

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

CARLOS SILVA ORELLANA,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 3:25-cv-00532-LS
KRISTI NOEM, Secretary, U.S. Department of	)	
Homeland Security; et. al,	)	
	)	
Respondents.	)	

**REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE**

Petitioner submits this reply to Respondent's Response to his Petition for Writ of Habeas Corpus. Petitioner continues to be detained unlawfully during his pending removal proceedings, in violation of his constitutional and statutory rights.

**A. Petitioner Does Not Challenge His Ongoing Removal Proceedings and 8 U.S.C. § 1252 does not deprive this Court of jurisdiction.**

Accordingly, 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). It is “clear bond hearings are

separate and apart from deportation proceedings.” *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. This Court has jurisdiction over Petitioner’s matter.

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

By way of review, 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.

The relevant statutes at issue are Sections 1225 and 1226. Section 1225, titled “Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing,” states:

An alien present in the United States who has not been admitted *or* who arrives in the United States...shall be deemed for purposes of this chapter an applicant for

admission... Subject to subparagraphs (B) and (C), 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 for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(a)(1), (b)(2)(A) (emphasis added).

Section 1226, entitled “Apprehension and detention of aliens,” states:

On a warrant issued by the Attorney General, an alien *may be arrested and detained pending a decision* on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General— (1) may continue to detain the arrested alien; and (2) may release the alien on— (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole...

8 U.S.C. § 1226(a) (emphasis added).

Prior to and since the decision in *Matter of Yajure Hurtado*, federal district courts in the First Circuit, Second Circuit, Third Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, Tenth Circuit, and Eleventh Circuit have all disagreed with Respondents’ interpretation and have subsequently granted relief to habeas petitioners. Here is a small sample of recent habeas decisions all over the country:

**First Circuit**

- *Alarcon v. Moniz*, No. 1:25-CV-13294-IT, 2025 WL 3204553 (D. Mass. Nov. 17, 2025)
- *Rafael v. Plymouth County Correctional Facility*, No. 1:25-CV-13197-IT, 2025 WL 3204554 (D. Mass. Nov. 17, 2025)
- *Anselmo v. Moniz*, No. 1:25-CV-13309-IT, 2025 WL 3171137 (D. Mass. Nov. 13, 2025)
- *Caguana-Caguana v. Moniz*, No. 1:25-CV-13142-IT, 2025 WL 3171043 (D. Mass. Nov. 13, 2025)
- *Portillo Martinez v. Hyde*, No. CV 25-11909-BEM, 2025 WL 3152847 (D. Mass. Nov. 12, 2025)

**Second Circuit**

- *Quituisaca Quituisaca v. Bondi*, No. 6:25-CV-6527-EAW, 2025 WL 3264440 (W.D.N.Y. Nov. 24, 2025)
- *Lieogo v. Freden*, No. 6:25-CV-6615-EAW, 2025 WL 3250884 (W.D.N.Y. Nov. 21, 2025)
- *Villa Alvarez*, No. 6:25-CV-6600-EAW, 2025 WL 3250858 (W.D.N.Y. Nov. 21, 2025)

- *Betancourt Izaguirre v. Freden*, No. 25-CV-6672-EAW, 2025 WL 3246831 (W.D.N.Y. Nov. 20, 2025)
- *Pedroso de Oliveira v. Moniz*, No. 25-CV-6663-EAW, 2025 WL 3239858 (W.D.N.Y. Nov. 20, 2025)

### Third Circuit

- *Garcia-Alvarado v. Warden*, No. CV 25-16109 (SDW), 2025 WL 3268606 (D.N.J. Nov. 24, 2025)
- *Aguilar Ramos v. Soto*, No. CV 25-15315 (MAS), 2025 WL 3251447 (D.N.J. Nov. 21, 2025)
- *Valerio v. Joyce*, No. CV 25-17225 (ZNO), 2025 WL 3251445 (D.N.J. Nov. 21, 2025)
- *Velasquez-Gomez v. Soto*, No. CV 25-17327 (BRM), 2025 WL 3251443 (D.N.J. Nov. 21, 2025)
- *Patel v. McShane*, No. CV 25-5975, 2025 WL 3241212 (E.D. Pa. Nov. 20, 2025)
- *Vasquez Lucero v. Soto*, No. CV 25-16737 (MCA), 2025 WL 3240895 (D.N.J. Nov. 20, 2025)
- *Ndiaye v. Jamison*, No. CV 25-6007, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025)
- *Perez v. Lyons*, No. 25-CV-17186-ESK, 2025 WL 3238540 (D.N.J. Nov. 19, 2025)
- *Demirel v. Federal Detention Center Philadelphia*, No. 25-5488, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025)

### Fourth Circuit

- *Perez-Gomez v. Warden, Camp East Montana Detention Facility*, No. CV 3:25CV773, 2025 WL 3141103 (E.D. Va. Nov. 10, 2025)
- *Diaz Garcia v. Noem*, No. 1:25-CV-1712 (PTG/LRV), 2025 WL 3111223 (E.D. Va. Nov. 6, 2025)
- *Lopez Sarmiento v. Perry*, No. 1:25-CV-01644-AJT-WBP, 2025 WL 3091140 (E.D. Va. Nov. 5, 2025)
- *Duarte Escobar v. Perry*, No. 3:25CV758, 2025 WL 3006742 (E.D. Va. Oct. 27, 2025)
- *Yesbincom Yobani v. Noem*, Respondents, No. 1:25-CV-01666-AJT-LRV, 2025 WL 2997507 (E.D. Va. Oct. 24, 2025)
- *Flores Pineda v. Simon*, No. 1:25-CV-01616-AJT-WEF, 2025 WL 2980729 (E.D. Va. Oct. 21, 2025)

### Fifth Circuit

- *Vasquez Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3268459 (W.D. Tex. Nov. 24, 2025)
- *Penuela Carlos v. Bondi*, No. 9:25-CV-00249-MJT-ZJH, 2025 WL 3252561 (E.D. Tex. Nov. 21, 2025)
- *Cruz Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025)
- *Orellana Cantarero v. Bondi*, No. 9:25-CV-00250-MJT-ZJH, 2025 WL 3252402 (E.D. Tex. Nov. 20, 2025)
- *Leon Hernandez v. Bondi*, No. 25-CV-1384 SEC P, 2025 WL 3217037 (W.D. La. Nov. 18, 2025)

- *Rodriguez Cortina v. Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025)
- *Cruz Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025)
- *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187 (W.D. Tex. Oct. 24, 2025)
- *Martinez v. Trump*, No. CV 25-1445 SEC P, 2025 WL 3124847 (W.D. La. Oct. 22, 2025)

#### **Sixth Circuit**

- *Godoy Bermudez v. Lynch*, No. 1:25-CV-1357, 2025 WL 3264437 (W.D. Mich. Nov. 24, 2025)
- *Huaman-Rodriguez v. Lynch*, No. 1:25-CV-1330, 2025 WL 3267768 (W.D. Mich. Nov. 24, 2025)
- *Hurtado-Medina v. Raycraft*, No. 25-CV-13248, 2025 WL 3268896 (E.D. Mich. Nov. 24, 2025)
- *Kadagan v. Raycraft*, No. 25-13602, 2025 WL 3268895 (E.D. Mich. Nov. 24, 2025)
- *Maya Ramirez v. Lynch*, No. 1:25-CV-1408, 2025 WL 3267771 (W.D. Mich. Nov. 24, 2025)
- *Moyao Roman v. Olson*, No. CV 25-169-DLB-CJS, 2025 WL 3268403 (E.D. Ky. Nov. 24, 2025)
- *Rodriguez Quezada v. Noem*, No. 1:25-CV-1441, 2025 WL 3267784 (W.D. Mich. Nov. 24, 2025)
- *Soto-Medina v. Lynch*, No. 1:25-CV-1392, 2025 WL 3267761 (W.D. Mich. Nov. 24, 2025)
- *Unaicho-Castro v. Unknown Party*, No. 1:25-CV-1318, 2025 WL 3264436 (W.D. Mich. Nov. 24, 2025)

#### **Seventh Circuit**

- *Paredes Padilla v. Galovich*, No. 25-CV-863-JDP, 2025 WL 3251446 (W.D. Wis. Nov. 21, 2025)
- *Rivas Alonso v. Olson*, No. 25-CV-1660, 2025 WL 3240928 (E.D. Wis. Nov. 20, 2025)
- *Rusu v. Noem*, No. 25 C 13819, 2025 WL 3240911 (N.D. Ill. Nov. 20, 2025)
- *Hernandez Gonzalez v. Olson*, No. 25 C 13439, 2025 WL 3237190 (N.D. Ill. Nov. 19, 2025)
- *Miguel Ramirez v. Noem*, No. 25 C 13651, 2025 WL 3227341 (N.D. Ill. Nov. 19, 2025)
- *Nava Lobera v. Noem*, No. 25 CV 13593, 2025 WL 3228984 (N.D. Ill. Nov. 19, 2025)
- *Hurtado Perez v. Olson*, No. 25 C 13731, 2025 WL 3213967 (N.D. Ill. Nov. 18, 2025)
- *Hernandez Balderas v. Olson*, No. 25 C 12749, 2025 WL 3210422 (N.D. Ill. Nov. 17, 2025)

#### **Eighth Circuit**

- *Medina Andres v. Noem*, No. 6:25-cv-03321 (W.D. Mo. Nov. 20, 2025)
- *Pozos Ramirez v. Noem*, No. 6:25-cv-03316 (W.D. Mo. Nov. 19, 2025)
- *Mairena-Munguia v. Arnott*, No. 6:25-CV-3318-MDH, 2025 WL 3229132 (W.D. Mo. Nov. 19, 2025)

- *Eshdavlatov v. Arnott*, No. 6:25-CV-00844-MDH, 2025 WL 3217838 (W.D. Mo. Nov. 18, 2025)
- *Morales Rodriguez v. Arnott*, No. 6:25-CV-00836-MDH, 2025 WL 3218553 (W.D. Mo. Nov. 18, 2025)
- *Chilel Chilel v. Sheehan*, No. 25-CV-3975 (SRN/DTS), 2025 WL 3157839 (D. Minn. Nov. 12, 2025)
- *Garcia Picazo v. Sheehan*, No. C25-4057-LTS-MAR, 2025 WL 3006188 (N.D. Iowa Oct. 27, 2025)

#### **Ninth Circuit**

- *Gomez v. Unknown Party*, No. CV-25-03255-PHX-JJT (CDB), 2025 WL 3269055 (D. Ariz. Nov. 24, 2025)
- *Romero Sanchez v. Larose*, No. 25-CV-3136 JLS (JLB), 2025 WL 3268590 (S.D. Cal. Nov. 24, 2025)
- *G. G. v. Kaiser*, No. 1:25-CV-01471-KES-SAB (HC), 2025 WL 3254999 (E.D. Cal. Nov. 22, 2025)
- *Carvalho Santos v. Larose*, No. 25-CV-3009-RSH-DDL, 2025 WL 3251575 (S.D. Cal. Nov. 21, 2025)
- *Chiapot Perez v. Noem*, No. 3:25-CV-3161-JES-VET, 2025 WL 3258065 (S.D. Cal. Nov. 21, 2025)

#### **Tenth Circuit**

- *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025)
- *Batz Barreno v. Baltasar*, No. 025-CV-03017-GPG-TPO, 2025 WL 3190936 (D. Colo. Nov. 14, 2025)
- *Pu Sacvin v. Anda-Ybarra*, No. 2:25-CV-01031-KG-JFR, 2025 WL 3187432 (D.N.M. Nov. 14, 2025)
- *Molina Ochoa v. Noem*, No. 1:25-CV-00881-JB-LF, 2025 WL 3125846 (D.N.M. Nov. 7, 2025)
- *Artola Arauz v. Baltazar*, No. 1:25-CV-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025)

#### **Eleventh Circuit**

- *Duvallon Boffill v. Field Office Director, Miami Field Office*, No. 25-CV-25179-JB, 2025 WL 3246868 (S.D. Fla. Nov. 20, 2025)
- *Bautista v. Noem*, No. 2:25-CV-996-KCD-DNF, 2025 WL 3227482 (M.D. Fla. Nov. 19, 2025)
- *Erazo v. Hardin*, No. 2:25-CV-891-KCD-DNF, 2025 WL 3187136 (M.D. Fla. Nov. 14, 2025)
- *Villa v. Normand*, No. 5:25-CV-100, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025)
- *Vasquez Carcamo v. Noem*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 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 Petitioner is subject to section 1226(a)’s discretionary detention scheme.

**C. Petitioner’s continued detention without a bond hearing is a Fifth Amendment violation.**

Petitioner’s continued detention violates due process, as Respondents’ arguments ignore the realities of the process of Petitioner’s immigration proceedings and the particular facts of this case. Respondents do not allege that Petitioner’s detention is necessary because he is a danger to the community, nor to ensure his appearance during removal proceedings. *See Zadvydas*, 533 U.S. at 690. There has been no evidence presented that Petitioner is a danger to the community or has done anything wrong to merit his detention. Petitioner’s continued 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 is detained under 8 U.S.C. § 1226. Respondent’s position that Petitioner must remain detained during the pendency of his removal proceedings and is not eligible for a bond redetermination hearing pursuant to 8 U.S.C. § 1225(b)(2), unlawfully deprives Petitioner of his liberty.

**CONCLUSION**

For the foregoing reasons, this Court should order Respondents to release Petitioner or 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: December 2, 2025

Respectfully Submitted,  
CARLOS SILVA ORELLANA

By: s/ Brittni Rivera  
One of his attorneys

Brittni Rivera, Esq.  
KRIEZELMAN BURTON & ASSOCIATES, LLC  
200 West Adams Street, Suite 2211  
Chicago, Illinois 60606  
(312) 332-2550  
[brivera@krilaw.com](mailto:brivera@krilaw.com)