UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Roelvis Enrique Valecillo-Osorio,

Petitioner,

-v-

Todd M. Lyons, Acting Director of US ICE; Miguel Vergara, San Antonio Field Office Director, US Immigration and Customs Enforcement; Daren K. Margolin, Director of the Executive Office for Immigration Review; Warden, T. Don. Hutto Detention Center,

Respondents.

Case No: 1:25-cv-01711-RP-ML

APPLICATION FOR TEMPORARY RESTRAINING ORDER

PETITIONER'S BRIEF IN SUPPORT OF HABEAS CORPUS AND TEMPORARY RESTRAINING ORDER

Petitioner submits this brief in support of his Petition and application for a Temporary Restraining Order (TRO). Petitioner asks the Court to order his release, or alternatively to order that Respondents provide him a bond hearing in which they bear the burden of demonstrating that his continued detention is justified by either dangerousness or a risk of flight.

I. Statement of the Facts

Petitioner entered the United States without authorization on or around December 22, 2021, seeking asylum. He was briefly detained before being released on his own recognizance on or around January 11, 2022. His detention and release were "[i]n accordance with section 236 [8 U.S.C. § 1226] of the Immigration and Nationality Act". ECF at 1, Exhibit A. He was never placed into expedited removal proceedings.

Despite his release and compliance with all conditions imposed by Respondents, Petitioner was detained again on or around October 20, 2025. This detention occurred during a routine check-in with Respondents, Immigration and Customs Enforcement (ICE). No reason was provided for his detention and he was not provided with any documentation either terminating his release or justifying his new period of detention.

Petitioner remains in detention today. Petitioner is seeking asylum, withholding of removal, and protection under the Convention Against Torture in his removal proceedings.

II. Argument

Petitioner was unlawfully detained by Respondents because the asserted detention authority, 8 U.S.C. § 1225, is wholly inapplicable to Petitioner's circumstances. Newly-issued binding precedent of the Board of Immigration Appeals prevents an immigration judge from ordering Petitioner's release on bond at this time. That precedent asserts that any individual who has unlawfully entered the United States is permanently ineligible for bond, even they were previously released under a different detention authority. This is a significant departure from prior interpretations of the law. There is no jurisdictional bar to the Court considering this case, and more than 60 federal courts have now found against Respondents on substantially similar factual grounds. Petitioner is not obligated to exhaust all administrative remedies in these circumstances, especially here since appeal to the Board of Immigration Appeals is futile.

Releasing Petitioner is the most appropriate remedy here because it cures the harm of unlawful detention most directly. However, in the alternative Petitioner requests a bond hearing in which Respondents bear the burden of demonstrating that Petitioner is a danger to their community or a flight risk before denying bond.

A. Expedited removal procedures under 8 U.S.C. § 1225 do not apply to Petitioner and are unconstitutional as applied to Petitioner

Respondents contend that Petitioner is detained pursuant to 8 U.S.C. § 1225. However, this section is wholly inapplicable to Petitioner, who has been in the United States for more than three years, and who is not an arriving alien. The Western District of Texas has recently observed in a substantially similar case how "[i]n recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025). Respondents continue to assert the same arguments notwithstanding the fact that they have been rejected in more than 60 separate cases.[1]

[1] *See, e.g., Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Gamez Lira v. Noem*, (D.N.M. Sept. 24, 2025); *Hernandez Lopez v. Hardin*, (M.D. Fla. Sept. 25, 2025); *da Silva v. ICE*, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo Hinestronza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Lorenzo Perez v. Kramer*, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Ozuna Carlon v. Kramer*, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Genchi Palma v. Trump*, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Duenas Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Brito Barrajas v. Noem*, No. 4:25-cv-00322 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Santiago Helbrum v. Williams*, No. 4:25-cv-00349 (S.D. Iowa Sept. 30, 2025); *Hernandez Marcelo v. Trump*, (S.D. Iowa Sept. 10, 2025); *Lopez Santos v. Noem*, 2025 WL 2624278 (W.D. La. Sept. 11, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Sampaio v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 2, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Lopez Benitez v. Francis*, 2025 WL

1. Statutory analysis and precedent demonstrate that the provisions of 8 U.S.C. § 1225 do not apply to Petitioner in his current circumstances.

Petitioner has been in the United States for more than three years since his initial entry. He is not subject to "expedited removal" procedures by virtue of his time in the United States. *See El Gamal v. Noem*, No. SA-25-CV-00664-OLG, 2025 WL 1857593, at *2 (W.D. Tex. July 2, 2025) (finding that "the second necessary element for expedited removal cannot be satisfied" because that individual had been in the country for at least two years."). In recent months, Respondents have argued that it is immaterial whether an individual is subject to expedited removal per se, because 8 U.S.C. § 1225 requires their detention following an unlawful entry even for individuals not subject to expedited removal procedures. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This reading is inconsistent with the statutory scheme established by Congress and contradicts recent Supreme Court decisions.

The procedures established at 8 U.S.C. § 1225 relate to immigrants who are arriving in the United States, their inspection and admission, and subsequent procedures should they be placed into "expedited removal" proceedings. This section is wholly inapplicable to Petitioner, who was detained and released from immigration detention pursuant to 8 U.S.C. § 1226.

Beginning with the text of the statute, the provisions of 8 U.S.C. § 1225 do not apply to immigrants, like Petitioner, who are detained long after their arrival and inspection. 8 U.S.C. § 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." The title references "arriving aliens" who are being inspected and subjected to "expedited removal." Petitioner was not arriving in the United States on September 2, 2025, when he was detained by Respondents. Nor was he seeking inspection and admission to the United States. Respondents have

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2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Encarnacion v. Moniz*, No. 25-12237 (D. Mass. Sept. 5, 2025).

argued that such individuals are nevertheless "deemed" to be applicants of admission by virtue of 8 U.S.C. § 1225(a)(1). This assumes the argument that Petitioner's detention is encompassed by 8 U.S.C. § 1225 at all, rather than 8 U.S.C. § 1226, as Respondents previously stated.

Other provisions of 8 U.S.C. § 1225 make clear that it relates to immigrants who are in the process of arriving in the United States, not someone who has been here for more than two years and who has developed substantial ties. 8 U.S.C. § 1225(a)(1) refers to "[a]n alien present in the United States *who has not been admitted or who arrives in the United States*" (emphasis added). The statute uses the present tense, "arrives," rather than the past tense, "arrived," demonstrating that it applies at the time of the actual entry and inspection of an alien to the United States.

The statute contemplates that some immigrants will arrive at the border and later seek asylum. 8 U.S.C. § 1225(b)(1)(A)(i) states that:

> *"If an immigration officer determines that an alien...who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or section 212(a)(7) of this Act, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 of this Act or a fear of persecution."*

Respondents did not follow these procedures in Petitioner's case, demonstrating that they were never applied until now. He was not ordered removed in "expedited removal proceedings." He was simply released pursuant to 8 U.S.C. § 1226. The procedures for individuals in true expedited removal proceedings are starkly different. For example, should an immigrant request asylum at the time of entry, the statute states that:

> *"If an immigration officer determines that an alien...who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or section 212(a)(7) of this Act and the alien indicates either an intention to apply for asylum under section 208 of this Act or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B)."*

8 U.S.C. § 1225(b)(1)(A)(ii). Petitioner was never referred for such an interview because he was never subject to expedited removal procedures in the first instance. He was not placed into expedited removal proceedings and was not provided an interview with an asylum officer as required by statute. Instead, he was processed under 8 U.S.C. § 1226(a), released on his own recognizance, and provided a court date to appear in immigration court to pursue his case.

Recent amendments to the Immigration and Nationality Act also demonstrate that Congress does not interpret the statute the way Respondents would counsel the Court to read it. The Laken Riley Act amendments which were passed in January of 2025 would be superfluous in part if Respondents' stance is correct. In a substantially similar case, a court found that:

> *"accepting Respondents' one-size-fits-all application of § 1225(b)(2) to all aliens, with no distinctions, would violate fundamental canons of statutory construction. Importantly, it would render § 1226 utterly superfluous. The recent Laken Riley Act amendments to § 1226(c), the legislative history of the IIRIRA, and longstanding practice supports this holding."*

Maldonado v. Olson, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025). Longstanding canons of statutory interpretation presume that Congress does not enact superfluous provisions and that statutes should not be interpreted in a manner that would render other statutes void, insignificant, or inoperative. *See, e.g.*, *Bilski v. Kappos*, 561 U.S. 593, 607–08, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010) and *Corley v. United States*, 556 U.S. 303, 314, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009) (cleaned up).

Respondents' interpretation of 8 U.S.C. § 1225(b)(2) would render the addition of Subsection (c)(1)(E) to § 1226 superfluous. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); *see also Maldonado* at 12. As the court in *Maldonado* opined, "If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." *Id.* The Court should find that Respondents' interpretation of 8 U.S.C. § 1225 is inconsistent with Congress' statutory design.

2. Numerous district courts have considered and rejected Respondents' arguments in favor of detention.

As noted above, Respondents' position has already been considered and rejected by numerous courts. *See, e.g., Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH) (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB) (D. Ariz. Aug. 11, 2025); *and Martinez v. Hyde*, No. 25-11613-BEM, (D. Mass. July 24, 2025). The court in *Lopez Benitez* considered practically identical circumstances to Petitioner's. There, the court held that:

> "Mr. Lopez Benitez was detained pursuant to DHS's discretionary authority under § 1226(a), for two independent reasons: (1) DHS has consistently treated Mr. Lopez Benitez as subject to detention on a discretionary basis under § 1226(a), which is fatal to Respondents' claim that he is subject to mandatory detention under § 1225(b); and (2) a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225's provision for mandatory detention of noncitizens "seeking admission" does not apply to someone like Mr. Lopez Benitez, who has been residing in the United States for more than two years."

Lopez Benitez at 5. Here, Petitioner was always treated by DHS as subject to detention under 8 U.S.C. § 1226 (INA § 236). Respondents have significantly departed from their prior practices and assert that Petitioner has been subject to mandatory detention the entire time he has been in the United States. There is no justification or explanation for that change and the Court should reject it.

In *Rosado v. Figueroa*, the court rejected the same arguments made by Respondents here, finding that the petitioner had been released on conditional parole, which is only available under INA § 236:

> "Thus, the record before the Court regarding Rosado's lack of detention during her removal proceedings beginning in 2018, after inspection at the border, through April 30, 2025, can only be construed as demonstrating that Rosado was conditionally paroled into the United States."

Rosado at 12. This same argument applies here because Petitioner was released on his own recognizance from detention after arriving in the United States. The court in *Rosado* held that this release is a form of conditional parole from detention, which is authorized by 8 U.S.C. § 1226(a)(2)(B). Whether Petitioner's

release was through a conditional parole or another parole power is not determinative of this case. The key here is that 8 U.S.C. § 1225(b) is not a legal detention authority applicable in these circumstances.

Finally, in *Martinez v. Hyde*, the court considered very similar factual circumstances and rejected the argument that the petitioner was subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A):

> "for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an examining immigration officer must determine that the individual is: (1) an applicant for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted.
> Petitioner's Order of Release on Recognizance contradicts Respondents' assertion that her April 2024 Border Patrol encounter constituted an examination under section 1225. While immigration officers routinely examine (or "inspect") non-citizen applicants, see 8 U.S.C. § 1225(a)(3), they also enjoy broad authority to interrogate and, in some circumstances, temporarily detain non-citizens within the United States without a warrant, id. § 1357(a)(1)–(2). In other words, not every encounter with an immigration officer necessarily constitutes an examination under section 1225. Petitioner's Order of Release does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ("[i]n accordance with section 236 of the Immigration and Nationality Act")...
> ***
> Release on recognizance is not "humanitarian" or "public benefit" "parole into the United States" under section 1182(d)(5)(A) but rather a form of "conditional parole" from detention upon a charge of removability, authorized under section 1226.

Martinez at 5-6 (internal citations and quotations omitted). The circumstances here are the exact same. Respondents would assert a new detention authority, which was never applied to Petitioner, more than three years after his entry and release into the United States.

Respondents believe that they can subject Petitioner to an entirely different detention scheme at a moment's notice without any due process. The Court should find that Petitioner is not subject to proceedings under 8 U.S.C. § 1225, is therefore not subject to mandatory detention under that section, and order his release.

B. Petitioner's detention under 8 U.S.C. § 1225 is unconstitutional because it violates his due process rights

Should the Court find that Petitioner is detained pursuant to 1225, Petitioner argues that this detention authority is unconstitutional under the Fifth Amendment. Challenges to the extent of DHS' detention authority are permissible and do not relate to any discretionary determinations. *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018).

Petitioner is a civil detainee who has never been charged with or convicted of any crime. As an immigrant, he is entitled to the same due process protections afforded to civil detainees. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). Petitioner has a "constitutionally protected interest in avoiding physical restraint". *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). He may not be detained as a means of punishment for noncriminal purposes. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Due process protections apply even if a statute explicitly authorizes detention. *See Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 338 (S.D. Tex. 2020) (finding that plaintiffs who were at high risk of serious illness or death due to the COVID-19 Pandemic were detained for a purpose that did "not reasonably relate to a legitimate governmental purpose.").

Respondents' asserted detention authority is unlawful because it ignores the statutory scheme carefully set out by Congress and would eviscerate the due process rights of potentially millions of immigrants like Petitioner. As noted above, Congress created a statutory scheme that clearly distinguishes between expedited removals at border and general removals which occur outside of that context. The expedited removal scheme necessarily trades some due process protections for expedited processing. Such tradeoffs are not appropriate for individuals like Petitioner who have been in the United States for several years.

The Supreme Court analyzed the interplay between both sections in *Jennings v. Rodriguez*. Section 1225 provides that "an alien who arrived in the United States or is present in this country but has not been admitted, is treated as an applicant for admission." *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. § 1225(a)(1) (internal quotations omitted)). The Court there observed that the decision of who may enter this country "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. *Id.* at 287. The *Jennings* Court noted that § 1225(b), the provision at issue in the instant habeas petition, "applies primarily to aliens seeking entry into the United States." *Id.* at 297. Then the Court noted, § 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. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of this section.'" *Id.* at 303. Subsection (c) of Section 1226 pertains to aliens who fall into categories involving criminal offenses or terrorist activities. "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." Id. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

Respondents would have Petitioner detained under Section 1225 even though his proceedings were initiated under Section 1226. Such a position destroys the balance created by Congress and outlined by the Supreme Court in *Jennings*. The Court should find that this overreach is unconstitutional, violates Petitioner's Fifth Amendment rights, and order his release.

C. Exhaustion before the BIA is futile in Petitioner's case

Respondents contend that Petitioner must appeal a bond denial to the Board of Immigration Appeals (BIA) and wait for a decision prior to petitioning for a writ of habeas corpus. However, there is no statutory exhaustion requirement in 28 U.S.C. § 2241. The courts have routinely reviewed the detention of immigrants pursuant to different statutes in habeas proceedings. *See, e.g.*, *Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). Furthermore, exhaustion is inappropriate here because appeal to the Board of Immigration Appeals is futile and inadequate.

Appeal to the BIA is futile because the agency has already issued a precedential decision holding that immigration judges unequivocally have no jurisdiction to entertain granting bond in his exact circumstances. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA described its holding in this case as:

> Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *Id.*

The requirement that Petitioner must exhaust all available appeals is subject to exceptions. The Fifth Circuit has held that "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (citing *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam).

As of today, the BIA has issued at least two precedential decisions stating that Petitioner's exact circumstances deprive an immigration judge of jurisdiction to consider bond. There is no reason to believe that the BIA would not apply its own recent precedent decisions to Petitioner's case. That assertion is unsupported and cannot surmount Petitioner's clear due process interest in being released from detention. Respondents bear the burden of proving that Petitioner's detention is lawful and they

have not met that burden. In light of the above, Petitioner asks the Court to find that an appeal to the BIA is not required and futile due to recent BIA precedent.

D. There are no jurisdictional bars to the relief sought

In similar circumstances, Respondents have argued that the district courts are prohibited from deciding such matter for lack of subject matter jurisdiction. This argument is incorrect, and there are no jurisdictional bars whether under 8 U.S.C. §§ 1252(a)(5), (b)(9), (g), or 8 U.S.C. § 1226(e).

Section 1252(a)(5) narrowly "specifies that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals." *Duarte v. Mayorkas*, 27 F.4th 1044, 1051 (5th Cir. 2022). Here, there is no final order of removal which Petitioner seeks review before this Court.

Section 1252(b)(9) limits judicial review of "questions of law and fact…arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter". 8 U.S.C. § 1252(b)(9). This provision is a jurisdictional channeling provision intended to prevent review of issues prior to the end of administrative proceedings. *See Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *7 (D. Minn. Aug. 15, 2025) (citing *Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007)). Petitioner is not challenging the initiation of removal proceedings or any action that occurred during those proceedings. He is challenging the constitutionality of his detention.

Section 1252(g) strips jurisdiction over "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). Here, Petitioner does not seek this review, and Congress did not intend to sweep in additional claims that were not explicitly included here. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025) (*citing Jennings v. Rodriguez*, 583 U.S. 281 at 924 (2018). Additionally, this provision carves

out habeas petitions; the jurisdictional bar is "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241". 8 U.S.C. § 1252(g).

Section 1226(e) does not apply to Petitioner's claim because he "challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 583 U.S. at 295, 138 S.Ct. 830 (cleaned up) (quoting *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)); *see also Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Petitioner is not challenging an individualized bond hearing determination but rather his indefinite detention without the opportunity to have such a hearing. In other similar cases before the Western District, Respondents' jurisdictional arguments have been found unavailing. *See* Lopez-Arevelo at *5.

E. A Temporary Restraining Order is appropriate in Petitioner's case.

A Temporary Restraining Order is committed to the "equitable discretion" of the court and preserves the status quo during the pendency of litigation. *Texas v. United States Dep't of Homeland Sec.*, 747 F. Supp. 3d 1005, 1009 (E.D. Tex. 2024). "Resolution of a motion for a TRO…rests on considerations of irreparable injury to the plaintiff without a TRO, the burden to the defendant of a TRO, the public interest, and the probability of plaintiff's ultimate success." *Id.* (citing *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974)).

First, Plaintiff here is suffering irreparable injury at this time and will continue to suffer during the pendency of this litigation if a TRO is denied. Plaintiff is detained and is unlikely to be released from detention except by order of this Court. He will never be able to recover this time that he has been confined to a detention center and separated from his family. The ongoing violation of his constitutional rights is a separate and significant injury that cannot be remedied by any other manner than by forcing Respondents to adhere to the law.

Second, Respondents' burden in complying with the law and releasing Petitioner, who they unlawfully detained, is minimal compared to Petitioner's suffering. Petitioner remains in removal proceedings and his personal information, including his address and other identifying information is known to Respondents. There is no basis to suggest that Petitioner might abscond or prevent his detention given that he was detained at a routine check-in with Respondents. Furthermore, this Court's order would implicate only this Petitioner and his release would be a routine and minimal effort on Respondents' part.

Third, the public interest is not negatively affected by this Court's issuance of a TRO. In fact, the public is currently paying government contractors a substantial amount of money to unlawfully detain Petitioner. As a law-abiding, gainfully-employed asylum seeker, Petitioner's release would actively serve the public interest.

Finally, the Court should find that Petitioner's arguments in support of this TRO are likely to succeed on the merits, if further litigation is required. Petitioner is likely to succeed for the reasons outlined above.

III. Conclusion

Because Respondents have unlawfully detained him, the only means that Petitioner has for being released is through an order of this Court. Therefore, Petitioner respectfully asks this Court to grant his Petition and issue a writ of habeas corpus ordering his release.

Respectfully submitted,

/s/ Joseph Krebs Muller

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