

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
OWENSBORO DIVISION

GREGORIO MONTES RAMIREZ,

Petitioner,

V.

MIKE LEWIS, Jailer, Hopkins County Jail  
TODD M. LYONS, Acting Director, U.S.  
Immigration and Customs Enforcement;  
SANUEL OLSON Chicago Field Office  
Director for Detention and Removal  
Operations, Immigration & Customs  
Enforcement,  
KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security; and  
PAMELA BONDI, Attorney General of the  
United States,

Respondents.

CIVIL ACTION NO. 4:25-CV-143-RGJ

**PETITIONER'S REPLY BRIEF**

**I. 8 USC 1252(b)(9) Does Not Limit this Honorable Court's Jurisdiction to Review Petitioner's Unlawful Detention**

In the present case, Petitioner is challenging his unlawful detention, not his removal proceedings. Respondent argues that Section 1252(b)(9) bars this Court from any action related to the government's attempt to remove an alien from the United States. Whether or not this Court can consider a challenge to the legality of a person's detention under Section 8 USC § 1225 or § 1226 is fairly settled in the Western District of Kentucky as explained most recently in *Del. Villar v. Noem*, No. 4:25-CV-00137-GNS, 2025 LX 540127 (W.D. Ky. Nov. 19, 2025) Citing *Hamdi ex rel. Hamdi v. Napolitano*, 620 F.3d 615, 626 (6<sup>th</sup> Cir. 2919), the Court noted:

Although § 1252(b)(9) has been described as the "unmistakable 'zipper' clause," its scope reaches only claims for judicial review "arising from any action taken or proceeding brought to remove an alien." The Supreme Court has contrasted § 1252(b)(9) with § 1252(g), stating that § 1252(b)(9) is a broader jurisdictional limitation for review of the legality of final orders of removal than § 1252(g) and demonstrates "the normal manner of imposing such a [general jurisdictional] limitation" for "all claims arising from deportation proceedings." "By its terms, the provision aims to consolidate 'all questions of law and fact' that 'arise from' either an 'action' or a 'proceeding' brought in connection with the removal of an alien."

*Id.* at 6. Several courts in this circuit have already rejected Respondent's argument that such challenges to detention are barred by 8 U.S.C. § 1252(b)(9). See *Alonso v. Tindall*, No. 3:25-CV-00652-DJH, 2025 WL 3083920, at \*2 n.5 (W.D. Ky. Nov. 4, 2025) ("[T]he Supreme Court has held that § 1252(b)(9) does not prohibit courts from hearing cases challenging whether bond hearings are required in removal proceedings. (citing *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018). And '[t]he Suspension Clause precludes 8 U.S.C. § 1252(a) from stripping the Court of jurisdiction to address a habeas petition presenting a constitutional claim.'" (alteration in original) (quoting *Dornveil v. Noem*, No. 4:25-CV-1809, 2025 WL 2720786, at \*2 (N.D. Ohio Sep. 24, 2025))); *Patel v. Tindall*, No. 3:25-CV-373-RGJ, 2025 WL 2823607, at \*2 (W.D. Ky. Oct. 3, 2025) ("Patel states that he is challenging his detention, not the IJ's decision, nor his removal. Because of that, this Court has jurisdiction to review the constitutionality of Patel's detention."); *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at \*3 (W.D. Ky. Sept. 4, 2025)

## **II. Petitioner's Detention is in Violation of Both 8 U.S.C. 1226(a) and The Due Process Clause**

While DHS argues that Petitioner is detained under Immigration and Nationality Act, Section 1225(b)(2), this Section does not apply to individuals like Mr. Montes Ramirez who entered the United States two decades ago and who were apprehended hundreds of miles from

any boarder or port of entry. See *Lopez v. Olson*, No. 3:25-cv-654-DJH, 2025 LX 511860 (W.D. Ky Nov. 18, 2025). See also *Alonso*, 2025 WL 3083920. Like the petitioner in *Alonso*, Mr. Montes Ramirez was arrested and detained on a warrant issued by the Attorney General, and the warrant indicated he was arrested and detained pursuant to Section 1226(a) and not Section 1225(b)(2) as Respondents assert in the present case. The warrant cited one section of the law, but Respondents argue detention was actualized under a different section of the law. The Court in *Alonso* refused to credit Respondents for their “post-hoc justification,” stating that “[A]n agency must defend its actions based on the reasons it gave when it acted.” *Alonso*, 2025 LX 404174, at \*20 (citing *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020)). Here, Petitioner is unlawfully detained under Section 1226(a) and is therefore eligible for a bond hearing.

Respondents instead focus their argument on how Petitioner must be considered an “applicant for admission” even though he is not seeking admission at a border or port of entry. Most recently this Court relied on a sister court’s explanation to explain why an application for admission is not necessarily “seeking admission.”

[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" Against this backdrop, the Court finds it particularly doubtful that Congress intended section 1225(b)(2)(A) to apply to non-citizens . . . detained while "present in the United States.

*Del. Villar*, 2025 LX 540127, at \*13 (citing *Martinez v. Hyde*, 792 F. Supp. 3d 211, 222 (D. Mass. 2025)).

The Court in *Del Villar* adopted the rationale of sister courts within the sixth circuit, including this Court by holding that Section 1225(b)(2) does not apply to noncitizens arrested on

a warrant while residing in the United States. *Id. Reyes v. Raycraft*, No. 25-cv-12546, 2025 LX 332553 (E.D. Mich. Sep. 9, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*6 (E.D. Mich. Aug. 29, 2025).

Petitioner is detained pursuant to Section 1226(a) and Respondents have refused to conduct an individualized assessment on his eligibility for release on bond as required by the statute. If the Immigration Judge would hold a bond hearing in Petitioner's case, Petitioner would be able to testify under oath that he: 1) desperately wants to be home with his three U.S. citizen children, 2) does not have any criminal convictions other than the misdemeanor driving without a license, and 3) has not been charged with driving under the influence. He is therefore not a flight risk or a danger to the community and is eligible for immediate release.

DHS and the immigration judge's refusal to grant a bond for Mr. Montes Ramirez violates due process under the Fifth Amendment. As this Court has recognized in prior decisions, the Fifth Amendment's Due Process Clause "extends to all persons, including noncitizens, regardless of immigration status and in the context of removal proceedings." See *Lopez*, 2025 LX 511860 at 10 (citing *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Alonso*, 2025 LX 404174 at 20. To determine whether civil detention violates due process, the Court uses the 3-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Court must therefore weigh: 1) the private interest affected by the official action 2) risk of erroneous deprivation of such interest through the procedures used and the probable value of additional procedural safeguards; and 3) the U.S. interest in the burdens of additional or substitute procedural safeguards. *Id.* at 335.

Here, Mr. Montes Ramirez has a significant private interest in not being detained. Second, the risk of erroneous deprivation of his freedom is high if the immigration judge fails to

assess his risk of flight or danger to the community. Third, a routine 30-minute bond hearing presents minimal fiscal and administrative burdens on the government. See similar analysis in *Alonso*, 2025 LX 404174 at 21.

**III. This Court Can Release Petitioner Prior to the Immigration Judge Entertaining a Bond Hearing**

At a minimum, Petitioner has demonstrated his petition raises serious legal questions regarding the applicability of Section 1225(b)(2) to his situation and that his ongoing detention violates his procedural due process rights under the Fifth Amendment. Petitioner has also demonstrated a likelihood of irreparable injury in the absence of temporary relief. Deprivation of constitutional rights unquestionably constitutes irreparable injury. A TRO immediately releasing Petitioner is appropriate to return him to the status quo while the potential harm to the government is minimal. If the government ultimately prevails, at most it faces a short delay in detaining Petitioner which is minimal harm.

**CONCLUSION**

Mr. Montes Ramirez's detention is unlawful and immediate habeas relief is required. In the alternative, Mr. Montes Ramirez requests this Honorable Court grant him a Temporary Restraining Order, enjoining the government from continued and unconstitutional detention.

Dated: November 21, 2025

Respectfully Submitted,

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