

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

EDUARDO CONSUELOS PEREZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 3:25-cv-539-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 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**

- *Brum Texeira v. Noem*, No. 1:25-CV-13460-IT, 2025 WL 3295543 (D. Mass. Nov. 26, 2025)
- *Gutierrez Cabello v. Moniz*, No. 1:25-CV-13213-IT, 2025 WL 3295996 (D. Mass. Nov. 26, 2025)
- *Rodriguez v. Hyde*, No. 25-CV-607-JJM-PAS, 2025 WL 3274606 (D.R.I. Nov. 25, 2025)

- *Tenemasa-Lema v. Hyde*, No. CV 25-13029-BEM, 2025 WL 3280555 (D. Mass. Nov. 25, 2025)
- *Alarcon v. Moniz*, No. 1:25-CV-13294-IT, 2025 WL 3204553 (D. Mass. Nov. 17, 2025)

### **Second Circuit**

- *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025)
- *Barillas Resinos v. Marich*, No. 6:25-CV-6689-EAW, 2025 WL 3294720 (W.D.N.Y. Nov. 26, 2025)
- *Huang v. Almodovar*, No. 25 CIV. 9346 (DEH), 2025 WL 3295912 (S.D.N.Y. Nov. 26, 2025)
- *Lieogo v. Freden*, No. 6:25-CV-06615 EAW, 2025 WL 3290694 (W.D.N.Y. Nov. 26, 2025)
- *McDonald v. Francis*, No. 25-CV-09355 (JAV), 2025 WL 3295906 (S.D.N.Y. Nov. 26, 2025)

### **Third Circuit**

- *Flores Obando v. Bondi*, No. 25-6474, 2025 WL 3452047 (E.D. Pa. Dec. 1, 2025)
- *Buele Morocho v. Jamison*, No. 5:25-CV-05930-JMG, 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025)
- *Diallo v. O'Neill*, No. CV 25-6358, 2025 WL 3298003 (E.D. Pa. Nov. 26, 2025)
- *Kaly Bah v. Soto*, No. 25-CV-17337-ESK, 2025 WL 3295569 (D.N.J. Nov. 26, 2025)
- *Mejia v. Cabezas*, No. CV 25-17094 (RK), 2025 WL 3294405 (D.N.J. Nov. 26, 2025)
- *Centeno Ibarra v. Warden of the Federal Detention Center Philadelphia*, No. CV 25-6312, 2025 WL 3294726 (E.D. Pa. Nov. 25, 2025)

### **Fourth Circuit**

- *Contreras Perez v. Noem*, No. 3:25CV882, 2025 WL 3281774 (E.D. Va. Nov. 25, 2025)
- *Diaz Larios v. Noem*, No. 1:25-CV-01810-AJT-WBP, 2025 WL 3285491 (E.D. Va. Nov. 25, 2025)
- *Hernandez-Lugo v. Bondi*, No. CV GLR-25-3434, 2025 WL 3280772 (D. Md. Nov. 25, 2025)
- *Molina Lopez v. Lyons*, No. 1:25-CV-01838-AJT-IDD, 2025 WL 3285493 (E.D. Va. Nov. 25, 2025)

### **Fifth Circuit**

- *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025)
- *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)

### **Sixth Circuit**

- *Barcenas Garcia v. Raycraft*, No. 1:25-CV-1497, 2025 WL 3454293 (W.D. Mich. Dec. 2, 2025)
- *Calzada Espinosa v. Noem*, No. 1:25-CV-1396, 2025 WL 3455533 (W.D. Mich. Dec. 2, 2025)
- *Palmito Ordonez v. Noem*, No. 1:25-CV-1501, 2025 WL 3454296 (W.D. Mich. Dec. 2, 2025)
- *Farias v. Noem*, No. 1:25-CV-1368, 2025 WL 3439807 (W.D. Mich. Dec. 1, 2025)
- *Martinez Correa v. Raycraft*, No. 1:25-CV-1421, 2025 WL 3442708 (W.D. Mich. Dec. 1, 2025)

#### **Seventh Circuit**

- *Gallegos Valenzuela v. Olson*, No. 25-CV-13499, 2025 WL 3296042 (N.D. Ill. Nov. 26, 2025)
- *De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind. Nov. 25, 2025)
- *Garcia Pacheco v. Olson*, No. 25 C 13405, 2025 WL 3281850 (N.D. Ill. Nov. 25, 2025)
- *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)

#### **Eighth Circuit**

- *Sales Ambrocio v. Noem*, No. 4:25CV3226, 2025 WL 3295530 (D. Neb. Nov. 25, 2025)
- *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)

#### **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)

#### **Tenth Circuit**

- *Espinoza Ruiz v. Baltazar*, No. 1:25-CV-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025)
- *Martinez Diaz v. Holt*, No. CIV-25-1179-J, 2025 WL 3296310 (W.D. Okla. Nov. 26, 2025)
- *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)

**Eleventh Circuit**

- *Ardon-Quiroz v. Assistant Field Director, Krome North Service Processing Center, U.S. Immigration and Customs Enforcement*, No. 25-CV-25290-JB, 2025 WL 3451645 (S.D. Fla. Dec. 1, 2025)
- *B.T.H. v. Warden, Stewart Detention Center*, No. 4:25-CV-387-CDL-AGH, 2025 WL 3455079 (M.D. Ga. Dec. 1, 2025)
- *E.L.D.C. v. Warden, Stewart Detention Center*, No. 4:25-CV-381-CDL-AGH, 2025 WL 3455078 (M.D. Ga. Dec. 1, 2025)
- *F.J.C.F. v. Warden, Stewart Detention Center*, No. 4:25-CV-359-CDL-AGH, 2025 WL 3455077 (M.D. Ga. Dec. 1, 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.

**B. 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.

**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 3, 2025

Respectfully Submitted,  
Eduardo Consuelos Perez

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