *43 (2d Cir. Sep. 19, 2025) (discerning no cited cases holding that "1252(a)(2)(B)(ii) outright strips federal courts of habeas jurisdiction to order the transfer or bond hearing of an immigrant whose place of detention was arranged pursuant to § 1231(g)."). Respondent's claim that restriction of Petitioner's relocation prevents him from being provided a bond hearing is false. Petitioner is prevented from obtaining a bond hearing by the statutorily erroneous decisions of the Board of Immigration Appeals. *See Matter of Yajure* Hurtado, 29 I&N Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Petitioner would not be provided a bond hearing in Idaho, Nevada, or anywhere else in the country, absent intervention by the Judiciary.

VI. CONCLUSION

Pursuant to the foregoing, Petitioner respectfully ask that this Court grant his requests for relief.

DATED: November 5, 2025

By: /s/ Casey Parsons
Casey Parsons
Attorneys for Petitioner