

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSUE CANTU-CORTES,	:	
	:	
Petitioner,	:	CIVIL ACTION
	:	
v.	:	
	:	
DAVID O'NEILL, KRISTI NOEM,	:	No. 25-cv-6338
PAMELA BONDI, and JAMAL L. JAMISON,	:	
	:	
Respondents.	:	

**NOTICE OF APPEAL**

Respondents David O'Neill, Kristi Noem, Pamela Bondi, and Jamal L. Jamison— all of whom are officers of the United States sued in their official capacities—hereby notice their appeal to the U.S. Court of Appeals for the Third Circuit of the district court's order of November 13, 2025 (ECF No. 6) and related memorandum opinion (ECF No. 5), and the district court's order of November 15, 2025 (ECF No. 8).

Respectfully submitted,

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United States Attorney

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Dated: January 12, 2026

**CERTIFICATE OF SERVICE**

I certify that on this date, the foregoing Notice of Appeal and its attachments were filed electronically and are available for downloading from the CM/ECF system and automatically served on counsel.

Dated: January 12, 2026

/s/ Anthony St. Joseph  
ANTHONY ST. JOSEPH  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSUE CANTU-CORTES,  
*Petitioner,*

v.

DAVID O'NEILL, Acting Field Office  
Director of Enforcement and Removal  
Operations, Philadelphia Field Office,  
Immigration and Customs Enforcement;  
KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security; PAMELA BONDI,  
U.S. Attorney General; JAMAL L.  
JAMISON, Warden of Philadelphia Federal  
Detention Center,  
*Respondents.*

CIVIL ACTION

No. 25-cv-6338

ORDER

AND NOW, this 13th day of November 2025, upon consideration of Petitioner Josue Cantu-Cortes' Petition for a Writ of Habeas Corpus (ECF No. 1) and Respondents' Answer (ECF No. 3), it is hereby **ORDERED** that Petitioner Josue Cantu-Cortes' Petition for a Writ of Habeas Corpus (ECF No. 1) is **GRANTED** as follows:

1. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and is instead subject to detention, if at all, pursuant to the discretionary provisions of 8 U.S.C. § 1226(a).
2. Within seven (7) days of the date of this Order, on or before November 20, 2025, Respondents shall provide Petitioner with a bond hearing in accordance with 8 U.S.C. § 1226(a) at which the parties will be allowed to present evidence and argument

regarding whether Petitioner is a danger to the community and presents a flight risk if not detained.

3. If Respondents do not provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days as required herein, Petitioner must be immediately released from detention while he awaits his bond hearing.
4. Within ten (10) days of this Order, the parties shall provide the Court with a status update concerning the results of any bond hearing conducted pursuant to this Order, or if no bond hearing was held, advise the Court regarding Petitioner's release. Further, the parties shall advise the Court whether any additional proceedings in this matter are required and submit any proposals for the scope of further litigation.
5. Respondents shall not remove, transfer, or otherwise facilitate the removal of Petitioner from the Eastern District of Pennsylvania before the ordered bond hearing. If the immigration judge determines that the Petitioner is subject to detention under 8 U.S.C. § 1226(a), Respondents may request permission from the Court to move Petitioner if unforeseen or emergency circumstances arise that require Petitioner to be removed from the District. Any such request must include an explanation for the request as well as a proposed destination. The Court will then determine whether to grant the request and permit transfer of Petitioner.
6. No removal hearing shall take place on **November 17, 2025**. Respondents shall not schedule a removal hearing at any other time prior to the required bond hearing.
7. Respondents shall notify the immigration court in Elizabeth, New Jersey of the status of the instant case.

**BY THE COURT:**

*/s/ Chad F. Kenney*

CHAD F. KENNEY, JUDGE

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CIVIL ACTION

No. 25-cv-6338

MEMORANDUM

KENNEY, J.

NOVEMBER 13, 2025

Petitioner is a citizen of Mexico who has resided in the United States since around 2000/2001, when he entered “as a teenager[] without inspection across the southern U.S. border and had no contact with immigration authorities.” ECF No. 1 ¶¶ 16, 41–42. He was arrested by Immigration and Customs Enforcement (“ICE”) on November 5, 2025, and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and § 1182(a)(7)(A)(i)(I). *Id.* ¶¶ 3, 16. On November 7, 2025, he filed an Emergency Petition for Writ of Habeas Corpus before this Court. *Id.* Respondents oppose Mr. Cantu-Cortes’ petition, arguing that (1) the Court lacks jurisdiction over the petition, (2) Petitioner failed to exhaust administrative remedies, (3) Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2), and (4) Petitioner’s “detention does not offend due process.” *See generally* ECF No. 3.

## I. JURISDICTION

First, the Court maintains jurisdiction to entertain the petition under 28 U.S.C. § 2241, and Respondents' jurisdictional argument fails. First, 8 U.S.C. § 1252(b)(9) does not bar this Court from reviewing whether a bond hearing is required prior to detention because that issue is collateral to the removal process. *See Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431, at \*4 (S.D. Cal. Sept. 3, 2025). Second, 8 U.S.C. § 1252(g) also does not bar jurisdiction for similar reasons. *See Avila v. Bondi*, No. 25-cv-3741, 2025 WL 2976539, at \*4 (D. Minn. Oct. 21, 2025) ("Petitioner's habeas claim is not jurisdictionally barred under § 1252(g) because Petitioner is not seeking review of a decision to commence proceedings, adjudicate cases, or execute a removal order. Instead, Petitioner challenges, among other things, the lawfulness of his continued detention without receiving a bond hearing . . . ."). Finally, 8 U.S.C. § 1252(a)(2)(B)(ii) does not bar jurisdiction because Petitioner is not challenging a discretionary decision to deny him bond, but is instead challenging the Government's position, as a matter of statutory interpretation, that no bond hearing is required. *See Ochoa Ochoa v. Noem*, No. 25-cv-10865, 2025 WL 2938779, at \*4 (N.D. Ill. Oct. 16, 2025).

## II. EXHAUSTION

Next, Petitioner is not required to exhaust his administrative remedies, as exhaustion would be futile. *See Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (exhaustion not required where "administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury"). Here, the Board of Immigration Appeals would be bound by its own precedent to determine that Petitioner's detention is mandatory

under 8 U.S.C. § 1225(b)(2). *See Del Cid v. Bondi*, No. 25-cv-00304, 2025 WL 2985150, at \*13 (W.D. Pa. Oct. 23, 2025).

### III. MERITS

The remaining issue before the Court is whether Petitioner is properly detained under 8 U.S.C. § 1225(b) versus 8 U.S.C. § 1226(a). Section 1225(b) provides that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained” pending removal hearings. 8 U.S.C. § 1225(b)(2)(A). In contrast, § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018); 8 U.S.C. § 1226(a). Most courts addressing the § 1225(b) versus § 1226(a) dispute reject Respondents’ position that “[a]n alien who arrives in the U.S. or is present in this country but has not been admitted is considered an applicant for admission under 8 U.S.C. § 1225(a)(1)” and is therefore subject to mandatory detention under § 1225(b)(2)(A). ECF No. 3 at 12–13 (cleaned up); *see Lopez v. Noem*, No. 25-cv-16890, 2025 WL 3101889, at \*3 (D.N.J. Nov. 5, 2025) (citing cases). The comprehensive decisions rendered by these courts are persuasive, and the Court finds that § 1226(a) is applicable to Petitioner.

Here, Petitioner was not seeking to be admitted to the Country when ICE detained him on November 5, 2025; he was already residing in the United States for between 24–25 years. ECF No. 1 ¶¶ 2–3, 16. “A noncitizen like [p]etitioner, who has already entered and is present in the country, simply cannot be characterized as ‘seeking entry’ consistent with the ordinary meaning

of that phrase.” *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at \*13 (D. Nev. Sept. 17, 2025).

#### **IV. CONCLUSION**

Accordingly, ICE’s mandatory detention of Petitioner under 8 U.S.C. § 1225(b)(2)(A) violates the laws of the United States and Petitioner’s rights under the Due Process Clause. Respondents must provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days. If Respondents do not provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days, Petitioner must be immediately released from detention while he awaits his bond hearing. An accompanying order will follow.

**BY THE COURT:**

**/s/ Chad F. Kenney**

**CHAD F. KENNEY, JUDGE**

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U.S. Attorney General; JAMAL L.  
JAMISON, Warden of Philadelphia Federal  
Detention Center,  
*Respondents.*

CIVIL ACTION

No. 25-cv-6338

ORDER

AND NOW, this 15th day of November 2025, upon consideration of the Joint Letter dated November 14, 2025 (ECF No. 7), it is hereby **ORDERED** that Respondents' request to move Petitioner out of the Eastern District of Pennsylvania is **DENIED**.

It is further **ORDERED** that Courtroom 11B is available for a hearing officer to conduct the bond hearing as required by ECF No. 6 on Wednesday, November 19, 2025 at 11:00 a.m. If a hearing officer local to the Eastern District of Pennsylvania is not available to appear on this date, Respondents shall secure a hearing officer from outside the District to appear either in person or via video conference into the Courtroom. If Respondents are unable to do so, Respondents shall release Petitioner while he awaits his bond hearing in accordance with ECF No. 6.

To the extent not discussed herein, all other provisions of the Court's Order at ECF No. 6 remain in full effect.

**BY THE COURT:**

*/s/ Chad F. Kenney*

**CHAD F. KENNEY, JUDGE**