

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

ANDRES GONZALEZ-LOPEZ,

PETITIONER

v.

CIVIL ACTION NO. 5:25-cv-00179-BJB

ADAM SMITH, Jailer, Christian County Jail; and
SAM OLSON, in his Official Capacity as
Interim Field Office Director,
Chicago Field Office,
Immigration and Customs Enforcement

RESPONDENTS

**RESPONDENT’S REPLY TO RESPONSE TO MOTION TO DISMISS
AND SUPPLEMENTAL AUTHORITY**

I. Respondent’s Reply

The Court must dismiss this action for lack of jurisdiction, because it requires the Court to answer a question of law arising from an action taken to remove Mr. Gonzalez-Lopez from the United States. *See* 8 U.S.C. § 1252(b)(9) (consolidating “review of all questions of law . . . arising from any action taken . . . to remove an alien from the United States” into the review of a final order of removal). Indeed, Petitioner’s Response makes clear, the question before this Court is purely legal: Which statute detains Mr. Gonzalez-Lopez?¹ *See also Hernandez Alonso v. Tindall et al.*, 2025 WL 3083920, at 4 (W.D. Ky. Nov. 4, 2025) (“[T]he Court must determine whether [a petitioner] is detained under § 1225 or § 1226, a legal question . . .”).

¹ “The test of Sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and numerous District Court decisions confirm that Petition is subject to section 1226(a)’s discretionary detention scheme.” [Doc 20, PageID.8].

This question matters because Mr. Gonzalez-Lopez wants a bond hearing before an Immigration Judge. But Section 1225 does not allow for it. *See generally* 8 U.S.C. § 1225. And, contrary to Petitioner’s assertions, the regulations do not allow for it either.² Only “aliens detained under § 1226 receive bond hearings at the outset of detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Section 236.1(c)(2) and 1236.1(c)(2) explain “[a]liens not lawfully admitted” are “not eligible to be considered for release from custody.” 8 C.F.R. §§ 236.1(c)(2), 1236.1(c)(2); *see also Jennings*, 583 at 311 (reading § 1225(b)(2)(A) to say that inadmissible aliens “shall be detained until . . . a removal proceeding” takes place).

II. Respondent’s Supplemental Authority

After the filing of Respondent’s Motion to Dismiss and Response to Petitioner’s Habeas Petition, the United States District Court for the Eastern District of Wisconsin issued *Rojas v. Olson*, 2025 WL 3033967 (E.D. Wisc. Oct. 30, 2025), and the United States District Court for the Western District of Louisiana issued *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025). While both decisions erred in analyzing the jurisdictional stripping provisions of 8 U.S.C. § 1252,³ they correctly held that

² [*Id.* at 5] (“8 C.F.R. § 1236(d)(1) controls detentions of noncitizens who are detained after entering the U.S. without permission and having been present for many years.” citing *Jennings*, 583 U.S. at 306).

³ *Sandoval* assumed jurisdiction without deciding it. *Sandoval*, 2025 WL 3048926, at *2. *Rojas* found jurisdiction, in relevant part, by interpreting *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 477 (1999) to limit the jurisdictional-stripping provisions of § 1252(g) to apply *only* to the *decision itself* to commence, adjudicate, or execute (which renders the term “arising from” superfluous). *See Rojas*, 2025 WL at 4. And despite answering a question of law (by determining that he was detained under § 1225) “which could be said to arise from actions

“applicants for admission,” like Petitioner, are detained under 8 U.S.C. § 1225, not § 1226. *Rojas*, 2025 WL 3033967, at *5-10; *Sandoval*, 2025 WL 3048926, at *5-6.

CONCLUSION

Because the Court lacks jurisdiction, the Court should dismiss Gonzalez-Lopez’s petition. Alternatively, the Court should deny the petition, because Gonzalez-Lopez is lawfully detained under 8 U.S.C. § 1225(b)(2) and the Agency has afforded him his due process rights.

Respectfully submitted,

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Timothy D. Thompson
Timothy D. Thompson
Jessica R. C. Malloy
Assistant United States Attorneys
717 W. Broadway
Louisville, KY 40202
(502) 582-6238
Timothy.Thompson@usdoj.gov
Jessica.Malloy@usdoj.gov
Counsel for Respondent

to remove him,” the Court ignored the jurisdictional stripping provisions of § 1252(b)(9) to avoid adopting “an expansive reading” of the statute. *Id.*

CERTIFICATE OF SERVICE

I hereby certify that, on November 6, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Petitioner.

/s/ Timothy D. Thompson
Timothy D. Thompson
Assistant United States Attorney