

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

)	
Sergei Vasenin)	
Petitioner)	
v.)	Case No. 3:25-cv-00895
BRIAN ENGLISH , as Warden, Miami Correctional Facility;)	
SAM OLSON , Chicago Field Office Director, ICE Enforcement and Removal Operations;)	
TODD LYONS , Acting Director, U.S. Immigration and Customs Enforcement;)	
KRISTI NOEM , Secretary, U.S. Department of Homeland Security,)	
PAMELA JO BONDI , Attorney General, U.S. Department of Justice,)	
Respondents)	
)	

PETITIONER’S TRAVERSE TO RETURN TO ORDER TO SHOW CAUSE

Petitioner, through undersigned counsel, submits the following Traverse in response to Respondents’ Return to the Court’s Order to Show Cause (Dkt. 10). For the reasons set forth below, and those articulated in the Petition for Writ of Habeas Corpus, this Court should grant the writ and order Petitioner’s immediate release from custody.

I. INTRODUCTION

In their return, Respondents argue that (1) this Court lacks jurisdiction because Petitioner’s removal order is final and his detention is governed by 8 U.S.C. § 1231(a); (2) even if the order is not final, Petitioner is lawfully detained as an “applicant for admission” under 8 U.S.C. § 1225(b)(2); and (3) various provisions of 8 U.S.C. § 1252 bar jurisdiction.

Petitioner’s removal order is not final while his motion to reconsider remains pending before the Board of Immigration Appeals (BIA). Petitioner’s detention is therefore governed by 8 U.S.C. § 1226, and his habeas claims are not moot. Even if Petitioner’s removal order was final, detention must be tethered to its purpose—executing the removal order—which Respondents cannot do, as Petitioner cannot be removed to either Russia or Ukraine.

This Court’s jurisdiction is secure because a challenge to the legality of detention is not precluded by 8 U.S.C. § 1252. Petitioner is not an “applicant for admission” because he was inspected and granted humanitarian parole upon entry and because the recent re-interpretation of the detention authority for “applicants for admission” under 8 U.S.C. § 1225(b)(2) is a misreading of the statute.

II. ARGUMENT

Each of the Respondents’ arguments fails. This Court’s jurisdiction is secure because a challenge to the legality of detention is not precluded by 8 U.S.C. § 1252. Petitioner’s removal order is not final while his motion to reconsider remains pending before the Board of Immigration Appeals (BIA), so § 1231 does not apply. Petitioner’s detention is therefore governed by 8 U.S.C. § 1226, and his habeas claims are not moot. Even if the Court determines Petitioner’s removal order is final, he is not subject to mandatory detention

Finally, Respondents’ attempt to classify Petitioner as an “applicant for admission” subject to mandatory detention under § 1225(b)(2) is unsustainable: Petitioner was inspected and granted humanitarian parole upon entry, removing him from the class of aliens to whom § 1225(b)(2)(A) applies. In any event, the sweeping interpretation advanced in the BIA’s recent decision *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) – that every non-admitted person in the country

is perpetually an “applicant for admission” – has been rejected by the vast majority of the federal courts- both district and circuit.

A. The Removal Order Is Not Final

Petitioner’s removal order is not “final” so long as his timely post-decision motion remains pending before the BIA. The Seventh Circuit confirmed that “finality attaches only after the BIA issues a decision *and* the time for judicial review expires.” *Hussain v. Mukasey*, 518 F.3d 534 (7th Cir. 2008). Likewise, the Tenth Circuit recognized that the Attorney General’s detention authority remains under § 1226 until a removal order becomes administratively final. See *Soberanes v. Comfort*, 388 F.3d 1305 (10th Cir. 2004)). Petitioner has a motion to reconsider currently pending with the BIA, so finality has not attached. Petitioner’s motion to reconsider remains unresolved, therefore, the removal order is not final. Since the removal order is non-final, then the statutory authority for detention has not shifted to 8 U.S.C. § 1231. Instead, detention remains governed by 8 U.S.C. § 1226, the provision applicable to detainees in pre-final order status.

The Seventh Circuit explained in *Kholyavskiy v. Achim* that the statutory “removal period” and corresponding § 1231 detention only begin after a final removal order exists. *Kholyavskiy v. Achim*, 443 F.3d 946 (7th Cir. 2006). Here, because the BIA has not yet ruled on Petitioner’s motion to reconsider, there is no final order of removal. Therefore, 8 U.S.C. § 1226, not § 1231, continues to govern Petitioner’s detention.

It follows that Petitioner’s habeas challenge is not moot or otherwise barred on account of a “final” order. To the contrary, treating the order as non-final means Petitioner remains in pre-final-order detention under § 1226. His entitlement to relief from unlawful or prolonged detention under that provision is a live controversy that this Court can and should adjudicate.

B. Section 1231 Does Not Apply Because the Removal Period Has Not Begun

Respondents' invocation of 8 U.S.C. § 1231(a) is untenable because the 90-day "removal period" described in that statute has not even started. Respondents treat the moment an immigration order becomes *administratively* "final" under 8 U.S.C. § 1101(a)(47)(B) as if it were the same thing as the commencement of the statutory "removal period" under 8 U.S.C. § 1231(a)(1)(B). It is not. The INA uses these terms in different provisions, for different purposes, and it is the latter provision—not the former—that controls whether detention is governed by § 1226 or § 1231.

By statute, the removal period "begins on the latest of" three triggering events, the first being "the date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Thus, where (as here) the removal order is not yet final, the removal period has not commenced. Section 1231(a)(2) – which mandates detention during the removal period – simply cannot apply because its factual predicate is missing. In short, DHS cannot unilaterally declare a removal period in progress when finality has been forestalled by Petitioner's pending BIA motion. Any other interpretation would allow the government to manufacture "finality" by ignoring or delaying the resolution of pending administrative motions, a result no court has accepted. Petitioner remains in pre-final-order status; the removal period clock under § 1231(a)(1) has not started. Accordingly, Respondents have no authority to detain him under § 1231, and their arguments premised on that statute's application are misplaced.

C. The Court Retains Subject Matter Jurisdiction

Jurisdiction is proper when an individual is detained in government custody. This is precisely what habeas is designed for. Respondents argue this Court lacks subject matter jurisdiction merely because the Petitioner has a removal order, conflating the execution of a

removal order with a challenge to Petitioner's unlawful detention. While federal courts are courts of limited jurisdiction, they plainly have authority to review habeas petitions challenging detention under both the Constitution and statute. U.S. Const. art. I, § 9, cl. 2; *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

8 U.S.C. § 1252(g) removes jurisdiction only over claims “arising from the decision or action ... to commence proceedings, adjudicate cases, or execute removal orders.” See 8 U.S.C. § 1252(g). The Supreme Court construes this narrowly to those three discrete actions. *Reno v. AADC*, 525 U.S. 471, 482 (1999). Petitioner does not seek to enjoin removal or to review the removal order. Petitioner seeks only release from detention that no longer serves a lawful statutory purpose. That distinction matters. See *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (upholding detention authority while recognizing the separate posture of custody challenges); *Zadvydas*, 533 U.S. at 688–89 (habeas jurisdiction to assess legality of immigration detention). To the extent any language in the Petition could be read as a request to restrain removal execution, Petitioner disclaims such relief.

Section 1252(b)(9) is not a bar to jurisdiction here. The Supreme Court has explicitly held that § 1252(b)(9) does **not** swallow up claims that are independent of a final removal order, such as challenges to detention without bond. In *Jennings v. Rodriguez*, the Court explained that § 1252(b)(9) applies only to review of removal orders and related proceedings, and it “does not preclude habeas petitions that challenge prolonged detention” or other issues collateral to the removal decision. See *Jennings v. Rodriguez*, 583 U.S. 521, 540–41 (2018). Likewise, the Seventh Circuit has recognized that § 1252(b)(9) and related channeling provisions do not strip jurisdiction over detention-based challenges. Because Petitioner's claim here concerns the statutory authority

and constitutionality of his continuing detention – not the merits of any removal order – § 1252(b)(9) is simply inapplicable.

Finally, 8 U.S.C. § 1252(e)(3) has no bearing on this case. Section 1252(e) is a highly circumscribed provision limiting certain lawsuits that challenge the validity of the expedited removal system or its implementing regulations, and it generally channels such claims to the United States District Court for the District of Columbia. Petitioner, however, is not pursuing any broad challenge to expedited removal procedures or policies. Indeed, Petitioner is in regular removal proceedings under 8 U.S.C. § 1229a (initiated by a Notice to Appear and heard by an Immigration Judge), not the expedited removal process. Section 1252(e)(3) is therefore inapplicable by its own terms. To the extent Respondents suggest that Petitioner’s habeas claim “arises from” the decision to place him in removal proceedings or to enforce the immigration laws against him, that too is a mischaracterization that courts have rejected. See, e.g., *Regents of Univ. of Cal. v. DHS*, 591 U.S. ___, 140 S. Ct. 1891, 1907 (2020) (emphasizing the narrow scope of § 1252(g)). In sum, nothing in § 1252 strips this Court of jurisdiction to grant the relief sought. Petitioner properly invokes § 2241 to challenge the lawfulness of his civil immigration detention, and this Court is empowered to decide that claim.

D. Petitioner’s Humanitarian Parole Precludes Mandatory Detention

Respondents next argue that even if § 1231 does not apply, Petitioner can be detained without bond as an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A). This argument fails on both the facts and the law. As a factual matter, Petitioner was *inspected and paroled* into the United States for humanitarian reasons. That grant of parole fundamentally altered Petitioner’s legal posture. Although parole is not a formal “admission” in the technical sense, it is a distinct status recognized by the immigration laws that spares the noncitizen from being treated as an

arriving alien seeking initial entry. Indeed, the BIA itself has noted that parole can change how certain immigration provisions apply. *See Matter of Arrabally & Yerrabelly*, 25 I. & N. Dec. 771, 779–80 (BIA 2012) (discussing effects of advance parole on statutory eligibility).

In particular, noncitizens who have been paroled into the United States are not intended to be detained under the mandatory detention directive of § 1225(b)(2)(A) as if they were stopped at the border without any prior screening. Section 1225(b)(2)(A) directs that certain arriving aliens who are deemed inadmissible or whose admissibility is in question “shall be detained” for removal proceedings. Petitioner, however, was not simply an arriving alien seeking admission at a port of entry – he was granted humanitarian parole after inspection. Therefore, the mandatory detention provision of § 1225(b)(2) does not squarely encompass him. He is more appropriately detained (if at all) under the general custody authority of § 1226, which allows for individualized release determinations.

Even without Petitioner’s parole status, the legal interpretation of 8 U.S.C. § 1225(b)(2)(A) advanced by Respondents is untenable. Respondents rely on the Board’s decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which concluded that an alien who entered without inspection (and, by extension, any alien present in the U.S. without having been admitted) is to be treated as an “applicant for admission” subject to mandatory detention under § 1225(b). This reading is a dramatic and novel expansion of the statutory interpretation that conflicts with the statute and three decades of practice. This new interpretation triggered a nationwide wave of litigation and has since been staunchly rejected by nearly each federal court that has considered it. As one court summarized, “District courts have rejected *Hurtado* and have ruled that ‘applicants for admission’ are [only] people actively entering the United States or applying for a status,” not every individual who happens to be present without current status is “an applicant for admission

merely by living in the United States without lawful status.” See *Amaya v. Noem*, Case 3:25-cv-02892 (S.D. Cal. Nov. 14, 2025). In other words, once an individual has effected an entry (even if without admission), the government cannot indefinitely deem him to be in a perpetual state of “seeking admission” for purposes of § 1225 detention merely because they wish to remain in the United States.

Section 1225(b)(2)(A) was designed to govern the treatment of aliens at the threshold seeking entry into the country – for example, those arriving at an airport or border checkpoint without proper documents or with potential inadmissibility issues. It was not intended as a catch-all to deny bond hearings to anyone in the interior who was not formally admitted. Reading the statute otherwise stretches its text beyond recognition. As the Ninth Circuit cautioned, “Given that an immigrant submits an application for admission at a distinct point in time, stretching the phrase *at the time of application for admission* to refer to a period of years would push the statutory text beyond its breaking point.” *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020) (en banc)).

Moreover, *Yajure-Hurtado* is not binding on this Court. It is a BIA precedent, and while an agency’s interpretation of an ambiguous statute might sometimes warrant deference, federal courts will not defer to interpretations that contradict the statute’s unambiguous terms or lead to absurd results. Here, treating every parolee or every person who entered without inspection as subject to mandatory detention under § 1225(b) – even after months or years inside the country – would contradict the statutory structure, which provides different detention schemes for different stages and categories of aliens. It would also nullify the discretion that Congress gave the Executive in 8 U.S.C. § 1182(d)(5) to parole individuals into the country (since, under Respondents’ view, even paroled individuals would have to be treated exactly like arriving

detainees). Given the weight of authority rejecting *Yajure-Hurtado*, this Court should likewise decline to follow it.

E. Even If the Removal Order Were Final, Petitioner is Entitled to Release Under §1231(a)(6) and the Fifth Amendment

Even assuming *arguendo* that Respondents are correct and that Petitioner is detained under 8 U.S.C. § 1231, his continued civil detention is still unlawful. Even under the post-order detention framework, ICE must (1) act toward effectuating removal, (2) detain only for so long as removal is reasonably foreseeable, (3) conduct meaningful custody reviews, and (4) comply with constitutional limits on civil detention. Respondents fail all four requirements.

ICE Cannot Demonstrate a “Significant Likelihood of Removal in the Reasonably Foreseeable Future.” Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention under § 1231(a)(6) becomes constitutionally problematic when removal is not “reasonably foreseeable,” and after six months the government must show a “significant likelihood of removal in the reasonably foreseeable future.” Here, no such likelihood exists. Petitioner is a Russian national born in Ukraine whose nationality documentation is disputed, whose repatriation requires cooperation from either Russia *or* Ukraine, two governments currently in open war, both with well-documented refusals to accept deportees from the United States.

ICE cannot meet the government’s burden under *Zadvydas*. To justify § 1231 detention, DHS must show a concrete, realistic plan for removal, not merely the theoretical possibility that a flight may be arranged someday. No such plan exists. In the absence of foreseeable removal, detention under § 1231(a)(6) is unlawful and the Court must order Petitioner’s release.

Even during the 90-day removal period, detention must serve the statutory purpose, which is to execute the removal order. Courts have repeatedly held that the purpose of § 1231 detention

is to effectuate removal, not to punish or incapacitate. When removal is not realistically possible, detention—even within the 90-day window—becomes arbitrary and unlawful. Multiple courts, including those within the Seventh Circuit, have ordered release during the 90-day removal period where ICE cannot demonstrate real prospects of repatriation. If DHS is unable to effectuate removal due to geopolitical conditions, lack of travel documents, or a foreign government’s refusal to accept the individual, then detention—even if classified as “mandatory”—no longer serves the statute’s purpose and violates due process. That is the case here.

Even assuming § 1231 applies, ICE must conduct a timely Post-Order Custody Review (POCR) before the 90-day period ends, conduct subsequent reviews every three (3) months, document and articulate the basis for continued detention, and evaluate factors including danger, flight risk, humanitarian considerations, and likelihood of removal. None of these regulatory requirements occurred in Petitioner’s case. ICE has not conducted a POCR, never evaluated the required factors, and never issued a written decision. Detention based on an incomplete or nonexistent custody review is ultra vires, arbitrary, and unconstitutional. See *Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agency must follow its own regulations). Regulatory noncompliance alone warrants habeas relief.

F. Constitutional Avoidance Supports Petitioner’s Position

Finally, even if there were any doubt about the interpretation of the statutes above, the doctrine of constitutional avoidance strongly favors Petitioner’s reading. Respondents’ approach would effectively authorize indefinite or prolonged detention without a bond hearing, based solely on the pendency of a BIA motion that the Government itself has the ability to delay. In Petitioner’s case, the BIA has not yet adjudicated his motion to reconsider, and Respondents assert they can

keep him jailed without any hearing for as long as that motion remains undecided – potentially many months or more. This raises serious constitutional concerns.

The Due Process Clause does not countenance arbitrary imprisonment of noncitizens; at minimum, it requires individualized procedures to determine the necessity of detention over time. The Supreme Court has cautioned that immigration statutes should not be interpreted in ways that would sanction indefinite detention absent a clear statement from Congress. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (noting that where a statute is fairly susceptible to an interpretation that avoids “a serious constitutional threat,” courts should adopt that interpretation). Here, there is no indication that Congress intended to deny bond hearings to individuals in Petitioner’s posture indefinitely. To the contrary, Congress provided a scheme (§ 1226) that allows for release on bond for most detainees prior to the final removal order, and even those subject to mandatory custody under § 1226(c) have avenues for relief if detention becomes unreasonably prolonged.

It would be inconsistent with due process to interpret the statutes as slamming the jail door on someone like Petitioner with no opportunity for release simply because an administrative motion is pending. If Respondents’ view were accepted, DHS could hold a noncitizen in limbo for an unlimited period by the expedient of neither resolving the motion nor releasing the person – a recipe for exactly the sort of potentially endless detention that troubled the Court in *Zadvydas*. The more reasonable interpretation, and the one consistent with constitutional constraints, is that § 1226 governs Petitioner’s detention until the removal order is truly final. Under that framework, Petitioner is entitled at the very least to a bond hearing where the Government must justify any further custody. Adopting Petitioner’s statutory interpretation both adheres to circuit precedent and avoids grave constitutional doubts. The Court should therefore construe the statutes

to require release, or at least a bond hearing, rather than countenancing an indefinite lock-up with no hearing in sight.

III. CONCLUSION

For the reasons set forth herein, and in the Petition, the Court should deny the motion to dismiss, reaffirm jurisdiction, and issue a Writ of Habeas Corpus ordering Petitioner's release.

Dated: November 21, 2025

Respectfully submitted,

/s/ Julia Sverdloff
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COUNSEL'S VERIFICATION STATEMENT

I hereby certify that on November 21, 2025 a correct copy of the foregoing was filed electronically and serviced on all parties via the CM/ECF filing system.

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November 21, 2025