

[but] it may review immigration-related detentions to determine if they comport with the demands of the Constitution.” *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 901 (D. Minn. 2020) (citing *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)).

This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(b)(9) and (g) as Petitioner’s claims do not challenge any decision to commence proceedings, adjudicate cases, or execute removal orders. Section 1252(b)(9) provides:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added).

The Supreme Court’s decision in *Jennings v. Rodriguez* is instructive here and supports Petitioner’s position that this Court does have jurisdiction and that Section 1252(b)(9) does not present a jurisdictional bar. The Supreme Court determined that the “arising from” language of Section 1252(b)(9) should not be interpreted so expansively as to include any action that technically follows the commencement of removal proceedings, because that would bar judicial review of questions of law and fact that are unrelated to the removal proceedings until a final order of removal was issued. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018). Petitioner, like the class in *Jennings*, “are not asking for review of an order of removal, they are not challenging the decision to detain them in the first place or to seek removal; and they are not

even challenging any part of the process by which their removability will be determined.” *Id.* at 294-95. Section 1252(g) provides:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added).

The Supreme Court’s decision in *Jennings* is again instructive here related to Section 1252(g). The *Jennings* court writes that “[w]e did not interpret [section 1252(g)] to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.” *Jennings*, 583 U.S. at 294 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)).

An immigration judge’s (IJ) review of a bond determination is a distinct proceeding from an alien’s underlying removal proceeding. 8 C.F.R. § 1003.19(d) (“Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.”). It is “clear bond hearings are separate and apart from deportation proceedings.” *See Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982). Here, Petitioner is seeking review of his unlawful detention, as he is unable to seek a bond hearing in front of the Immigration Court as a result of the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). He is not challenging a removal order or anything else listed in Section 1252(b)(9) and (g) which would strip this court of jurisdiction.

Furthermore, Respondents' argument that this Court lacks jurisdiction under 8 U. S. C. § 1252(e)(3) fails, as § 1252(e)(3) is a savings clause and not a jurisdictional bar. Looking to the structure of § 1252 as a whole, keeping in mind the context of § 1252(e)(3) as a safety valve exception to the jurisdictional bars in § 1252(a)(2)(A), Section 1252(e)(3) is rather a grant of jurisdiction that functions as a carve out from the jurisdiction that is precluded by § 1252(a)(2)(A).

Section 1252(e)(3) lacks the hallmarks of the jurisdiction barring language found throughout § 1252. Applying the logic that the Supreme Court used in interpreting § 1252(d)(1) to the text of § 1252(e)(3) shows why it is not a jurisdictional bar:

Instead, a second feature of the statute compounds our doubt that § 1252[(e)(3)] qualifies as a jurisdictional rule: That provision's language differs substantially from more clearly jurisdictional language in related statutory provisions. Elsewhere in the laws governing immigration cases, Congress specified that "no court shall have jurisdiction" to review certain matters. Over and over again, Congress used that language in provisions that were enacted at the same time—and even in the same section—as § 1252[(e)(3)].

The contrast between the text of § 1252[(e)(3)] and the "unambiguous jurisdictional terms" in related provisions "show[s] that Congress would have spoken in clearer terms if it intended" for § 1252[(e)(3)] "to have similar jurisdictional force." *Gonzalez v. Thaler*, 565 U.S. 134, 143, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012); accord, *Henderson*, 562 U.S. at 438–439, 131 S.Ct. 1197.

Santos-Zacaria v. Garland, 598 U.S. 411, 418-19 (2023) (footnotes omitted). "And, here, there is good reason to infer that the linguistic contrast between § 1252[(e)(3)] and neighboring provisions is meaningful, not haphazard: Unlike other provisions, § 1252[(e)(3)] concerns" a carveout to the jurisdictional bars under § 1252(a)(2)(A).

Section 1252(a)(2)(A) states expressly that "no court shall jurisdiction to review" four general matters enumerated at clauses (i) through (iv). First, this is a jurisdictional bar with

jurisdiction stripping language that is not found in any part of § 1252(e)(3). *Santos-Zacaria*, 598 U.S. at 418-19. Second, all four of those enumerated clauses pertain to matters specifically and only having to do with § 1225(b)(1). §§ 1252(a)(2)(A)(i) (“pursuant to § 1225(b)(1) of this title”); (ii) (“the provisions of such section”); (iii) (“under section 1225(b)(1)(B) of this title”); (iv) (“the provisions of section 1225(b)(1) of this title”).

Third, three of the four enumerated jurisdictional bars specifically reference § 1252(e) as an exception to their jurisdiction stripping. §§ 1252(a)(2)(A)(i) (“except as provided in subsection (e)”); (ii) (same); (iv) (same). Thus, by design, the various savings clauses found in § 1252(e), including (e)(3), are exceptions to the prohibitions enumerated in § 1252(a)(2)(A), and thus only apply to the enumerated matters relating to § 1225(b)(1) detention and processing—they have nothing to do with § 1225(b)(2). See *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one.”) (citation omitted). And to the extent the Court finds that there is still ambiguity left here, then the section heading for § 1252(e) should resolve the matter: “Judicial review of orders under section 1225(b)(1).”

In sum, Section 1252(e)(3) is not a jurisdictional bar. And even if it was, it has nothing to do with detention and habeas issues relating to § 1225(b)(2). As such, this Court has jurisdiction over Petitioner’s matter.

B. Exhaustion is not required as seeking a bond redetermination before an immigration court would be futile

Exhaustion is not required as Respondents suggest since requesting a bond hearing before an Immigration Judge would be futile. The Immigration and Nationality Act mandates exhaustion in order to challenge “final order[s] of removal.” 8 U.S.C. § 1252(d)(1). However, this provision does not cover challenges to preliminary custody

or bond determinations, which are quite distinct from “final order[s] of removal.” *See Gornicka*, 681 F.2d at 505 (“[I]t is clear bond hearings are separate and apart from deportations hearings.... A bond determination is not a final order of deportation ... and does not effect [sic] the deportation proceeding.”).

Congress does require exhaustion for certain types of habeas petitions, but not for those petitions, such as Petitioner’s, brought under 28 U.S.C. § 2241. *See James v. Walsh*, 308 F.3d 162, 167 (2d Cir. 2002) (“Section 2254(b)(1) requires state prisoners to exhaust all available state court remedies before filing a Section 2254 petition, whereas Section 2241 contains no such exhaustion requirement.”).

“[W]here Congress has not clearly required exhaustion, sound judicial discretion governs.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In exercising that discretion, we must balance the individual and institutional interests involved, taking into account “the nature of the claim presented and the characteristics of the particular administrative procedure provided.” *Id.* at 146. We start with “the general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts.” *Id.* at 144-45; *see also Sanchez v. Miller*, 792 F.2d 694, 697 (7th Cir. 1986) (accord). This rule, however, is not absolute.

The Sixth Circuit has previously held that a due process challenge generally does not require exhaustion since the Board of Immigration Appeals lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) (“exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency’s

procedures.”)(citation omitted); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

The Sixth Circuit also applies a three-factor test which here weighs against requiring exhaustion. Courts may require prudential exhaustion when:

- 1) Agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
- 2) Relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
- 3) Administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

See Shweika v. Dep't of Homeland Sec., No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015). These factors weigh in Petitioner's favor. First, the issues raised in Petitioner's case are purely legal in nature and do not require the agency to develop the record. Second, since Petitioner's petition includes a due process claim, the administrative scheme, an appeal to the Board, is futile, as the Board lacks the authority to review constitutional claims. Finally, administrative review is unlikely to change Respondents' position that Section 1225(b)(2)(A) applies in Petitioner's case. The Department of Homeland Security's policy makes clear that mandatory detention is the position taken and it is done in conjunction with the Department of Justice.

Here, exhaustion would be futile due to the Board of Immigration Appeal's recent September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This case proclaimed for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond. The Board's decision,

in contravention of decades of immigration law, Supreme Court precedent, and Executive Office of Immigration Review policies and procedures, takes a new reading of INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), which requires mandatory detention of “Applicants for Admission,” to include those present in the United States without having been inspected and admitted and who are later apprehended.

Prior to the Board’s decision, noncitizens present in the United States without having been inspected and admitted and who are later apprehended are subject to detention under INA § 236(a), 8 U.S.C. § 1226(a). Noncitizens detained under this section are not subject to mandatory detention and may be released on bond or on their own recognizance. Requiring Petitioner to request a bond redetermination with the immigration court in the first instance would be futile as the bond would be denied in light of *Matter of Yajure Hurtado*. It would be prejudicial to Petitioner in prolonging his detention in order to request a bond that will ultimately be denied.

Even if this Court were to agree that prudential exhaustion should apply, waiver of the exhaustion requirement is warranted here as Petitioner is likely to experience irreparable harm if he is unable to seek habeas relief until after an immigration judge denies bond, and the Board would have to decide an appeal on the denied bond motion. *Sampiao v. Hyde, et al.*

1:25-cv-11981-JEK, at *1 (D.Mass. Sept. 9, 2025); *Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403872, at *7 (D.Mass. Aug 19, 2025) (finding that loss of liberty is a form of irreparable harm and citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987)). Waiver is appropriate where the interests of the individual weigh heavily against requiring administrative exhaustion, or exhaustion would be futile and unable to afford the petitioner the relief he seeks. *See McCarthy*, 503 U.S. at 145; *see also Fazzani v. NE Ohio Corr. Ctri*, 473 F.3d 229 (6th Cir. 2006)(citing *Aron v. LaManna*, 4. F. App’x 232, 233 (6th

Cir. 2001) and *Goar v. Civletti*, 688 F.2d 27, 28-29 (6th Cir. 1982)); *Lopez v. Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 at *5 (E.D. Mich. Aug 29, 2025)(“because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion”).

The average processing time for bond appeals exceeded 200 days in 2024. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash 2025). There is no requirement for the Board to act promptly or decide the appeal quicker than any other case. Should the Board act promptly, it would be unlikely to decide Petitioner’s appeal anytime soon, and if the Board processed the appeal at the same rate as last years’ appeals, the appeal may not be resolved until spring of 2026. As such, Petitioner is likely to endure several months of additional detention. Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm. *Bois v. Marsh*, 801 F.2d 462, 469 (D.C. Cir. 1986).

Additionally, requiring Petitioner to wait six months in detention to reach a decision on whether he could be released on bond would be futile. While Petitioner is scheduled for a preliminary master calendar hearing before the Detroit Immigration Court on November 22, 2025, the hearing is merely Petitioner’s initial appearance. A subsequent preliminary hearing must be scheduled in order to afford Petitioner time to submit relief before the Immigration Court. That hearing would be scheduled for less than six months from now. As such, exhaustion would not effectively afford Petitioner the relief he seeks, given that a removal determination would likely come before the Board’s determination of whether a bond is appropriate in his case.

Therefore, given the constitutional claims raised by Petitioner, this Court should find that exhaustion is not required according to the Sixth Circuit standards. Should this Court find that exhaustion applies, then the Court should waive exhaustion as it would be futile and would not

prove Petitioner with the relief he requests in a timely manner. *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

C. Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of “Applicants for Admission.” Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance.

Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. This argument fails for several reasons.

The Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge’s authority to hear a bond request for any noncitizen present in the United States without having been inspected and admitted and who are later apprehended by DHS. 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of “Applicants for Admission.” Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. This argument fails for several reasons.

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Prior to and since the decision in *Matter of Yajure Hurtado*, federal district courts in the First Circuit, Second Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, and Tenth Circuit have all disagreed with Respondents' interpretation and have subsequently granted relief to habeas petitioners. The Sixth Circuit alone has ruled on cases with facts similar to those of Petitioner.

Sixth Circuit

- *Vera Curillo v. Noem*, No. 1:25-CV-1340, 2025 WL 3235737 (W.D. Mich. Nov. 20, 2025)
- *Ceballos Ortiz v. Raycraft*, No. 1:25-CV-1328, 2025 WL 3223771 (W.D. Mich. Nov. 19, 2025)
- *Del Villar v. Noem*, No. 4:25-CV-00137-GNS, 2025 WL 3231630 (W.D. Ky. Nov. 19, 2025)
- *Hernandez Franco v. Raycraft*, No. 1:25-CV-1274, 2025 WL 3223780 (W.D. Mich. Nov. 19, 2025)
- *Martinez v. Unknown Party*, No. 1:25-CV-1298, 2025 WL 3223774 (W.D. Mich. Nov. 19, 2025)
- *Nava Ibarra v. Noem*, No. 1:25-CV-1335, 2025 WL 3223765 (W.D. Mich. Nov. 19, 2025)
- *Orozco-Martinez v. Lynch*, No. 1:25-CV-1353, 2025 WL 3223786 (W.D. Mich. Nov. 19, 2025)
- *Yac Pastor v. Raycraft*, No. 1:25-CV-1301, 2025 WL 3223777 (W.D. Mich. Nov. 19, 2025)
- *Juarez Mendez v. Raycraft*, No. 1:25-CV-1323, 2025 WL 3214100 (W.D. Mich. Nov. 18, 2025)
- *Lopez v. Olson*, No. 3:25-CV-654-DJH, 2025 WL 3217036 (W.D. Ky. Nov. 18, 2025)
- *Robledo Gonzalez v. Raycraft*, No. 25-13502, 2025 WL 3218242 (E.D. Mich. Nov. 17, 2025)
- *Amigon Cardona v. Unknown Party #1*, No. 1:25-CV-1287, 2025 WL 3200682 (W.D. Mich. Nov. 17, 2025)
- *Martinez Guerra v. Noem*, No. 1:25-CV-1341, 2025 WL 3204289 (W.D. Mich. Nov. 17, 2025)
- *Orellana v. Noem*, No. 1:25-CV-1333, 2025 WL 3198685 (W.D. Mich. Nov. 17, 2025)
- *Sevilla v. Noem*, No. 1:25-CV-1325, 2025 WL 3200698 (W.D. Mich. Nov. 17, 2025)
- *Chavez v. Director of Detroit Field Office*, No. 4:25-CV-2061, 2025 WL 3187080 (N.D. Ohio Nov. 14, 2025)
- *Ginez Hernandez v. Noem*, No. 1:25-CV-1307, 2025 WL 3170872 (W.D. Mich. Nov. 13, 2025)

- *Lara v. Noem*, No. 1:25-CV-1332, 2025 WL 3170876 (W.D. Mich. Nov. 13, 2025)
- *Madrid Gonzalez v. Noem*, No. 1:25-CV-1315, 2025 WL 3170879 (W.D. Mich. Nov. 13, 2025)
- *Singh v. Noem*, No. 1:25-CV-1251, 2025 WL 3170855 (W.D. Mich. Nov. 13, 2025)
- *Contreras Alvarez v. Noem*, No. 1:25-CV-1313, 2025 WL 3151948 (W.D. Mich. Nov. 12, 2025)
- *Diego v. Raycraft*, No. 25-13288, 2025 WL 3159106 (E.D. Mich. Nov. 12, 2025)
- *Lucero Lucero v. Noem*, No. 1:25-CV-1295, 2025 WL 3165235 (W.D. Mich. Nov. 12, 2025)
- *E.V. v. Raycraft*, No. 4:25-CV-2069, 2025 WL 3122837 (N.D. Ohio Nov. 7, 2025)
- *Hernandez Garcia v. Raycraft*, No. 1:25-CV-1281, 2025 WL 3122800 (W.D. Mich. Nov. 7, 2025)
- *Morales-Martinez v. Raycraft*, No. 25-CV-13303, 2025 WL 3124695 (E.D. Mich. Nov. 7, 2025)
- *Rodriguez Serrano v. Noem*, No. 1:25-CV-1320, 2025 WL 3122825 (W.D. Mich. Nov. 7, 2025)
- *Hernandez Capote v. Sec'y U.S. Dep't of Homeland Sec.*, No. 25-13128, 2025 WL 3089756 (E.D. Mich. Nov. 5, 2025)
- *Alonso v. Tindall*, No. 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025)
- *Salgado Mendoza v. Noem*, No. 1:25-CV-1252, 2025 WL 3077589 (W.D. Mich. Nov. 4, 2025)
- *Escobar-Ruiz v. Raycraft*, No. 1:25-CV-1232, 2025 WL 3039255 (W.D. Mich. Oct. 31, 2025)
- *Godinez-Lopez v. Ladwig, et al.*, No. 2:25-CV-02962-SHL-ATC, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025)
- *Perez Guerra v. Woosley*, No. 4:25-CV-119-RGJ, 2025 WL 3046187 (W.D. Ky. Oct. 31, 2025)
- *Ramirez v. Noem*, No. 1:25-CV-1261, 2025 WL 3039266 (W.D. Mich. Oct. 31, 2025)
- *Ruiz Mejia v. Noem*, No. 1:25-CV-1227, 2025 WL 3041827 (W.D. Mich. Oct. 31, 2025)
- *Marin Garcia v. Noem*, No. 1:25-CV-1271, 2025 WL 3017200 (W.D. Mich. Oct. 29, 2025)
- *Cervantes Rodriguez v. Noem*, No. 1:25-CV-1196, 2025 WL 3022212 (W.D. Mich. Oct. 29, 2025)
- *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294 (E.D. Mich. Oct. 29, 2025)
- *Puerto-Hernandez v. Lynch*, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025)
- *Gimenez Gonzalez v. Raycraft*, No. 25-CV-13094, 2025 WL 3006185 (E.D. Mich. Oct. 27, 2025)
- *Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025)
- *Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025)
- *Casio-Mejia v. Raycraft*, No. 2:25-CV-13032, 2025 WL 2976737 (E.D. Mich. Oct. 21, 2025)

- *Contreras-Lomeli v. Raycraft*, No. 2:25-CV-12826, 2025 WL 2976739 (E.D. Mich. Oct. 21, 2025)
- *Jimenez Garcia v. Raybon*, No. 2:25-CV-13086, 2025 WL 2976950 (E.D. Mich. Oct. 21, 2025)
- *Santos Franco v. Raycraft*, No. 2:25-CV-13188, 2025 WL 2977118 (E.D. Mich. Oct. 21, 2025)
- *Contreras-Cervantes v. Raycraft*, No. 2:25-CV-13073, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025)
- *Diaz Sandoval v. Raycraft*, No. 2:25-CV-12987, 2025 WL 2977517 (E.D. Mich. Oct. 17, 2025)
- *Pacheco Mayen v. Raycraft*, No. 2:25-CV-13056, 2025 WL 2978529 (E.D. Mich. Oct. 17, 2025)
- *Sanchez Alvarez v. Noem*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025)
- *Ballestros v. Noem*, No. 3:25-CV-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025)
- *Patel v. Tindall*, No. 3:25-CV-373-RGJ, 2025 WL 2823607 (W.D. Ky. Oct. 3, 2025)
- *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025)
- *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025)
- *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025)
- *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

This Court is not required, and should not, give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and indeed “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court’s own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the numerous district court decisions confirm that he is subject to section 1226(a)'s discretionary detention scheme.

D. Petitioner's Continued Detention Without a Bond Hearing is a Fifth Amendment Violation

Petitioner's deprivation of his liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Clause of the Fifth Amendment. Petitioner has not been found to be a danger to the community and Respondents do not allege that detention is to ensure Petitioner's appearance during removal proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents have not put forth a credible argument that Petitioner could not be safely released to his community and family.

The Sixth Circuit has held that the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, applies in the context of immigration detention. *See United States v. Silvestre-Gregorio*, 983 F.3d 848, 852 (6th Cir. 2020). Thus, under *Mathews*, this Court must consider the following three factors: "(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *See Lopez-Campos*, 2025 WL 2496379, at *9 (citing *Mathews*, 424 U.S. at 335).

In regards to the first *Mathews* factor, Petitioner has a significant private interest in avoiding detention, one of the "most elemental of liberty interests." *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Additionally, Petitioner resides in Chicago, Illinois and supports himself. *See* Dkt. 1. Pg. 2. Petitioner is now detained in another state, "experiencing [many of] the

deprivations of incarceration, including loss of contacts with friends and family, loss of income earning...lack of privacy, and, most fundamentally, the lack of freedom of movement.” See *Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025).

As to the second *Mathews* factor, a risk of erroneous deprivation is minimized through a bond hearing, where an Immigration Judge can determine whether Petitioner is a flight risk or a danger to the community. See *Lopez Campos*, 2025 WL 2496379, at *9.

Finally, as to the third factor, while Respondents do have “a legitimate interest in ensuring noncitizens’ appearance at removal proceedings and preventing harms to the community,” here, Respondents have not established an interest in regards to detaining Petitioner who may well convince “a neutral adjudicator, following a hearing and assessment of the evidence, that his ongoing detention is not warranted.” *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

As such, Petitioner’s current detention under the framework of Section 1225(b)(2)(A) violates Petitioner’s Fifth Amendment Due Process rights.

E. The Secretary of Homeland Security is a Proper Respondent

Petitioner has named the Field Office Director as Petitioner’s immediate custodian. He also names the Secretary of Homeland Security, Kristi Noem, as Respondent in this action. Petitioner alleges violations of law and the application of law by agents of the Department of Homeland Security. Given Secretary Noem’s broad authority over the operation and enforcement of the immigration laws, she is thus an appropriate Respondent for the subject case.

CONCLUSION

For the foregoing reasons, this Court should order Petitioner's release or in the alternative, order Respondents to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order.

Dated: November 20, 2025

Respectfully Submitted,
/s/ Khiabett T. Osuna

Khiabett T. Osuna Esq.
KRIEZELMAN BURTON & ASSOCIATES, LLC
200 West Adams Street, Suite 2211
Chicago, Illinois 60606
(312) 332-2550
kosuna@krilaw.com