

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Damari CHAVEZ DE VASQUEZ

Petitioner
v.

Kristi Noem, et al.

Respondents

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Case Number: 8:25-cv-03657-SAG

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO AMENDED PETITION FOR A
WRIT OF HABEAS CORPUS AND MOTION TO DISMISS**

I. Introduction

Petitioner, by and through undersigned counsel, respectfully submits this Reply in opposition to Respondents' Response and Motion to Dismiss, and requests that this Honorable Court deny the motion and grant habeas relief.

Respondents' opposition tries to recast this case as a simple disagreement with an immigration judge's discretionary bond ruling under 8 U.S.C. § 1226(a). It is not. Petitioner does not ask this Court to reweigh bond factors or to substitute its judgment for that of the immigration court on the appropriate amount of bond. Instead, she challenges the legality of her **arrest and continued detention** under the Fourth and Fifth Amendments or the Suspension Clause. Her petition raises core constitutional questions about (1) whether ICE may arrest and detain a noncitizen who affirmatively appears for an ATD check-in without a judicial warrant and without probable cause; and (2) whether an immigration judge may deny liberty based solely on untested, unsupported allegations of (HEARSAY) ATD "violations," with no evidentiary submission from DHS and no meaningful opportunity for Petitioner to confront or rebut those allegations.

Those are not discretionary-detention issues barred by 8 U.S.C. § 1226(e). They are classic habeas claims that go to the legality of executive detention itself. Nor are they barred or channeled away by 8 U.S.C. § 1252(b)(9); detention is collateral to removal, and the Board of Immigration Appeals has no authority to adjudicate the constitutionality of a seizure or to grant habeas relief. Respondents' jurisdictional arguments therefore fail, and their merits arguments do not cure the underlying constitutional violations.

II. Subject-Matter Jurisdiction

This Court has subject-matter jurisdiction pursuant to, inter alia, the Fourth and Fifth Amendments to the U.S. Constitution, as discussed below:

III. Petitioner's Habeas Corpus Petition states a claim upon which relief can be granted.

As discussed below, the Petition for Habeas Corpus does state a claim. Upon which relief can be granted.

A. 8 U.S.C. § 1226(e) Does not Bar Federal Court Review of Constitutional Challenges

Respondents rely heavily on 8 U.S.C. § 1226(e), which provides that “[n]o 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.” They argue that because an immigration judge has already denied bond, this Court is jurisdictionally barred from considering whether Petitioner’s detention is lawful. That reading is far broader than the text and directly contrary to controlling Supreme Court precedents and the U.S. Constitution itself.

The Supreme Court has clearly explained that § 1226(e) precludes review of discretionary judgments about detention and bond, but it does not bar judicial review of **constitutional** challenges to detention itself. In *Demore v. Kim*, the Court noted that § 1226(e) “precludes challenges to the Attorney General’s discretionary judgment” but does not bar “constitutional challenges to the legislation authorizing the detention.” 538 U.S. 510, 516 (2003). Likewise, in *Jennings v. Rodriguez*, the Court reaffirmed that § 1226(e) “does not preclude ‘constitutional claims or questions of law’” and rejected the idea that this provision insulates all detention decisions from judicial review. 583 U.S. 281, 295 (2018). Petitioner’s claims fall squarely in the category that *Jennings, supra*, and *Demore, supra*, preserve: She raises Constitutional questions regarding the basis for her seizure, the lack of probable cause or judicial warrant, the absence of even minimally adequate due process procedures or even any evidence supporting

Respondents' bald, unsubstantiated hearsay regarding any alleged ATD violations at her bond hearing, and the arbitrariness and fundamental unfairness of continuing to deprive her of liberty while she has a pending asylum application, strong family ties, and no criminal record.

Petitioner is not asking this Court to second-guess a discretionary balancing of bond factors. She seeks a determination that Respondents' actions, arresting her when she voluntarily appeared as instructed for an ATD check-in, allegedly based on ATD "violations" never proven with evidence, only HEARSAY, and then obtaining an IJ bond denial without a meaningful evidentiary or otherwise record, violate the Fourth and Fifth Amendments. Section 1226(e) does not bar such a challenge. To accept Respondents' interpretation would be to conclude that Respondents' may insulate unconstitutional detention from any judicial review simply by labeling it a "bond decision," a result at odds with, *inter alia*, the Suspension Clause and the core role of habeas corpus.

B. Section 1252(b)(9) and the INA's Review Provisions Do not Bar or Channel this Habeas Petition

Respondents next invoke 8 U.S.C. § 1252(b)(9), describing it as a "zipper clause" that channels all immigration-related claims into the petition-for-review process after a final removal order. That provision, however, applies to claims "arising from any action taken or proceeding brought to remove an alien," and it does not convert every detention-related constitutional challenge into an unreviewable removal claim. Detention and removal are distinct.

The Supreme Court has already rejected the expansive interpretation of § 1252(b)(9) that Respondents advance. In *Jennings, supra*, the Court held that § 1252(b)(9) does not bar claims that are "challenges to detention" rather than challenges to "any removal-related proceeding." Detention is "not inextricably linked" to the substance or outcome of removal proceedings. A person can challenge the legality of her detention, including whether it is arbitrary, capricious, and

unlawful, without challenging the government's ultimate authority to remove her or the merits of any charge of inadmissibility.

That is precisely the posture here. Petitioner does not ask this Court to rule on her removability, to review any future removal order, or to disturb the immigration judge's jurisdiction over removal proceedings. Instead, she challenges an ongoing **seizure** and deprivation of liberty of Petitioner: an arrest at an in-person ATD check-in and continued detention based on unproven allegations and a procedurally defective bond hearing. Those are not "questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien," but, instead, claims collateral to removal that habeas courts have long entertained.

Further, Respondents' suggestion that Petitioner's only recourse is to appeal the bond decision to the BIA ignores the limited authority of the BIA. The BIA cannot adjudicate Constitutional claims, cannot provide habeas relief, and cannot order Respondents to release a detainee on constitutional grounds. It is a creature of regulation, bound by Board precedent and the Attorney General's regulations, and it has no power to invalidate or disregard those regulations on constitutional grounds. For that reason, channeling a constitutional seizure challenge into the BIA is not an adequate or exclusive substitute for habeas.

Under these circumstances, § 1252(b)(9) does not apply and cannot deprive this Court of jurisdiction.

C. Petitioner has Adequately Pled a Fifth Amendment Due Process Violation

Respondents' memorandum repeatedly frames Petitioner's Due Process claim as mere disagreement with the immigration judge's conclusion that she is a "flight risk" due to alleged ATD violations. But the Petition challenges, inter alia, something far more fundamental: the absence of minimally fair procedures at the bond hearing, including the IJ's total reliance on

“hearsay” to support ICE’s allegations of ATD violations, and the arbitrary nature of the deprivation of liberty imposed. DHS did not submit **any proof whatsoever** of twelve or of any alleged ATD violations, but the immigration judge nonetheless accepted DHS’s bare assertions, treated those unproven allegations as dispositive, and denied bond. Petitioner alleged that she had complied with ATD instructions and that the bond hearing afforded no meaningful opportunity to challenge DHS’s allegations or to confront the lack of evidence against her.

Respondents now attempt to cure that defect by cataloging the alleged violations in their opposition and attaching program forms, asserting that between June 2024 and September 2025, Petitioner incurred a series of “Tracker Missed Callback,” “Missed Biometric Check-in,” and similar events and that ICE relied on those to revoke release and re-arrest her. But the question for this Court is not whether Respondents can now describe a list of alleged events in their opposition. It is whether, at the time liberty was taken away and the bond decision was made, Petitioner was afforded the process the Fifth Amendment requires: notice of the evidence, an opportunity to be heard in a meaningful manner, and a decision based on a record rather than mere speculation or conclusory hearsay assertions.

The Supreme Court has emphasized that “[f]reedom from imprisonment, from government custody, detention, or other forms of physical restraint, lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil immigration detention is permissible only if it bears a reasonable relation to a legitimate purpose, ensuring appearance or protecting the community, and only if accompanied by “adequate procedural protections” to guard against arbitrary confinement. Where, as here, the government alone controls the data and records that could show whether alleged ATD violations actually occurred, and nonetheless refuses to submit that evidence while insisting its untested allegations suffice, the resulting denial of bond is

arbitrary and fundamentally unfair. Moreover, at no point after ICE unlawfully arrested and detained Petitioner did they show her a judicially issued warrant, and any that ICE issued was after the fact, nor did they give her an opportunity to explain any alleged ATD violations, nor did they afford her a hearing.

Further, Petitioner's individual equities underscore the unreasonableness of her continued unlawful detention. She has a timely filed asylum application pending with USCIS, lives with her husband and three minor children in Maryland, has local counsel, and has no criminal record. These facts are not disputed. It is irrational to conclude that a mother of three, with a pending asylum claim and counsel, who complied with instructions by appearing at an in-person ATD check-in, suddenly posed such a flight risk that no bond at all would suffice, particularly where the government never introduced competent (or any) evidence (only HEARSAY) of the alleged violations it relied upon. The Fifth Amendment does not permit a deprivation of liberty on that basis.

D. Petitioner has adequately pled a Fourth Amendment Violation

Petitioner's arrest on November 4, 2025, violated the Fourth Amendment. She was not arrested in the field or during an emergency operation; she was called and instructed to appear for a routine ATD check-in in Silver Spring, which she did. Upon arrival, she was taken into custody. ICE arrested her without a warrant and without probable cause, based solely on unsubstantiated allegations of ATD "violations" and without any individualized showing of necessity for custodial arrest.

Respondents now assert that ICE arrested Petitioner "pursuant to a signed Warrant for Arrest of Alien, Form I-200," and, therefore, there was no warrantless arrest. But an I-200 is an administrative form generated and signed by the enforcement agency itself. It is not issued by a

neutral and detached magistrate, is not supported by a judicial determination of probable cause, and does not carry the judicial safeguards the Fourth Amendment contemplates when it uses the word “warrant.” The government cannot insulate itself from Fourth Amendment scrutiny simply by self-issuing a document it calls a “warrant” and then using it as a basis to arrest a noncitizen who voluntarily appears at its instruction.

In addition, Petitioner’s claim does not turn solely on the presence or absence of an internal DHS form. She challenges the fact that she was seized during a routine, non-exigent check-in, based on unverified and undisclosed allegations of A1D noncompliance, without probable cause grounded in specific, articulable facts. Nothing in 8 U.S.C. § 1226(b) authorizes arrest in violation of the Fourth Amendment; that provision permits revocation of release and rearrest “under the original warrant,” but it does not displace constitutional requirements. Statutes and regulations yield to the Constitution, not the other way around.

Taking Petitioner’s well-pled allegations as true at this stage, she has adequately stated a Fourth Amendment claim that cannot be dismissed under Rule 12(b)(6).

IV. Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court deny Respondents’ Motion to Dismiss, retain jurisdiction under 28 U.S.C. § 2241, and grant the relief requested in the Amended Habeas Corpus Petition, including Petitioner’s immediate release from custody on reasonable conditions of supervision.

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Respectfully submitted,

/s/ Ronald D. Richey

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