

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MYKOLA TKACHUK,)	
)	
Petitioner,)	
)	
v.)	No. 25 C 13375
)	
KRISTI NOEM, in her official capacity as)	Judge Coleman
Secretary of Homeland Security, <i>et al.</i> ,)	
)	
Respondents.)	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Mykola Tkachuk is a native and citizen of Ukraine who is challenging his immigration detention. Dkt. 1 (“Pet.”) at ¶¶ 21, 24. He entered the United States without inspection in 2000 and is seeking a bond hearing from an immigration judge under 8 U.S.C. § 1226(a). *Id.* at ¶¶ 25, 61. Just over eight weeks ago, the Board of Immigration Appeals ruled that foreign nationals who entered the United States without inspection were not eligible for bond hearings in immigration court because the individuals were technically never admitted to the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Petitioner claims that *Yajure Hurtado* was decided incorrectly. Pet. ¶ 59.

This issue is being litigated in district courts across the country, including other courts in this district, and even this court. *See* Dkt. 7, 8. In fact, it has been litigated so much that this court relied on those cases to immediately enter its order today deciding that petitioner is entitled to either a bond hearing or ultimate relief (that is, release from custody) before respondents could even file this response by their court-ordered response date of November 5, 2025. *Compare* Dkt. 2 (“Respondent[s are] ordered to respond to the habeas corpus petition by 11/5/2025.”), *with* Dkt. 7, 8 (granting relief prior to the filing of this response with the court). Nonetheless, respondents

do not wish to waive any of the relevant issues for potential appeal in this matter, and to that end, attach a copy of the government's brief in a similar case that presents the arguments that respondents wish to reiterate in this case. Exhibit 1.

By way of recap, respondents contend that this court lacks jurisdiction over these issues by virtue of the jurisdictional bars set forth in 8 U.S.C. § 1252. *Id.* at 5–11. The respondents contend that the decision to detain petitioner during removal proceedings is incident to both the commencement of those proceedings and the adjudication of that case under 8 U.S.C. § 1252(g). *Id.* at 5–8. The respondents also maintain that review of the detention decision is also barred by 8 U.S.C. § 1252(b)(9) (review only available on judicial review of final order of removal) and 8 U.S.C. § 1252(a)(2)(B)(ii) (no jurisdiction over discretionary immigration decisions). *Id.* at 8–11. Similarly, respondents do not believe that due process is violated in this matter because Seventh Circuit law does not recognize that foreign nationals who have not been lawfully admitted have a liberty interest in release from custody *into the United States*. *Id.* at 11–14. Finally, the respondents contend that foreign nationals who were never lawfully admitted into the United States do not qualify for bond under the Immigration and Nationality Act. *Id.* at 14–22. The respondents believe that the arguments made in that attached brief apply equally to this case.

Although already decided, respondents believe the habeas petition should be denied.

Respectfully submitted,

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