

I. INTRODUCTION

Petitioner, by and through the above-named counsel of record, submits this Reply to Respondents' Return and Opposition to his Petition for Writ of Habeas Corpus. Respondents incorrectly assert that this court lacks jurisdiction. Respondents also incorrectly assert that Petitioner's detention is mandated by statute. By contrast, Petitioner is requesting that this court require Respondents to properly apply the Congressionally designed and enacted detention scheme that Respondents have recently chosen to discard via invalid and unconstitutional reinterpretation and decision making. Respondents' new interpretation is invalid because it is unconstitutional, and as such was explicitly rejected by Congress in 1996. Respondent's interpretation of the statute was also explicitly rejected by the agency during the public rulemaking process in 1997. Petitioner is asking this court *to require Respondents to properly apply the law as established by statute and regulation, in accordance with the requirements of the Due Process Clause of the U.S. Constitution*. It is Petitioner's position that Respondents' recent reinterpretation of the nearly thirty-year-old statutory detention scheme and their application of that reinterpretation to preclude his eligibility for a bond hearing violates his constitutional right to procedural and substantive due process; it violates the expressed intent of Congress, as documented in the statutory scheme and Congressional record, the regulations, Supreme Court and agency precedent.

On November 3, 2025, Petitioner filed an application to reinstate his DACA with USCIS. See Appendix A, Receipt Notice. Inasmuch as Petitioner's misdemeanor conviction has been vacated in the interests of justice, Petitioner remains eligible to reapply for DACA, which he has done. Petitioner has resided in the U.S. for over 25 years. He is married to a U.S. Citizen

and his wife and four children are all U.S. Citizens. He has made good-faith efforts to regularize his presence, and he has extensive ties and connections to the U.S.

II. ARGUMENT

A. This Court Has Jurisdiction to Review Petitioner's Constitutional and Statutory Interpretation Claims

The first section of Respondents' Return and Opposition asserts that this court does not have jurisdiction to consider Petitioner's Petition because "Congress has stripped the federal courts of jurisdiction over challenges to the commencement of removal proceedings, including the consequent detention pending removal proceedings." Respondents' Return at 1. Thereafter Respondents cite three specific provisions of 8 U.S.C. 1252 as statutory authority for this claim. Those statutes are 8 U.S.C. 1252(a)(5), 1252 (b)(9), and 1252(g). None of these statutory provisions controls or in any way restricts the jurisdiction of this court to decide Petitioner's Petition for a Writ of Habeas Corpus.

1. 8 U.S.C. § 1226(e)

8 U.S.C. § 1226(e) states:

(e) Judicial review: The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.

Petitioner is not challenging any judgment, discretionary or otherwise, regarding the application of this section. Petitioner *is* explicitly challenging the Respondents' unconstitutional *refusal to grant him the benefit of a bond hearing, as § 1226(a) authorizes*. Petitioner is not seeking to set aside any action or decision by the attorney general regarding his detention, or regarding the revocation of denial of bond or parole, because Respondents have explicitly removed all authority from the nation's Immigration Judges to even consider any bond application that he—

or thousands of other non-criminal, non-arriving aliens—might attempt to file. As Judge Cardone of this court wrote in response to this same claim in *Lopez-Arrevelo v. Ripa*, 3:25-cv-00337-KC p. 10 (W.D. Texas September 21, 2025).

Because this section shields only the Attorney General’s discretionary detention decisions, it “does not preclude ‘challenges to the statutory framework that permits the alien’s detention without bail.’” Jennings, 583 U.S. at 295 (cleaned up) (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003)); see also *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). In other words, the Court “retain[s] jurisdiction to review [a noncitizen’s] detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition.” *Oyelude v. Chertoff*, 125 F. App’x 543, 546 (5th Cir. 2005); accord *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015) (citing *Baez v. Bureau of Imm. & Customs Enf’t*, 150 F. App’x 311, 312 (5th Cir. 2005)).

Petitioner is not seeking review of any action under 8 U.S.C. § 1226(e). He is seeking review of Respondents’ blanket unconstitutional declaration that the provisions of 8 U.S.C. § 1226(a) do not apply to him, and the equally blanket assertion (directly contrary to the agency’s governing, published regulations) that no Immigration Judge has jurisdiction to consider any bond application he might make. 8 U.S.C. § 1226(e) does not bar this court’s jurisdiction to consider these legal and constitutional questions.

2. 8 U.S.C. § 1225(b)(4)

The text of the statute is precise and self-limiting:

(4) Challenge of a decision: The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

As with *all* of 8 U.S.C. § 1225(b), the context is explicitly *the examination of arriving aliens*, aliens *seeking admission* into the U.S. As defined by Congress at 8 U.S.C. § 1101(13)(A), “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into

the United States after inspection and authorization by an immigration officer.” In this case, Petitioner has *never made any application for admission; Petitioner has never sought admission; Petitioner has never been inspected for admission to the United States*. As was discussed in Petitioner’s Petition for Writ of Habeas Corpus, and as Petitioner will lay out in greater detail below, Congress carefully and explicitly drafted 8 U.S.C. § 1225(b)—including 1225(b)(4)—to apply exclusively to one half of the general “applicant for admission” or “inadmissible alien” class defined in 8 U.S.C. § 1225(a). That is, 8 U.S.C. § 1225(b) was intentionally drafted not to apply to the entire class of aliens defined as applicants for admission, but rather, to apply explicitly to that group defined as “arriving in the U.S.” This group was explicitly defined in the regulations at 8 C.F.R. § 1.2:

Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act.

Inasmuch as Petitioner is not seeking admission¹, and the question raised by Petitioner in his habeas petition is whether Respondents have properly classified him as an arriving alien and therefore subject to *any* of the provisions of 8 U.S.C. 1225(b), Respondents’ argument that this section precludes this court’s jurisdiction is circular, at best. At worst, again, this text presumes

¹ The Board of Immigration Appeals has previously held that seeking relief from removal does not constitute an application for admission. *See, e.g., Matter of Y-N-P-*, 26 I&N Dec. 10 (BIA 2012) (“being an ‘applicant for admission’ under section 235(a)(1) is distinguishable from ‘applying . . . for admission to the United States’ within the meaning of section 212(h)” citing *Poveda v. U.S. Attorney General* No. 11-14512 (11th Cir. August 27, 2012)).