UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SANTOS MORENTE CAHUEC

Petitioner,

v.

Samuel J. Olson, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; Kristi Noem, in her official capacity as Secretary of the U.S. Department of Homeland Security; Todd Lyons, in his official capacity as acting director of U.S. Immigration and Customs Enforcement; Pam Bondi, in her official capacity as Attorney General of the United States; Ryan Shea, in his official capacity as Freeborn County Sheriff.

Respondents.

Case No. 0:25-cv-4264

PETITIONER'S REPLY TO RESPONDENT'S CONSOLIDATED RESPONSE TO PETITION FOR HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Pursuant to the Court's Orders, *see* ECF No. 6, Petitioner respectfully submits this memorandum in reply to Respondent's Consolidated Response to Petition For Writ of Habeas Corpus And Motion For Temporary Restraining Order, *see* ECF 8. The Court properly has jurisdiction to hear the instant habeas petition. The Petitioner's instant response demonstrates that all counts are necessary and all necessary parties have been joined to ensure complete relief. Petitioner's response will address the Respondents' arguments and demonstrate that the Petitioner was and is properly included in §1226 removal proceedings and efforts to recategorize him as removable under § 1225 are illegal.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner was detained under INA 212(a)(6)(A)(i) and has no order for removal.

On July 20, 2023, Petitioner received a Notice to Appear ("NTA") from DHS and was arrested and taken into Immigration and Customs Enforcement ("ICE") custody. ECF 9-3. The NTA lists his charge as INA 212(a)(6)(A)(i) – being present in the United States without being admitted or paroled. *Id.* Immigration Judge Audrey Carr's ("IJ Carr") Order releasing him on bond also lists INA 212(a)(6)(A)(i) as his charge. ECF 9-5, 1. IJ Carr found she had jurisdiction. *Id.*, 2. IJ Carr noted DHS argued the Petitioner

was not subject to mandatory detention. *Id.*, 3. On August 15, 2023, Petitioner was released from custody upon posting a $5,000 bond. ECF 1-4. On August 22, 2023, DHS filed an appeal of IJ Carr's bond order, objecting to the discretionary determination under § 1226 and did not challenge IJ Carr's finding she had jurisdiction. ECF, 9-6. On August 21, 2025, the BIA upheld DHS's appeal under the discretionary § 1226(a) framework. ECF 1-3.

On July 8, 2025, DHS issued an Interim Guidance "in coordination" with DOJ to systematically misclassify § 1226 detainees as mandatory detainees under § 1225(b). On September 26, 2025, the Respondent surrendered himself pursuant to the BIA's vacatur of bond and was arrested and served an I-200 warrant. ECF 9-7; *see* also ECF 1-4. On October 14, 2025, DHS amended the charges to allege Petitioner was removable under INA 212(a)(7)(A)(i)(I) – being an immigrant who, at time of application for admission, was not in possession of a valid entry document. ECF 1-5. No new facts were cited in this amendment document to provide grounds for the new charge. *Id.* On September 5, 2025, the misclassification policy described in the Interim Guidance was formalized in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

On October 15, 2025, Immigration Judge Kalin Ivany ("IJ Ivany") determined she lacked jurisdiction pursuant to *Matter of Yajure Hurtado*. ECF 1-6. The Petitioner reserved the right to appeal the IJ's decision. *Id.*, 2.

III. ARGUMENT

A. The Court has jurisdiction over Petitioner's claims.

The Court properly has jurisdiction as this claim does not "arise from" the "commencement" of proceedings. Petitioner is not challenging: an order for removal, the commencement of removal proceedings, the adjudication of the merits of his case before EOIR, or the ability of the government to execute a removal order. Petitioner's detention has no impact on his on-going immigration proceedings, and the termination of his detention will not disrupt those proceedings. Petitioner brought this habeas action to challenge the constitutionality of the statutory frameworks by which Respondents contend his detention without bond is mandatory. This challenge is properly within this Court's habeas jurisdiction. *See Jennings v. Rodriguez*, 583 U.S. 281, 291–96 (2018) (analyzing habeas jurisdiction to challenge detention without an individualized bond hearing).

Respondents' jurisdiction argument references an outlier decision that misreads *Jennings's* § 1252(b)(9) and 1252(g) analyses. ECF 17, 10; *See S.Q.D.C. v. Bondi,* No. CV 25-3348 (PAM/DLM), 2025 WL 2617973 (D. Minn. Sept. 9, 2025). *Jennings* is clear "[t]he question is not whether *detention* is an action taken to remove an alien but whether *the legal questions* in this case arise from such an action. And for the reasons explained above, those legal

questions are too remote from the actions taken to fall within the scope of § 1252(b)(9)." *Jennings,* 583 U.S. at 295 Fn.3. *S.Q.D.C.* misapplies jurisdiction stripping provisions under § 1252(b)(9) to a "remote" detention question.

The *S.Q.D.C.* Court erred by flipping 1252(g) on its head when it proclaimed that the petitioner had to identify a "narrow exception to § 1252(g)" for the court to exercise jurisdiction. *S.Q.D.C. v. Bondi,* No. CV 25-3348 (PAM/DLM), 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025). However, the Supreme Court cautioned that the jurisdictional restrictions of 1252(g) *itself* are "narrow" and are limited to cases which arise from the commencement of proceedings, adjudication of cases, or the execution of removal orders. *Dep't of Homeland Sec. v. Regents of the Univ. of California,* 140 S. Ct. 1891, 1907, 207 L. Ed. 2d 353 (2020). As noted below, the Petitioner has no final order of removal to execute. *See* Section III.B. The outlier decision is out of step with precedent and other decisions that did consider the precedential § 1252(g) analysis. This Court should conform to precedent.

Respondents' reliance on *Ali v. Sessions* is misplaced as the Court's analysis in that case supports both the narrow reading §1252(g) and a carve-out for habeas claims. ECF 8, 15. First, the Court noted that §1252(g) would deprive them of jurisdiction where the detention decision "connected directly

and immediately" to the enumerated execution of a removal order. Ali v. Sessions, No. 17-CV-5334 (PJS/KMM), 2017 WL 6205789, at *2 (D. Minn. Dec. 7, 2017) (citing *to Silva v. United States*, 866 F.3d 938, 940 (8th Cir. 2017) quoting *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 943 (5th Cir. 1999)). There is no such "direct and immediate" connection in the instant case. The Petitioner's removal proceedings continued during the pendency of his custody redetermination, throughout his release on bond, and continue now with no relation to whether he is detained. Second, the Court went on to further note that under *Silva*, § 1252(g) does not deprive Eighth Circuit Courts of jurisdiction over habeas claims that rase a "pure question of law." *Id.* at 5. Ali argued that he had a statutory right to file and get a decision on their motion to reopen, which would be frustrated by his removal, presenting a question of pure law. *Id.* The Court agreed with this argument and granted Ali's petition. *Id.* at 6. This contrasts with Lopez Silva's FTCA claim, which did arise the enumerated decision to execute a removal order. *Silva v. United States,* 866 F.3d 938, 939, 941 (8th Cir. 2017). As the Petitioner in the instant case is also arguing for relief on the basis of a pure question of law, *Ali* supports finding both that the Court has jurisdiction and that his relief should be granted.

B. The APA claim and all Parties are proper

The APA claim is properly raised in the habeas petition because it concerns a regulation that impacts the fact and duration of confinement. "Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus[.]" *Muhammad v. Close*, 540 U.S. 749, 750 (2004); *see also Otey v. Hopkins,* 5 F.3d 1125, 1130 (8th Cir. 1993) ("The central focus of the writ of habeas corpus is to provide a remedy for prisoners who are challenging the fact or duration of their physical confinement ..."). Here, Petitioner's APA challenge concerns the *Yajure Hurtado* decision that affected the duration of Mr. Morente Cahuec's confinement by extending Petitioner's incarceration by stripping the IJ of jurisdiction. ECF 1, ¶ 69-74; ECF 1-6. Because the APA claim concerned an administrative decision that impacts the duration of confinement, the claim was properly brought in a habeas petition. The Court must enjoin enforcement of this decision to give legal effect to any Order granting the Petitioner relief.

Respondents' citations in favor of severing APA claims and relevant Parties are inapt. Respondents cite cases concerning conditions of confinement, not the fact of confinement nor duration of confinement. *Spencer v. Haynes*, 774 F.3d 467, 469 (8th Cir. 2014) (concerning the use of a

habeas claim to object to use of four-point restraints); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996) (concerning a habeas claim that was in fact a § 1983 claim). Respondents also cite to a case joining a mandamus action and a habeas petition. *Dipakkumar B. P. v. Noem*, No. 25-CV-3167 (ECT/DJF), 2025 WL 2821375 (D. Minn. Oct. 3, 2025). Respondents also refer to a case joining § 1983 claim, a habeas claim, and several other claims unrelated to confinement. *Canada v. Olmsted Cnty. Cmty. Corr.*, No. 22-2104, 2022 WL 5235389 (8th Cir. July 27, 2022). In the instant case, the Petitioner is solely concerned with the fact and duration of confinement and is seeking the limited relief of termination of unlawful confinement or limited procedural remedy of the statutory right to seek release from confinement. Cases seeking money damages, immigration benefits, or relief unrelated to confinement are inapt.

C. The Petitioner's is currently in § 1226 Removal Proceedings.

The instant case regards the sudden and unexplained error in DHS's misclassification of the Petitioner, the illegality of that Board decision in *Yajure Hurtado* and the Petitioner's legal entitlement to a bond determination hearing. The procedural history of the Petitioner's proceedings supports finding he is properly in § 1226(a) proceedings. *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *6 (D. Ariz. Aug. 11, 2025),

report and recommendation adopted sub nom. Rocha Rosado v. Figueroa, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025). Respondents initiated and pursued removal proceedings against the Respondent under § 1226 for years and made no objections to his categorization as such. ECF 9-3; *see also* ECF 9-5; *see also* ECF 9-6; *see also* ECF 1-3. As Petitioner noted in the original brief, it was only in October of 2025 that the Respondents miscategorized the Petitioner as removable under § 1225, without any factual evidence to support their recategorization. ECF 1-5. This remains a purely legal question the Court can resolve based on the undisputed facts.

Respondents' attempt to rely on outlier cases to misread §§ 1225 and 1226, but the errors in those decisions expose the faults in their analysis. *Pena v. Hyde* is entirely inapt as it concerns an argument the Petitioner was "entitled to remain in the country" because of an approved I-130. *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913,at *1 (D. Mass. July 28, 2025). *Olalde v. Noem* alleges that an "applicant for admission" is necessarily "seeking admission" by the ordinary meaning of those terms and trying to read a distinction in §1225 is "hairsplitting." *Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830, *8-9. However, "even statutory language that is unambiguous in isolation must be read in context." *NOEL LOPEZ DE LA CRUZ, Petitioner, v. KRISTI NOEM, et al., Respondents. Additional Party Names: Brian Gardner, Dave Beuter*, No. C25-150-LTS, 2025 WL 3110876, at *4 (N.D. Iowa Oct. 20,

2025) (citing to *Yates v. United States*, 574 U.S. 528, 537 (2015) (plurality) and *Pulsifer v. United States*, 601 U.S. 124, 133 (2024)). "Considering § 1225 alongside its § 1226 companion demonstrates that the most natural interpretation of § 1225 is that it applies to aliens encountered as they are attempting to enter the United States or shortly after they gained entry without inspection." *Id.* To avoid misreading an "ordinary meaning" onto text read in isolation, Courts read statutes as a whole in order to determine if Congress intended a term of have a particular meaning in context. Reading §§1225 and 1226 as part of a single scheme – rather than separately – supports finding that Congress intended a distinction between mere arriving non-citizens such as "crewm[e]n" and those actively "seeking admission". *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025). Similarly, *Vargas Lopez v. Trump* attempts to read §§1225 and 1226 as overlapping categories. *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025). This requires misreading *Jennings*, which states clearly that the separate sections concern separate classes of non-citizens. *Jennings*, 583 U.S. at 289. It also requires ignoring the administrative practice and subsequent legislation that demonstrates Congress's understanding of its own statute.

Respondents cannot elide the plain language of § 1225(b)(2) – concerning those "seeking admission" — to fit the Petitioner within its ambit. *Belsai D.S.*

v. Bondi, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025). *Jennings* clearly indicated that § 1225 and § 1226 concern non-overlapping classes of non-citizens, with § 1225 focusing on those outside the United States "seeking" lawful entry and § 1226 focusing on those "already in" the country. *Jennings*, 583 U.S. at 289. The Petitioner fits within the plain text of § 1226(a). *Belsai D.S.*, 2025 WL 2802947, at *6. The Respondent's radical reinterpretation of § 1225 does not comport with the context and structure of the rest of the legislative scheme, as analyzed in *Jennings*. *Id.* Recent legislative history and longstanding agency practice confirm the Petitioner is properly subject to § 1226 discretionary detention as a non-citizen who has resided in the United States for decades. *Id.*, at *6-7. Longstanding Supreme Court jurisprudence confirms the distinction between rights and procedures appropriate for non-citizens within the United States and those "on the threshold" of entry. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 140 S. Ct. 1959, 1963–64, 207 L. Ed. 2d 427 (2020); *see also Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212, 73 S. Ct. 625, 629, 97 L. Ed. 956 (1953); *see also Leng May Ma v. Barber*, 357 U.S. 185, 187, 78 S. Ct. 1072, 1073, 2 L. Ed. 2d 1246 (1958) ("It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission, such as petitioner, and those who are within the United States after an entry, irrespective of its legality."). Statutory

text, court precedent, and the history of agency practice all demonstrate that the Petitioner is properly categorized as subject to § 1226(a) proceedings.

D. *Dataphase* weighs in favor of granting Petitioner his entitled bond redetermination.

Respondents admit that non-citizens in removal proceedings under § 1226 are entitled to a subsequent request for bond redetermination 8 C.F.R. 1003.19(e). ECF 8, 25. Contrary to the Respondents' assertions, there are changed circumstances in the Petitioner's case which an IJ could cite to support granting bond. *Id.*, 25-26. A material change in circumstances is any development that impacts the multi-factor analysis an IJ performs to determine if a noncitizen is a danger to the community or a flight risk. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). This includes factors such as length of residence, family ties, employment history, record of appearance in court, recency and nature of any criminal activity, and any immigration violations. *Id.* Since the initial 2023 bond redetermination, the Petitioner has been a law-abiding father and husband, contributing to his community. ECF 4, 15, 26. The Petitioner was fully abstinent from alcohol prior to his re-detention. ECF 1-14. While Respondents make prejudicial references to the Petitioner's initial charges, the Petitioner's 2023 case resulted solely in a disorderly conduct conviction. ECF 8, 2. (Note: Respondents' prejudicial

references rely heavily on an uncorroborated police report where the officer's body camera was turned off for the duration of the observation. ECF 9-1, 5.) Petitioner fully complied with his immigration orders, including surrendering himself upon upon the BIA decision. ECF 1-4. Based on his long presence in the community, the remoteness of any criminal conduct, his deep integration in his family, and his compliance with immigration orders, including appearing for re-detention, an IJ could find materially changed circumstances warrant release on bond.

The Petitioner should not be denied his statutory right to present this evidence of materially changed circumstances from his initial bond redetermination to yet again demonstrate to a neutral magistrate that he warrants release on bond. Respondents should be required to adhere to normal procedures and not permitted "disrupt the status quo" by doing an end run around the statutory scheme. *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *15 (D. Minn. Aug. 15, 2025). There is cognizable no harm to the Respondents where the government is merely required to adhere to longstanding bond practices. *Id.*

IV. CONCLUSION

For all of the foregoing reasons, Petitioner asks this Court to grant his Motion for a Temporary Restraining Order and Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Mr. Morente Cahuec's Petition, Motion, and Memorandum of Law violated the Fifth Amendment of the United States Constitution, 28 U.S.C. § 2241, and the APA.
2. Enjoin Respondents from continuing to detain Mr. Morente Cahuec in their custody during the pendency of his petition for writ of habeas corpus before this Court.
3. If Mr. Morente Cahuec is not immediately released from Respondents' custody, enjoin Respondents from transferring him to a detention facility out of this District where he would lose access to his counsel and support network.
4. If Mr. Morente Cahuec is not immediately released from Respondents' custody, order Respondents to grant him a bond redetermination hearing on the merits of his release.
5. Grant Mr. Morente Cahuec such other relief as the Court deems appropriate and just.

DATED: November 18, 2025

Respectfully submitted,

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