UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDUARDO PEREZ-JASSO,

Petitioner,

v.

ROBERT LYNCH, Detroit Field Office Director for U.S. Immigration and Customs Enforcement; RICH MARTIN, Lake County Sheriff; MARCOS CHARLES, Acting Executive Associate Director, Enforcement and Removal Operations; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement; MADISON SHEAHAN, Deputy Director, Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the Department of Homeland Security; PAM BONDI, Attorney General of the United States; DONALD J. TRUMP, President of the United States,

Respondents.
_____________________________________/

Case No. 1:25-cv-1345

Hon. Paul L. Maloney
U.S. District Court Judge

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Respondents filed their Response in Opposition to Petition for Writ of Habeas Corpus (Response) on November 12, 2025. Petitioners hereby submits this Reply in Support of Petition for Writ of Habeas Corpus (Reply) to the Response. Respondents argue in the Response that 8 U.S.C. § 1252 leaves this Court with no jurisdiction over Petitioner's detention challenge because detention "arises from" Respondents' discretionary decision to commence and conduct removal proceedings, and that Petitioner is detained under 8 U.S.C § 1225(b)(2)(A), and therefore not eligible for release under 8 U.S.C. 1226(a). Respondents also argue in the Response that Petitioner has not exhausted his administrative remedies, that his due process rights have not been violated, and that the Suspension Clause does not apply to Petitioner's "immigration removal claim." And,

lastly, Respondents argue that only Robert Lynch (the new Field Office Director for ICE's Detroit Field Office) is the only proper Respondent in this case.

JURISDICTION

This Court has jurisdiction over the Plaintiff. Respondents reference to 8 U.S.C. § 1252(e)(3) is a red herring. Generally, 8 U.S.C. § 1252 regards judicial review of **orders of removal**, not necessarily only immigration habeas corpus petitions or detention. 8 U.S.C. § 1252(e) concerns "Judicial Review Of Orders Under Section 1225(B)(1)." Subsection (3) concerns "Challenges On Validity Of The System." Subsection (3)(A) states: "Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia…"

Here, Petitioner does not challenge any removal order under 8 U.S.C. § 1225(b), which, in fact, concerns orders of expedited removal. Instead, Petitioner challenges his detention under 8 U.S.C. § 1225(b). Even so, Respondents argue that their detention of Petitioner "arises from" their discretionary decision to commence and conduct removal proceedings. Various Courts in the Western District of Michigan and in other federal courts have rejected this same argument from Respondents.

In *Demore v. Kim,* 538 U.S. 51, 517 (2003), the Supreme Court found that limitations of judicial review of the Attorney General's discretionary judgments regarding detention and release did not preclude the Court of jurisdiction to grant habeas relief in the context of a challenge to detention under the no-bail provision of the Immigration and Nationality Act [INA]. In *Reno v. Am.-Arab Anti-Discrimination Comm.,* 525 U.S. 471 (1999), the Supreme Court held that 8 U.S.C. 1252 did not include "the universe of deportation claims," but "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings,

adjudicate cases, or *execute* removal orders.'" *Id.* at 482. The Court held that Congress enumerating these three events was clearly not a way to refer to all claims arising out of deportation proceedings to the discretion of the Attorney General. *Id. see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907 (2020) (describing interpretation of 8 U.S.C. § 1252(g) as narrow).

In the case of *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that a habeas challenge to detention does not fall within the scope of 8 U.S.C. § 1252(g). In that decision, the Supreme Court stated that Respondents' assertion that detention is an "action taken... to remove" is not true. The Supreme Court concluded that multiple lower courts agreed that the federal courts have jurisdiction over habeas petitions challenging Petitioners' immigration detention. *See, e.g., Eliseo v. Olson,* No. 25-3381, 2025 WL 2886729, at *5 (D. Minn. Oct. 8, 2025) (citing, *inter alia*, *Cardoso v. Reno,* 216 F.3d 512, 516 (5th Cir. 2000); *Mosqueda v. Noem,* No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *Kostak v. Trump,* No. 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem,* No. 1:25-cv-02428, 2025 WL 2430025, at 5–7 (D. Md. Aug. 24, 2025)*; Espinoza, et al., v. Kaiser, et al.,* No. 1:25-cv-01101 JLT SKO, 2025 WL 2675785, at *9 (E.D. Cal. Sep. 18, 2025); *Kong v. United States,* 62 F.4th 608, 617 (1st Cir. 2023); *Puerto-Hernandez v. Lynch,* --- F. Supp. 3d ---, 2025 WL 3012033 (W.D. Mich. Oct. 28 2025). In this case, Petitioner's petition for a writ of habeas corpus seeks an order compelling Respondents to release him on bond and does not seek the review of a discretionary decision regarding commencement of proceedings on, adjudication of, or execution of a removal order.

Respondents also contend that 8 U.S.C. § 1252(b)(9) acts as a zipper clause that channels judicial review of all claims arising from deportation proceedings to a court of appeals in the first

instance. As discussed above, Petitioner's habeas petition challenges his detention under 8 U.S.C. § 1229(b). This jurisdictional argument fails because Petitioner is not challenging a removal order.

EXHAUSTION

Respondents argue that the Court should dismiss Petitioner's petition for writ of habeas corpus for lack of jurisdiction because Petitioner has failed to exhaust administrative remedies. Respondents claim that Petitioner has yet to exhaust his administrative remedies within the immigration courts before seeking a writ of habeas corpus from the federal district court. For the Court to require Petitioner to do this would result in irreparable injury.

The outcome of such "exhaustion" is also a foregone conclusion. The Board of Immigration Appeals (BIA) has already decided in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) and *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 229 (2025) that Immigration Judges lack jurisdiction over bond redetermination proceedings for individuals, like Petitioner here, who entered the United States either without inspection or on parole. The BIA is unlikely to reconsider their opinion in these cases for Petitioner.

Furthermore, Petitioner's challenge to detention does not require exhaustion. The BIA cannot review constitutional challenges. For this reason, the Sixth Circuit has held that due process challenges generally do not require exhaustion. *See Sterkaj v. Gonzalez*, 439 F. 3d 273, 279 (6th Cir. 2006).

BASIS FOR DETENTION

Respondents argue that *Matter of Yajure Hurtado* applies to Petitioner. In that case, the BIA held that § 1225(b), rather than § 1226, governs the detention of all noncitizens who are subject to removal proceedings on the basis that they are "seeking admission" for purposes of the detention status. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 221 (BIA 2025). In that case, the

BIA came down sharply against years of jurisprudence and common practice, holding that "Immigration Judges lack authority to hear bond requests or to grant bond" because such noncitizens are detained pursuant to § 1225(b) (the expedited removal statute) and not § 1226 (the normal removal statute). *Id.* at 255. Recently, dozens of federal district courts have issued decisions in immigration habeas petitions rejecting the logic in *Matter of Yajure Hurtado* and holding that detention of noncitizens already in the country is governed by . *See, e.g., Lopez-Campos,* 2025 WL 2496379, at *8; *see also Rodriguez v. Bostock,* 779 F. Supp. 3d at 1256–61; *Singh v. Lewis,* No. 4:25-cv-96-RGJ, 2025 WL 2699219, at *3–5 (W.D. Ky. Sept. 22, 2025); *Lopez-Arevelo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–12 (W.D. Tex. Sept. 22, 2025); *Campos Leon v. Forestal,* 1:25-cv-1774-SEB-MJD, 2025 WL 2694763, at *2–5 (S.D. Ind. Sept. 22, 2025); *Hasan v. Crawford,* No. 1:25-cv-1408 (LMB/IDD), 2025 WL 2682255, at *5–9 (E.D. Va. Sept. 19, 2025); *Garcia Cortes v. Noem,* No. 1:25-cv-2677-CNS, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025); *Kostak v. Trump et al.,* No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *2–4 (W.D. La. Aug. 27, 2025); *Romero v. Hyde,* No. 1:25-cv-11631-BEM, 2025 WL 2403827, at *8–13 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson,* No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411, at *9–16 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem, No.* 1:25-cv-12052-JEK, 2025 WL 2370988, at *6–9 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis,* No. 1:25-cv-05937-DEH, 2025 WL 2371588, at *3–9 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa,* No. 2:25-cv-02157-DLR, 2025 WL 2337099, at *6–11 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes v. Hyde,* No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *6–8 (D. Mass. July 7, 2025).

In a recent decision from the Northern District of Illinois, *Miguel v. Noem.,* No. 25-cv-11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025) (Alonso, J.), the Court held "consistent with

Jennings, where the Supreme Court already stated that § 1225(b) applies to noncitizens 'seeking admission into the country,' and § 1226(a) applies to noncitizens 'seeking admission into the country,'" *Miguel*, 2025 WL 2976480, at *7 (citing *Jennings*, 583 U.S. at 289). The *Miguel* decision draws from others, such as *Ochoa Ochoa* v. *Noem,* No. 25 C 10865, 2025 WL 2938779, at *7 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.) that were supported by "a longstanding agency practice of providing § 1226(a) bond hearings to noncitizens... who were released on recognizance upon entering the United States, placed in standard removal proceedings, and then redetained." *Id.* at *7. *See Miguel*, 2025 WL 2976480, at *6 ('"our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission... and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges no extended to those in the former category who are merely on the threshold of initial entry.'") (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 1958))).

This Court should agree with Petitioner and the dozens of other federal courts that *Yajure Hurtado* is incorrect as a matter of law. Petitioner has been in the United States for more than 35 years. He has immediate and extended family members who are United States citizens. Finally, Respondents have placed Respondent into normal removal proceedings under § 1226 and may not pick and choose various parts of different statutes (namely § 1225) to claim that the Immigration Judge has no jurisdiction over an immigration bond hearing or redetermination.

DUE PROCESS VIOLATIONS

The Fifth Amendment's Due Process Clause provides that "[n]o person shall... be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at

the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. at 690. The Supreme Court has held that the Due Process Clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693. Respondents' detention of Petitioner must comply with the requirements of § 1226(a), meaning that he is eligible for a bond hearing at which the government bears the burden of proving that he is a flight risk or danger to the community. Respondents argue that *DHS v. Thuraissigiam*, 591 U.S. 103 (2020) entitles Petitioner only to the processes set forth in the statutes and regulations that are sufficient to satisfy an arriving noncitizen's process rights.

In *Thuraissigiam*, the Court held that a noncitizen "at the threshold of initial entry cannot claim any greater rights under the Due Process Clause" than those provided to him by statute. *Id.* at 107. The Petitioner in *Thuraissigiam* entered the United States without inspection and Respondents apprehended him just 25 yards from the border. *Id.* Petitioner in this case, however, has been in the United States for 35 years and has put down roots and raised a family in the Chicago, Illinois, area.

Courts use a balancing test with three factors to determine whether a violation of due process has occurred: (1) whether a private interest is implicated by the Government action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural reqruierment would entail." *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976).

This Court should conclude that Respondents' detention of Petitioner without an individualized determination of his risk of dangerousness or flight violates his due process. Petitioner has a private interest in not being in custody. Respondents continued detention of

Petitioner creates a substantial risk of erroneously depriving him of that interest. The Government's interest, including any monetary or bureaucratic burdens, is minimal.

The Government should be required to show, at an individualized bond hearing, that Petitioner poses a danger or flight risk by clear and convincing evidence. This standard of proof "serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision." *Addington v. Texas*, 441 U.S. 418, 423 (1979). "The Supreme Court has consistently held the Government to a standard of proof higher than a preponderance of the evidence where liberty is at stake and has reaffirmed the clear and convincing standard for various types of civil detention." *Velasco Lopez v. Decker*, 978 F.3d 842, 856 (2d Cir. 2020). "The preponderance standard, the Supreme Court has noted, 'creates the risk of increasing the number of individuals erroneously committed' and 'it is at least unclear to what extent, if any, the state's interests are furthered by using [it].'" *Id.* (quoting *Addington,* 441 U.S. at 426). Clearly then, Petitioner has due process interests well above and beyond what Respondents claim he has, which is effectively no due process rights whatsoever.

DISMISSAL OF CERTAIN NAMED RESPONDENTS

The Sixth Circuit Court of Appeals "concluded that a detained alien generally must designate his immediate custodian – the INS District Director for the district where he is being detained – as the respondent to his habeas corpus petition." *Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003). In that case, the Sixth Circuit held that while: "the immediate custodian rule generally applies to alien habeas corpus petitioners, [there is] the possibility of exceptions to this rule... an exception might be appropriate if the INS were to exercise its transfer power in a clear effort to evade an alien's habeas petitioners." *Id.* at 325-326. For this reason, Petitioner urges this Court to not dismiss any of the named Respondents in this case.

CONCLUSION

In closing, and in consideration of Petitioner's and Respondents' arguments, the Petitioner urges this Court to find that he is detained under § 1226, the normal removal proceeding statute which allow for an individualized custody determination and bond hearing in Immigration Court, rather than § 1225, the expedited removal proceeding statute which provides for mandatory detention. Petitioner asks this Court to not dismiss any Respondents named in this habeas petition. Petitioner finally requests that this Court find that Respondents are violating his due process rights under the Fifth Amendment.

Respectfully Submitted,

WILLIAM GASTON MCLEAN III
ATTORNEY FOR RESPONDENT

/s/ William Gaston McLean III
WILLIAM GASTON MCLEAN III
The Law Office of William G. McLean III
4225 Gage Ave.
Lyons, IL 60534
Ph.: (312) 714-5603
Email: mcleanlaw.chicago@gmail.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned attorney, William Gaston McLean III, certify that I electronically filed the Petitioner's Reply in Support of Petition for Writ of Habeas Corpus with the Clerk of the Court using the CM/ECF system on November 17, 2025. Pursuant to FED. R. CIV. P. 5(b)(3). I have thereby electronically served all Filing Users with a copy of the Petitioner's Reply in Support of Petition for Writ of Habeas Corpus.

I, the undersigned attorney, William Gaston McLean III, certify that I have also served a copy of the Petitioner's Reply in Support of Petition for Writ of Habeas Corpus by email on Carolyn Almassian, the attorney for the Assistant United States Attorney's Office, at the following email address on November 17, 2025:

Carolyn.Almassian@usdoj.gov

Signed,

/s/ *William Gaston McLean III*
WILLIAM GASTON MCLEAN III
Law Office of William G. McLean III, P.C.
4225 Gage Ave.
Lyons, IL 60534
Ph: (312) 714-5603
Fax: (312) 268-7427
Email: mcleanlaw.chicago@gmail.com

ATTORNEY FOR PETITIONER