UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KAYODE ELUSOJI ,	)	
	)	
Petitioner,	)	
	)	No. 25 C 13318
v.	)	
	)	Judge Seeger
PAMELA BONDI, in her official capacity as Secretary of Homeland Security, *et al.*,	)	
	)	
Respondents.	)	

RESPONSE IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS

This case involves petitioner Kayode Elusoji, a Nigerian national who has overstayed his tourist visa by many years. *See* Dkt. 1 ("Pet.") at 2. He is currently detained by U.S. Immigration and Customs Enforcement ("ICE") while that agency initiates administrative removal proceedings against him. *See generally* Pet.; *see also* Exhibit 1. Petitioner thus seeks habeas relief from his detention before those proceedings even begin to play out before an immigration judge. Hoping to undermine that process, he filed his habeas petition the same day he was placed into those proceedings after having been arrested the day before. *See id.* But Elusoji's habeas petition should be denied for the numerous reasons discussed below.

Argument

First, this case is unripe because Elusoji has no idea if he will be detained throughout his removal proceedings. Indeed, because he has been admitted into this country, he is entitled to a bond determination during his removal proceedings under 8 U.S.C. § 1226(a). And that section provides that while removal proceedings are pending, a foreign national "may be arrested and detained." 8 U.S.C. § 1226(a)(2). Thus, when a foreign national is apprehended under § 1226(a),

an ICE officer makes the initial custody determination. *See, e.g.*, *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). But "[f]ederal regulations provide that aliens detained under § 1226(a) 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)). If, at that hearing, the detainee demonstrates by the preponderance of the evidence that he is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk," the immigration judge will order his release on bond. *Diaz*, 53 F.4th at 1197. The petition here seeks to completely bypass this process and have this court order Elusoji's release immediately.

Second, this court should dismiss the Secretary of Homeland Security and the Attorney General from this lawsuit, leaving the ICE Field Office Director as the sole respondent, because the latter is the only relevant custodian of Elusoji. This is important because "standing is not dispensed in gross," and simply lumping defendants together is improper. *TransUnion v. Ramirez*, 594 U.S. 413, 431 (2021). Instead, a party "'must demonstrate standing for each claim that they press' against *each defendant*, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (emphasis added) (quoting *TransUnion*, 594 U.S. at 431). That rule dictates dismissal of the Secretary of Homeland Security and Attorney General since a writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Thus, except in extraordinary circumstances, the only proper respondent in a habeas case is the detainee's immediate custodian. *See, e.g.*, *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Because Elusoji was detained at the Broadview ICE facility at the of filing, this means that only the ICE Field Office Director is the proper respondent—not just agency respondents with no direct relationship to his detention. *See Kholyavskiy v. Achim*, 443 F.3d 946, 953 (7th Cir. 2006).

Third, this court lacks jurisdiction to entertain Elusoji's habeas challenge because 8 U.S.C. § 1252(g) strips district courts of jurisdiction to intervene in ongoing removal proceedings, including the method by which those proceedings are conducted and decisions related to bond or release from custody during those proceedings—which are part of immigration judges adjudicating the cases before them. *See* 8 U.S.C. § 1252(g) ("'Except as provided in this section and notwithstanding any other provision of law . . . including section 2241 of Title 28, *or any other habeas corpus provision*, . . . 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." (emphases added)); *see also E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). More specifically for the purposes of this case, § 1252(g) bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain a foreign national pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" or to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Here, Elusoji is directly challenging ICE's decision to detain him during his removal proceedings. That detention arises from the decision to commence such proceedings against him, as well as any immigration judge's decisionmaking on any motion Elusoji may file under § 1226(a) for a bond determination, and these decisions are thus insulated from review by § 1252(g) because they involve an immigration judge "adjudicate[ing the] case[]" by applying BIA case law to their decisionmaking on a motion. *See, e.g.*, *Albarran v. Wong*, 157 F.Supp.3d 779, 784–85 (N.D. Ill. 2016), (court lacked jurisdiction to hear challenges to discretionary denials of requests for stay of

removal, rescission of reinstatement order, and release on order of supervision); *Valencia-Mejia v. United States*, No. 08-cv-2943, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"). This is because "Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion" regarding removal decisions. *Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999); *see also Fathers of St. Charles v. USCIS*, No. 24 C 13197, 2025 WL 2201013, at *5 (N.D. Ill. Aug. 1, 2025): *Koleda v. Jaddou*, No. 23 C 15064, 2024 WL 1677408, at *3 (N.D. Ill. Apr. 18, 2024).

With this backdrop in mind, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. 08-cv-2941, 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). And at that point, "[t]he Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from that choice is thus barred under § 1252(g). *Id.*

Fourth, Elusoji's unlawful arrests claims will not merit habeas relief for him here. *See* Pet. at 3. This is because there is no application of the exclusionary rule to "suppress" Elusoji himself from his own removal proceedings. *See United States v. Chagoya-Morales*, 859 F.3d 411, 418 (7th Cir. 2017) ("The 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." (quoting *INS v. Lopez-Mendoza*, 468 U.S.

1032, 1039–40 (1984))). Indeed, the Seventh Circuit has been even more clear regarding the immigration-related remedy involved in such circumstances: "once deportation proceedings have begun, the legality of the alien's detention *can no longer be tested by way of a habeas corpus proceeding*," even if it is undisputed that the arrest made was unlawful. *Arias v. Rogers*, 676 F.2d 1139, 1143–44 (7th Cir. 1982) (emphasis added). The *Arias* court held then added the qualification that this rule applies only if the proceedings are begun with reasonable promptness. *Id.* at 1143–44. But that qualification is satisfied in this case because removal proceedings were initiated *on the very day* of Elusoji's arrest. *See* Exhibit 1.

Fifth, the court should reject petitioner's due process and arbitrary detention claims because Elusoji is receiving all the procedure he is constitutionally due during his removal proceedings. *See* Pet. at 3. This is because the Supreme Court has held that detention during removal proceedings is reasonable and does not violate a detainee's Fifth Amendment rights. *See Demore v. Kim*, 538 U.S. 510, 529 (2003). In this regard, Elusoji has not submitted any evidence that he is being detained for any purpose beyond the resolution of his removal proceedings. *Cf. Chaviano v. Bondi*, No. 25-cv-22451, 2025 WL 1744349, at *8 (S.D. Fla. June 23, 2025) (noting how hearings before an immigration court and opportunities for credible fear interviews, together with a one month detention, was not a sufficient basis for finding a due process violation, particularly where "detention, even for far longer periods, pending immigration proceedings" did not violate due process). And at this point, he has been given notice of the charges against him, has access to counsel, may attend hearings with an immigration judge, can request bond at that time, and has the right to appeal the denial of any request for bond. *See* 8 U.S.C. § 1362. The fact that he does not want to appeal any immigration judge's bond order through the procedures provided to him by Congress does not make those procedures constitutionally deficient. *Cf. Al-Shabee v. Gonzales*,

188 F. App'x 333, 339 (6th Cir. 2006) ("Shabee's disagreement with the Immigration Judge's order, however, does not constitute a violation of the Due Process Clause.").

Finally, the court should require that petitioner address his challenge to an immigration judge and from there, with the Board of Immigration Appeals ("BIA"), before addressing it to this court. This is because when Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs" whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* Here, the court may require that petitioner at least attempt to request bond before an immigration judge, or appeal any denial of bond to the BIA, before considering the merits of his claims here. *See, e.g.*, *Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 876–77 (E.D. Wis. 2007).

As alluded to above, Congress has provided a robust administrative hearing and appeal process for foreign nationals in removal proceedings that include evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). Requiring petitioner to exhaust that process before seeking review in federal court may reduce the number of similar cases filed in this court, making exhaustion particularly appropriate in this case.

Conclusion

For the foregoing reasons, the court should deny the petition.

Respectfully submitted,

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