UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

ANDRES GONZALEZ-LOPEZ, Petitioner, v. ADAM SMITH, Jailer, Christian County Jail; and SAMUEL OLSON, Interim Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, Respondents.	)	Case No. 5:25-cv-179-BJB

REPLY TO RESPONDENTS' RESPONSE AND MOTION TO DISMISS PETITIONER'S HABEAS CORPUS PETITION

Petitioner submits this reply to Respondent's Response and Motion to Dismiss his Petition for Writ of Habeas Corpus. Petitioner continues to be detained unlawfully during his pending removal proceedings, in violation of his constitutional and statutory rights.

A. This Court has subject matter jurisdiction over Petitioner's habeas corpus petition.

This action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

Certainly, this Court "may not review discretionary decisions made by immigration authorities, [but] it may review immigration-related detentions to determine if they comport with the demands of the Constitution." *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 901 (D. Minn. 2020) (citing *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)).

This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(b)(9) and (g) as Petitioner's claims do not challenge any decision to commence proceedings, adjudicate cases, or execute removal orders.

Section 1252(b)(9) provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added).

The Supreme Court's decision in *Jennings v. Rodriguez* is instructive here and supports Petitioner's position that this Court does have jurisdiction and that Section 1252(b)(9) does not present a jurisdictional bar.

The Supreme Court determined that the "arising from" language of Section 1252(b)(9) should not be interpreted so expansively as to include any action that technically follows the commencement of removal proceedings, because that would bar judicial review of questions of law and fact that are unrelated to the removal proceedings until a final order of removal was issued. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018). Petitioner, like the class in *Jennings*, "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." *Id.* at 294-95.

Section 1252(g) provides:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear 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).

The Supreme Court's decision in *Jennings* is again instructive here related to Section 1252(g). The *Jennings* court writes that "[w]e did not interpret [section 1252(g)] 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." *Jennings*, 583 U.S. at 294 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)).

An immigration judge's (IJ) review of a bond determination is a distinct proceeding from an alien's underlying removal proceeding. 8 C.F.R. § 1003.19(d) ("Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding."). It is "clear bond hearings are separate and apart from deportation proceedings." *See Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982). Here, Petitioner is seeking review of his unlawful detention. He is not challenging a removal order or anything else listed in Section 1252(b)(9) and (g) which would strip this court of jurisdiction. This Court has jurisdiction over Petitioner's matter. *See Hernandez Alonso v. Tindall et al.*, No. 3:25-cv-652-DJH (W.D. Ky. Nov. 4, 2025); *Avila v. Bondi et al.*, No. 25-3741 (JRT/SGE), 2025

WL 2976539, at *4 (D. Minn. Oct. 21, 2025); *Patel v. Tindall*, No. 3:25-cv-373-RGJ, 2025 WL 2823607, at *2 (W.D. Ky. Oct. 3, 2025).

B. Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of "Applicants for Admission." Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. This argument fails for several reasons.

The Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge's authority to hear a bond request for any noncitizen present in the United States without having been inspected and admitted and who are later apprehended by DHS.

The relevant statutes at issue are Sections 1225 and 1226. Section 1225, titled "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing," states:

> An alien present in the United States who has not been admitted *or* who arrives in the United States...shall be deemed for purposes of this chapter an applicant for admission... Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking* admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(a)(1), (b)(2)(A) (emphasis added).

Section 1226, entitled "Apprehension and detention of aliens," states:

> On a warrant issued by the Attorney General, an alien *may be arrested and detained pending a decision* on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General— (1) may continue to detain the arrested alien; and (2) may release the alien on— (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole…

8 U.S.C. § 1226(a) (emphasis added).

Respondents argue that 8 C.F.R. § 1236(c)(2) supports their contention that Petitioner is subject to mandatory detention. However, Section 1236(c)(2) must be read in its entirety to understand its full meaning. Specifically this section states: "*Subject to paragraph (c)(6)(i)* of this section, but notwithstanding any other provision within this section, an alien subject to the TPCR who is not lawfully admitted is not eligible to be considered for release from custody." *Id.* (emphasis added). As the title of the section indicates, Section 1236(c)(6)(i) relates to "Unremovable aliens and certain long-term detainees", or in other words noncitizens who have already been deemed removable by an Immigration Judge but cannot be repatriated. 8 C.F.R. § 1236(c)(6)(i). Thus, this section is not the general rule of detention. Instead, 8 C.F.R. § 1236(d)(1) controls detention of noncitizens who are detained after entering the U.S. without permission and having been present for many years. *See Jennings*, 583 U.S. at 306.

Prior to and since the decision in *Matter of Yajure Hurtado*, federal district courts in the First Circuit, Second Circuit, Third Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, Tenth Circuit, and Eleventh Circuit have all disagreed with Respondents' interpretation and have subsequently granted relief to habeas petitioners, even after the date of filing of this petition:[1]

First Circuit

[1] This Habeas Corpus petition was filed on October 24, 2025. Dkt. 1, PageID#1-17. Please see paragraph 41 of the original Petition for Writ of Habeas Corpus and Complaint for Emergency Injunctive Relief for additional District Court cases that decided similar issues to this case prior to the filing of this Habeas Corpus petition. Dkt. 1, PageID#12-13.

- *Cesario Souza v. Hyde*, 2025 WL 2997670 (D. Mass. Oct. 24, 2025)
- *Chanaguano Caiza v. Scott*, 2025 WL 3013081 (D. Me. Oct. 28, 2025)
- *Tomas Elias v. Hyde*, 2025 WL 3004437 (D.R.I. Oct. 27, 2025)

Second Circuit
- *J.G.O. v. Francis*, 1:25-cv-07233 (S.D.N.Y. Oct. 28, 2025)

Third Circuit
- *Patel v. Almodovar*, 2025 WL 3012323 (D.N.J. Oct. 28, 2025)

Fourth Circuit
- *Pineda Velasquez v. Noem*, 2025 WL 3003684 (D. Md. Oct. 27, 2025)
- *Aguilar Lares v. Bondi*, 1:25-cv-01562 (E.D. Va. Oct. 29, 2025)
- *Duarte Escobar v. Perry*, 2025 WL 3006742 (E.D. Va. Oct. 27, 2025)
- *Yobani v. Noem*, 2025 WL 2997505 (E.D. Va. Oct. 24, 2025)

Fifth Circuit
- *Erazo Rojas v. Noem et al.*, EP-25-CV-443-KC (W.D. Tx. Oct. 30, 2025)

Sixth Circuit
- *Hernandez Alonso v. Tindall et al.*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025)
- *Perez Guerra v. Woosley et al.*, 2025 WL 3046187 (W.D. Ky. Oct. 31, 2025)
- *Contreras Orellana v. Noem*, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025)
- *Martinez-Elvir v. Olson*, 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025)
- *Salgado Bustos v.* Raycraft et al., 2025 WL 3022294 (E.D. Mich. Oct. 29, 2025)
- *Gimenez Gonzalez v. Raycraft*, 2025 WL 3006185 (E.D. Mich. Oct. 27, 2025)
- *Salgado Mendoza v. Noem et al.*, 2025 WL 3077589 (W.D. Mich. Nov. 4, 2025)
- *Ruiz Mejia v. Noem et al.*, 2025 WL 3041827 (W.D. Mich. Oct. 31, 2025)
- *Escobar-Ruiz v. Raycraft et al.*, 2025 WL 3039255 (W.D. Mich. Oct. 31, 2025)
- *Ramirez v.* Noem et al., 2025 WL 3039266 (W.D. Mich. Oct. 31, 2025)
- *Cervantes Rodriguez v. Noem*, 2025 WL 3022212 (W.D. Mich. Oct. 29, 2025)
- *Marin Garcia v. Noem,* 2025 WL 3017200 (W.D. Mich. Oct. 29, 2025)
- *Rodriguez Carmona v. Noem*, 1:25-cv-1131 (W.D. Mich. Oct. 24, 2025)
- *Puerto-Hernandez v. Lynch*, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025)

Seventh Circuit
- *Corona Diaz v. Olson*, 2025 WL 3022170 (N.D. Ill. Oct. 29, 2025)
- *Amigon Sanchez v. Olson*, 2025 WL 3004580 (N.D. Ill. Oct. 27, 2025)
- *Patel v. Crowley*, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025)
- *Patel v. Noem*, 1:25-cv-11180 (N.D. Ill. Oct. 24, 2025)
- *Ramirez Valverde v. Olson*, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025)

Eighth Circuit
- *Garcia Picazo v. Sheehan, 2025 WL 3006188 (N.D. Iowa Oct. 27, 2025)*

Ninth Circuit

- *J.A.E.M v. Wofford*, 2025 WL 3013377 (E.D. Cal. Oct. 27, 2025)
- *J.A.C.P. v. Wofford*, 2025 WL 3013328 (E.D. Cal. Oct. 27, 2025)
- *Castellanos Lopez v. Warden, Otay Mesa Det. Ctr.*, 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025)
- *Esquivel-Ipina v. Larose*, 2025 WL 2998361 (S.D. Cal. Oct. 25, 2025)
- *Arce-Cervera v. Noem*, 2025 WL 3017866 (D. Nev. Oct. 28, 2025)
- *Bautista-Avalos v. Bernacke*, 2025 WL 3014023 (D. Nev. Oct. 27, 2025)
- *Dominguez-Lara v. Noem*, 2025 WL 2998094 (D. Nev. Oct. 24, 2025)

Tenth Circuit

- *Nava Hernandez v. Baltazar*, 2025 WL 2996643 (D. Colo. Oct. 24, 2025)

Eleventh Circuit

- *J.A.M. v. Streeval et al.*, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025)
- *Garcia v. Noem et al.*, 2025 WL 3041895 (M.D. Fl. Oct. 31, 2025)
- *Hernandez Lopez v. Hardin, et al.*, 2025 WL 3022245 (M.D. Fl. Oct. 29, 2025)

This Court is not required, and should not, give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

Respondents argue that an "Applicant for admission" refers to a noncitizen seeking admission to the U.S. As reiterated in the recent Western District of Kentucky decision, *Hernandez Alonso v. Tindall et al.*, not all applicants for admission are automatically seeking admission. *Hernandez Alonso v. Tindall et al.*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025). District Courts in the Sixth Circuit have carefully analyzed the statutory construction of sections 1225(b)(2) and 1226, articulating the nuance between an arriving alien and an alien present in the

U.S. without being admitted or paroled. While both are applicants for admission under the statute, an "[a]rriving alien means an applicant for admission coming or attempting to come into the United States." 8 C.F.R. § 1.2. These District Courts have repeatedly interpreted Section 1225 as requiring the immediate action of "seeking" admission at a port of entry and to find otherwise does not comport to the plain language of the statute.

The text of Sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the numerous District Court decisions confirm that Petitioner is subject to section 1226(a)'s discretionary detention scheme.

C. Petitioner's continued detention without a bond hearing is a Fifth Amendment violation.

Petitioner's continued detention violates due process, as Respondents' arguments ignore the realities of the process of Petitioner's immigration proceedings and the particular facts of this case. Respondents do not allege that Petitioner's detention is necessary because he is a danger to the community, nor to ensure his appearance during removal proceedings. *See Zadvydas*, 533 U.S. at 690. Petitioner's continued deprivation of his liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Cause of the Fifth Amendment.

The Sixth Circuit has held that the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, applies in the context of immigration detention. *See United States v. Silvestre-Gregorio,* 983 F.3d 848, 852 (6th Cir. 2020). Thus, under *Mathews*, this Court must consider the following three factors: "(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *Mathews*, 424 U.S. at 335.

In regard to the first *Mathews* factor, Petitioner has a significant private interest in avoiding detention, one of the "most elemental of liberty interests." *See Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Petitioner is now detained in another state, away from his family, U.S. citizen children, and support system, "experiencing [many of] the deprivations of incarceration, including loss of contacts with friends and family, loss of income earning…lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025). Further, Petitioner was arrested in Chicago, Illinois without a warrant, which violated the consent decree established by *Castañon Nava et al. v. Department of Homeland Security et al.*, No. 18-cv-3757 (N.D. Ill. 2018).

As to the second *Mathews* factor, a risk of erroneous deprivation is minimized through a fair bond hearing, where an Immigration Judge can determine whether Petitioner is a flight risk or a danger to the community.[2] *See Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *9 (E.D. Mich. Aug. 29, 2025). Petitioner has been in the United States for over 20 years and appears eligible for Non-Legal Permanent Resident Cancellation of Removal. Allowing an Immigration Judge to use their expertise to determine a Petitioner's eligibility for bond reduces the risk of erroneously depriving Petitioner of his liberty interests.

As to the third factor, while Respondents do have "a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community," here, Respondents have not established an interest in regard to detaining Petitioner who may well convince "a neutral adjudicator, following a hearing and assessment of the evidence, that his

[2] Respondents provided Form I-213 which allegedly documents the encounter between Immigration and Customs Enforcement and Petitioner in addition to Petitioner's alleged criminal history. Dkt. 8-1, PageID#49-52. Petitioner's counsel was unable to locate these specific dispositions after conducting a search using Petitioner's legal name and date of birth in the Circuit Court of the Nineteenth Judicial Circuit database for Lake County, Illinois.

ongoing detention is not warranted." *Sampiao v. Hyde,* No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

Petitioner is detained under 8 U.S.C. § 1226. Respondent's position that Petitioner must remain detained during the pendency of his removal proceedings and is not eligible for a bond redetermination hearing pursuant to 8 U.S.C. § 1225(b)(2), unlawfully deprives Petitioner of his liberty.

CONCLUSION

For the foregoing reasons, this Court should order Respondents to release Petitioner or to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order.

Dated: November 5, 2025

Respectfully Submitted,
ANDRES GONZALEZ-LOPEZ

By: s/ Maya A. Flores
One of his attorneys

Maya A. Flores, Esq.
KRIEZELMAN BURTON & ASSOCIATES, LLC
200 West Adams Street, Suite 2211
Chicago, Illinois 60606
(312) 332-2550
mflores@krilaw.com

Certificate of Service

I hereby certify that on November 5, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

/s/ Maya A. Flores