IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDWIN AROLDO MASIS LUCERO, Petitioner, v. KEVIN RAYCRAFT[1], Field Office Acting Director of Enforcement and Removal Operations Detroit, United States Immigration and Customs Enforcement, Department of Homeland Security, *et al.*, Respondents.	Case No. 1:25-cv-00823 District Judge Douglas R. Cole Magistrate Judge Elizabeth Preston Deavers

PETITIONER'S RESPONSE TO RESPONDENTS' RETURN OF WRIT

Respondents' return of Petitioner's petition for a writ of habeas corpus attempts to persuade that this honorable Court does not have jurisdiction to decide the legality Petitioner's detention and that administrative exhaustion is required before this Court can determine the legality of Petitioner's detention, neither of which are correct considering the long-established jurisprudence of habeas corpus. Respondents also argue that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225, and thus, there is no due process violation. However, as set forth in detail below, Respondents' interpretation of the applicable statutes is incorrect, and the federal regulations underlying Petitioner's arrest and detention by ICE leave no doubt that his detention is pursuant to 8 U.S.C. § 1226, not § 1225.

[1] Robert K. Lynch is no longer the Field Office Director for ERO, ICE. Kevin Raycraft is currently the Acting Field Office Director for ERO, ICE.

I. 8 U.S.C. § 1226(a) Applies to Petitioner's Detention by ICE

Respondents do not dispute that Petitioner entered the United States without inspection over two years ago, was not apprehended by the DHS at his time of entry and thus is not subject to the expedited removal process of § 1225. It is similarly undisputed that Petitioner is in removal proceedings under 8 U.S.C. § 1229a. Yet, despite Petitioner's continuous residency of approximately eighteen years in the interior of the United States, Respondents attempt to equate Petitioner to the same legal footing as an arriving alien to the United States, who is seeking entry to this country, and is subject to the same mandatory detention provision of 8 U.S.C § 1225(b)(2) as foreign nationals who are in expedited removal proceedings.

Respondents rely upon § 1225(a)(1) to give authority to their supposition that Petitioner is an applicant for admission to the United States, even though he has already been here for almost twenty years; however, Respondents are incorrect that § 1225 applies to Petitioner. Section 1225 is entitled "Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing." The Supreme Court of the United States has held that a statute's "title is especially valuable [where] it reinforces what the text's nouns and verbs independently suggest." *Yates v. United States,* 574 U.S. 528, 552 (Alito, J., concurring in judgment), *cited in Beltran Barrera v. Tindall,* No. 3:25-cv-541-RGJ (W.D. Ky. Sep. 19, 2025), *Cf. Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (relying on section title to help construe statute). The inclusion of the phrases "expedited removal" and "arriving aliens" in the title of the statute means that this statue is limited to "arriving aliens," who are in "expedited removal" proceedings, not those already present in this country who are in non-expedited removal proceedings of 8 U.S.C. § 1229a. *Beltran Barrera, supra, concurring with Pizarro Reyes v. Raycraft,* 2025 WL 2609425 at *5 (E.D. Mich. Sep. 9, 2025).

Moreover, the remainder of the statutory text of § 1225 also supports the interpretation that this statute only applies to foreign nationals who have just arrived to the United States and seeking entry to this country, not those like Petitioner who already live here. The plain text of § 1225 shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)– (b), (d). That section repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4); sets out procedures for "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); and discusses "stowaways, "crewm[e]n," and noncitizens "arriving from contiguous territory." *Id.*§ 1225(a)(2), (b)(2)(B), (b)(2)(C). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the United States border, and not Petitioner who has resided here for nearly two decades before his apprehension by the DHS.

Additionally, the Supreme Court of the United States made clear in *Jennings* that § 1226 is the applicable detention statute for foreign nationals that already live in the United States who are apprehended by ICE and that § 1225 only applies to foreign nationals who are §1225 expedited removal proceedings. The issue before the Court in *Jennings* was not the same issue that is before the Court in this case. The precise issue being decided by the *Jennings* Court was whether § 1226 detention requires Petitioner to be provided with a bond hearing every six months. However, the *Jennings* Court in its analysis of this issue discussed the differences between § 1225 and §1226 detention, and this discussion establishes beyond doubt that the Petitioner in this case is detained pursuant to §1226.

There are three instances where the Supreme Court of the United States in *Jennings* clarifies the issue before this Court in this case: that a foreign national who entered the United States without inspection and already resides here, like Petitioner, is detained pursuant to §1226 and not §1225. The first elucidation that Petitioner is detained pursuant to § 1226 is as follows:

> Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls "within one or more....classes of deportable aliens." § 1227(a). **That includes aliens who were inadmissible at the time of entry** or who have been convicted of certain criminal offenses since admission. See §§ 1227(a)(1), (2).
>
> Section 1226 generally governs the process of arresting and detaining **that group of aliens** pending their removal.

Jennings v. Rodriguez, 138 S. Ct. 830, 837 (2018). *[emphasis added]*

It is undisputed in Petitioner's case that he was inadmissible to the United States at the time of his entry to the United States per 8 U.S.C. § 1182(a)(6)(A)(i) for having entered the United States without inspection. Per 8 U.S.C. § 1227(a)(1)(A), Petitioner is deportable from the United States for being inadmissible at the time of entry. That is why Petitioner is in removal proceedings. As *Jennings* explains, for "that group of aliens," i.e. those who are deportable per § 1227(a)(1), like this Petitioner, § 1226 governs the process of arrest and detention. *Id.*

A couple of paragraphs later, the *Jennings* Court goes on to summarize in very basic, plain, understandable language which foreign nationals are subject to § 1225 detention versus which foreign nationals are subject to § 1226 detention:

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain **certain aliens already in the country** pending the outcome of removal proceedings under §§ 1226(a) and (c).

Id. at 838. *[emphasis added]*.

This explanation by the *Jennings* Court clearly differentiates between foreign nationals seeking admission into the United States and those already in the country, like Petitioner. "Certain aliens already in the country," who are deportable per § 1227(a)(1) for having been inadmissible at the time of their entry, like Petitioner, are detained by the Government under § 1226. *Id.* at 837-838. Finally, the *Jennings* Court explicitly reiterates for a third time that § 1225 does not apply to immigrants who

already reside in the United States, such as Petitioner, "As noted, § 1226 applies to aliens already present in the United States." *Id.* at 846.

Moreover, Congress has recently verified through its passage of the Laken Riley Act that §1226 bond proceedings apply to foreign nationals already residing in the United States prior to their detention. This extremely recent amendment of §1226 further clearly demonstrates that foreign nationals such as Petitioner, who are already residing in the United States, are ***not*** subject to §1225(b)(2) mandatory detention. The Laken Riley Act added additional provisions to §1226(c)(1). *See §1226(c)(1)(E)(i)-(ii).* Specifically, the newly codified §1226(c)(1)(E) provides that the Attorney General shall detain any alien who is inadmissible to the United States under 8 U.S.C. §1182(6)(A) who is also charged with or guilty of certain crimes. *Id.*

The mere existence of the Riley Laken Act resolves the issue before this Court in Petitioner's writ of habeas corpus. It is undisputed that Petitioner is inadmissible to the United States per §1182(6)(A) for having entered the United States without inspection. If foreign nationals who entered the United States without inspection were already subject to the mandatory detention scheme of §1225(b)(2), there would have been no need for Congress to enact the Riley Laken Act to protect United States citizens from the foreign nationals who have entered this country without inspection and have committed certain crimes. Resolving Petitioner's issue here does not require going back to the intent of the 1996 Congress in passing IIRARA. This very same year Congress considered the issue of the detention of foreign nationals who entered without inspection and have committed certain crimes. If detention of these individuals was already required under §1225(b)(2), there would have been no need for Congress to pass the Riley Laken Act. Quite obviously, Petitioner is not subject to the mandatory detention provisions of §1225(b)(2), and per §1226 the Immigration Judge has full legal authority to order Petitioner released from detention on bond.

II. The Applicable Regulations Establish that Petitioner Is Detained Pursuant to § 1226.

Examination of the regulations underlying Petitioner's arrest and detention by ICE also compels the conclusion that § 1226 controls Petitioner's present detention. 8 U.S.C. §1357 covers ICE's authority to interrogate and arrest foreign nationals without a warrant. §1357(a)(1) permits the warrantless interrogation of foreign nationals regarding their right to be present in the United States, and then §1357(a)(2) provides that officers may then arrest any foreign national without a warrant if the officer has reason to believe that the individual is present in violation of the law and likely to escape before a warrant can be obtained.

After the warrantless arrest is effectuated under the authority of 8 U.S.C. §1357(a)(2), then 8 C.F.R. § 287.3 comes into play: "Disposition of cases of aliens arrested without warrant." Per 8 C.F.R. §287.3(d) Custody procedures, a decision will then be made as to "whether a notice to appear and a warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued."

8 C.F.R. § 236.1 makes clear that Petitioner is detained pursuant to 8 U.S.C. § 1226. 8 C.F.R. § 236.1 is entitled "Apprehension, custody, and detention." 8 C.F.R. § 236.1(c) is "Custody issues and release procedures." 8 C.F.R. § 236.1(c)(8) provides:

> Any officer authorized to issue a warrant of arrest **may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act, under the conditions at section 236(a)(2) and (3) of the Act**; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding. *[emphasis added].*

Moreover, 8 C.F.R. § 236.1 requires obligatory ICE forms to be produced which further illuminate the fact that Petitioner is detained by ICE pursuant to its authority per 8 U.S.C. § 1226, Section 236 of the Immigration and Nationality Act. 8 C.F.R. § 236.1(b) Warrant of arrest, provides for the

issuance of Form I-200, Warrant of Arrest, while §236.1(g)(1) provides for issuance of a Form I-286, Notice of Custody Determination. Petitioner's counsel is not in possession of forms I-200 and I-286 for this case, yet they are in Respondents' possession. For illustrative purposes, Petitioner is attaching redacted forms I-200 and I-286 from a different foreign national's case. *See* Ex. A, I-200, Warrant for Arrest of Alien. *Also see* Ex. B, I-286, Notice of Custody Determination.

Both forms I-200 and I-286 specify that the foreign national was taken into custody by ICE as authorized by section 236 of the Immigration and Nationality Act. Petitioner respectfully requests that the Court give careful consideration to Exhibit B because, although it was issued in a different foreign national's case, Exhibit B was issued on October 24, 2025, by the ICE Sub Office of Westerville, Ohio, which is the same ICE office that arrested Petitioner on or around the same date. Therefore, Petitioner has very good reason to believe that the I-286 issued in his case also informs us that ICE detained him pursuant to its authority of section 236 of the Immigration and Nationality Act.

III. Petitioner's Detention Violates Due Process.

As set forth above, the Immigration Judge's decision in this case that she does not have the legal authority to determine bond in Petitioner's case is clearly unlawful and violates Petitioner's fundamental due process right. The Due Process Clause extends to Petitioner even though he does not presently have a lawful status in the United States. *A.A.R.P. v. Trump,* 605 U.S. 91, 94 (2025), *cited in Morales Chavez v. Director of Detroit Field Office, et al.,* No. 4:25-cv-02061-SL (N.D. of Ohio, Oct. 20, 2025). Petitioner's status as removable from the United States per §§1182(6)(A) and 1227(a)(1) does not outweigh his constitutionally protected interest in his personal liberty. *Rosales-Garcia v. Holland,* 322 F.3d 386, 408 (6th Cir. 2003), *cited in Morales Chavez, supra.* The process due here is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical

detention by one's own government." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Petitioner is limited to ensuring his appearance at future immigration proceedings and preventing danger to the community.

IV. Exhaustion of Administrative Remedies Is Not Applicable to Unlawful Detention

Requiring Petitioner to file to the Board of Immigration Appeals an appeal of the Immigration Judge denial of his bond would be futile. The Immigration Judge denied bond stating that she does not have authority to determine bond per *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision was made despite the fact that Petitioner's bond hearing took place after the decision was issued in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL [MSJ Order] (C.D. Cal. Nov. 20, 2025), whereby the Court certified a nationwide class and expressly extended its prior declaratory relief to all class members, which should include Petitioner.

The Board of Immigration Appeals has made its position clear through its precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that noncitizens who entered without inspection are subject to mandatory detention under § 1225(b)(2)(A). The Board of Immigration Appeals cannot be expected to reverse its own precedential decision, particularly when the agency coordinated with the Department of Homeland Security in establishing this novel policy of depriving foreign nationals who entered without inspection of their right to a bond proceeding.

Cases before the BIA often languish for years. At the end of Fiscal Year 2024, there were 50,419 appeals filed, only 44,785 appeals completed, leaving 138,680 appeals pending before the Board. As of the third quarter of Fiscal Year 2025, there were 72,200 appeals filed, only 23,889 appeals completed, and 186,473 appeals pending.[1] This massive backlog was exacerbated by the administration's recent downsizing of the Board from 28 to only 15 members by interim final rule published on and effective as of April 15, 2025 (90 FR 15525, 4/14/25).

Courts have recognized that exhaustion may be waived when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Furthermore, exhaustion may be waived when "the legal question is fit for resolution and delay means hardship." *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000), *cited in Singh v. Lewis, et al,* No. 4:25-cv-96-RGJ (W.D. Ky, Sep. 22, 2025). Prudential exhaustion may be required by the Court if 1) agency expertise is necessary to generate a record; 2) not requiring exhaustion would incentivize bypassing the administrative scheme; and 3) administrative renew would likely preclude the necessity of judicial review as the agency could correct its own errors. *Lopez-Campos v. Raycraft,* 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025), *cited in Singh v. Lewis, et al,* No. 4:25-cv-96-RGJ (W.D. Ky, Sep. 22, 2025).

Here, as in *Singh, supra,* the record in the case clearly indicates that prudential exhaustion is not required. The issue before the Court is whether §1225 or 1226 controls Petitioner's ability to be considered released on bond. No further development of the record is needed, as this is solely a legal issue of statutory interpretation. *Id.* Moreover, the violation of Petitioner's due process is a constitutional question that the Board of Immigration Appeals does not have the authority to decide, and the Sixth Circuit has thus held that exhaustion is not necessary in this context. *Sterkaj v. Gonzalez,* 439 F.3d 273, 279 (6th Cir. 2006), *cited in Singh, supra.* Finally, as set forth above, exhaustion would be futile because the Board of Immigration Appeals would follow its own newly issued, binding precedent of *Yajure Hurtado.* The federal district courts within the Sixth Circuit that have already considered this exact same issue have held that exhaustion is not required, and the same should be held here.

V. This Court Has Jurisdiction Over Petitioner's Petition for Writ of Habeas Corpus

While this Court would not have jurisdiction to review Petitioner's removability from the United States, there is no doubt that jurisdiction is proper over Petitioner's petition for writ of habeas corpus to determine the legality of his detention by ICE. *See Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 117 (2020). (Habeas corpus is the correct remedy to determine whether a foreign national's detention is lawful).

VI. Conclusion

Petitioner is being detained unlawfully by ICE under an unlawful interpretation of the Immigration and Nationality Act, in clear violation of Congressional intent as well as the applicable federal regulations. 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner, and the Immigration Judge does have authority to release him on bond per § 1226. This Court has jurisdiction over Petitioner's habeas corpus case, and administrative exhaustion should not be required considering its futility in this unique situation, as well as the fundamental due process liberty interest at stake.

DATED this 17th day of December of 2025.

Respectfully Submitted,

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