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INTRODUCTION

Petitioner, Ronald Ernesto Vasquez-Colocho, respectfully submits this response to Respondents' ("Government") Answer to the Petition for Writ of Habeas Corpus ("Petition"). The Court should grant habeas relief for the following reasons. First, the Government does not dispute the critical facts in this case and there are no material issues in dispute with regard to Petitioner's immigration history. However, the Government misreads the Petition as a challenge to Petitioner's post-final order of removal detention under 8 U.S.C. § 1231(a)(6). However, Petitioner is not detained under section 1231(a)(6). He is detained under pre-final order of removal provisions of 8 U.S.C. 1226(a). This is because Petitioner's detention status reverted to pre-final order of removal once the Third Circuit Court of Appeals issued a stay of removal in connection with his Petition for Review ("PFR"). It is well-established that such stays of removal have the effect of switching a noncitizen's detention status.

Second—since Petitioner's detention has reverted—it is uncontested that Petitioner is subject to section 1226(a) detention and is entitled to release. Petitioner has no criminal history that could render him subject to mandatory detention under section 1226(c), and he is not "arriving alien" or an "applicant for admission" who is "seeking admission" that would subject him to mandatory detention under section 1225(a)(1) or 1225(b)(2). As such, Petitioner can only be subject to the general discretionary detention provisions of section 1226(a). The Government makes no arguments with regard to this issue and only assumes that Petitioner is subject to post-final order detention under section 1231(a)(6).

Third, even if Petitioner was detained under section 1231(a)(6) (which he is not), his detention has become prolonged and the Government cannot demonstrate a significant likelihood of removal in the foreseeable future.

ARGUMENTS

I. THE GOVERNMENT DOES NOT DISPUTE THE CRITICAL PROCEDURAL FACTS AND MISREADS THE PETITION AS ASSUMING PETITIONER IS DETAINED UNDER THE POST-FINAL ORDER DETENTION PROVISIONS OF 8 U.S.C. § 1231 INSTEAD OF 8 U.S.C. § 1226(a)

The Government does not dispute that Petitioner “entered the United States in 2015 without inspection” (ECF No. 5 at p. 1) and that he was initially ordered removed on March 26, 2018 by an Immigration Judge (“IJ”). The Government does not dispute that Petitioner appealed that decision to the Board of Immigration Appeals (“BIA”), and that the BIA issued upheld the IJ’s decision on April 13, 2018. The Government further concedes that Petitioner was detained on August 11, 2025 and filed a motion to reopen his removal proceedings with the BIA on August 27, 2025. *See id.*¹

The Government acknowledges that the BIA denied the motion to stay removal on September 10, 2025 with a four-sentence order that did not mention any facts or law, and that the BIA did not make a decision on the merits of the motion to reopen. The merits of the motion to reopen remain pending with the BIA, with no timeline for when an adjudicated can be expected.

The Government acknowledges that Petitioner filed a PFR on September 23, 2025, along with a motion to stay removal. On the same date, the Third Circuit granted the temporary stay of

¹ As set forth in the Petition, the basis for the motion to reopen was that “Petitioner’s circumstances have materially changed and that he is now eligible for a new form of relief. He continuously resided in the United States for more than 10 years as of March 20, 2025, thereby satisfying the statutory physical presence requirement for cancellation of removal under INA 240A(b)(1). In addition, Petitioner is the father of two U.S. citizen children, including a daughter born in 2022 who suffers from autism spectrum disorder, global developmental delay, mixed-receptive-expressive language disorder, and sensory processing disorder. Petitioner contended in his motion that this made his daughter dependent on him for caregiving, emotional stability, and financial support, thereby satisfying the hardship element required for cancellation of removal relief. In addition, Petitioner’s motion contended that reopening was warranted because the NTA was defective.” *See* ECF No. 1 ¶ 17.

removal until such time a full panel could consider the motion. As of the date of this filing, the Third Circuit stay of removal remains in place and the PFR remains pending.

While the Government concedes all of these points, it misreads the Petition and Petitioner's detention authority. The Government claims that "Petitioner cannot show that his detention under § 1231(a)(6) is unlawful." ECF No. 5 at p. 2. With regard to the effect of the Third Circuit stay of removal order, the Government states that "[t]here is no indication here that El Salvador Consulate will not, or cannot, provide travel documents." *Id.* at p. 4. However, the Government does not consider the fact that Third Circuit's stay of removal order had the effect of reverting Petitioner's detention from section 1231(a)(6) to section 1226(a).

Generally speaking, the INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2). Finally, the INA also provides for detention of noncitizens who are subject to final orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

The Government assumes Petitioner is subject to post-final order detention under section 1231 because he was ordered removed by an IJ on March 26, 2018, and that decision was upheld by the BIA on April 13, 2018. While that would normally be correct, the Government does not

appreciate that Petitioner's status reverted to his pre-final order detention once he was issued a stay of removal by the Third Circuit. "Once an alien is subject to an administratively final removal order, his detention is authorized by 8 U.S.C. § 1231(a) *unless and until the alien seeks judicial review of his removal order and the court of appeals having jurisdiction over his petition for review grants him a stay of removal.*" *Jean A. v. Dep't of Homeland Sec.*, Civil Action No. 19-13951 (SDW), 2019 U.S. Dist. LEXIS 204986, at *4 (D.N.J. Nov. 26, 2019) (emphasis added); *see also* 8 U.S.C. § 1231(a)(1)(B)(ii) (delaying start of § 1231 detention where "the removal order is judicially reviewed and . . . a court orders a stay of the removal of the alien"); *Leslie v. Attorney General of the United States*, 678 F.3d 265, 268–70 (3d Cir. 2012); *Brodyak v. Davies*, No. 14-4351, 2015 U.S. Dist. LEXIS 31898, 2015 WL 1197535, at *2 (D.N.J. March 16, 2015). Therefore, "If the alien seeks, and is granted, a stay by the Court of Appeals, his detention reverts to pre-final order status, and the alien returns to detention pursuant to 8 U.S.C. § 1226." *Jean A.*, 2019 U.S. Dist. LEXIS 204986, at *5 (D.N.J. Nov. 26, 2019).

This makes sense "because the statutory language on which the Third Circuit based its decision in *Leslie* is clear that the start of the removal period, and in turn the onset of § 1231 detention will only be delayed if an alien's removal order is judicially reviewed and 'a court orders a stay of the removal order.'" *Id.* (quoting 8 U.S.C. § 1231(a)(1)(B)(ii)). Indeed, it makes no sense that Petitioner would remain subject to post-final order detention under section 1231(a)(6) if there is a legal impediment to his removal, such as the Third Circuit stay of removal in this case. For that reason, the Government's argument that Petitioner remains detained under section 1231(a)(6) is without merit. The Government claims that there is no indication that El Salvador cannot provide travel documents for Petitioner to be removed and that "Petitioner has provided no evidence of his own mandatory efforts to obtain travel documents . . .

. .”). ECF No. 5 at p. 4. However, the Government conflates the likelihood of removal under section 1231(a)(6) with the fact that Petitioner cannot legally be removed from the United States, which is precisely why his status has, by operation of law, reverted to pre-final order authority for detention.

II. IN LIGHT OF THE FACT THAT PETITIONER’S DETENTION HAS REVERTED TO PRE-FINAL ORDER, 8 U.S.C. § 1226(a) APPLIES AS THE GOVERNING DETENTION AUTHORITY

The Government does not take any position as to what Petitioner’s detention authority is if his detention reverted from post to pre-final order of removal. *See Santana-Rivas v. Warden of Clinton Cty. Corr. Facility*, No. 3:25-CV-01896, 2025 LX 523492, at *6 (M.D. Pa. Dec. 8, 2025) (noting Government argument was waived “because it was not raised in the response to [petitioner’s] petition.”). For the completeness of the record, Petitioner reiterates that his detention is governed by 8 U.S.C. § 1226(a). Petitioner has no criminal history, let alone any that would subject him to mandatory detention under section 1226(c). He is also not an “arriving alien” that would subject him to mandatory detention under section 1225(a)(1).² The only other alternative is mandatory detention under section 1225(b)(2)(A) as an “applicant for admission” who is “seeking admission.” DHS radically changed its position regarding the statutory interpretation this statute and now considers all noncitizens—except those who were admitted to the United States—to be ineligible for bond under this section. The BIA adopted that position in its September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This

² “An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.” This does not apply to Petitioner because he entered without parole or inspection.

has left millions of noncitizens who were previously eligible for bond now subject to mandatory detention.

This issue has led to extensive habeas litigation across the nation. This Court, along with what appears to be every other court in the District of New Jersey, has rejected the Government's reading of section 1225(b)(2)(A). *See Lemu v. Soto*, No. 25-17098 (RMB), 2025 LX 560687 (D.N.J. Dec. 3, 2025); *see, e.g., Valerio v. Joyce*, Civil Action No. 25-17225 (ZNQ), 2025 LX 521517, at *7 (D.N.J. Nov. 21, 2025); *Rivera v. Zumba*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *8 (D.N.J. Sept. 26, 2025); *Bethancourt Soto v. Soto*, No. 25-CV-16200 (CPO), 2025 WL 2976572, at *6 (D.N.J. Oct. 22, 2025); *Lomeu v. Soto*, No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025); *Buestan v. Chu*, No. 25-16034 (MEF), 2025 WL 2972252, at *1 (D.N.J. Oct. 21, 2025). For the reasons set forth in this Court's decision in *Lemu*, the Court should again join the chorus of cases across the country and find that section 1226(a) is the applicable statute of detention.

III. EVEN ASSUMING PETITIONER IS DETAINED UNDER 1231(a)(6), HIS DETENTION IS UNCONSTITUTIONAL

As noted above, the Government assumes Petitioner is still subject to post-final order detention, even though he is not. Nonetheless, even assuming Petitioner was detained under section 1231(a)(6), his detention would still be unlawful because the Government cannot establish a significant likelihood of removal in the reasonably foreseeable future. The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) established a presumptively reasonable six-month period of detention for noncitizens detained under section 1231(a)(6). However, *Zadvydas* left open the question of whether that six-month period begins after the order of removal becomes administratively final, or after Petitioner is detained following the entry of an administratively final order of removal. The Government acknowledges Judge Padin's decision

in *Tadros v. Noem*, No. 25-4108 (EP), 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) rejecting argument that a *Zadvydas* claim was premature and holding that timing of *Zadvydas* six-month period began when order of removal became final, not when a noncitizen subject to a final order of removal is redetained. This Court should adopt the holding of *Tadros* if it finds that Petitioner is detained under section 1231(a)(6). Petitioner's order of removal was administratively final in April 2018 when the BIA upheld the IJ's order of removal, yet the Government did not detain Petitioner until August 2025. Clearly more than six-months have elapsed. The Government cites to *Joseph v. United States*, 127 F. App'x 79, 81 (3d Cir. 2005) and *Resil v. Hendricks*, No. 11-2051, 2011 WL 2489930, at *5 (D.N.J. June 21, 2011) for the proposition that Petitioner has produced no evidence that El Salvador is unwilling to produce the necessary travel documents for his removal. However, these cases concern factually distinguishable scenarios, and the Government does not address the bigger issue in this case, which is that Petitioner's removal is impeded not by the Petitioner, but by the Third Circuit's order staying removal. The Government cannot characterize this legal impediment to removal as Petitioner's refusal to cooperate with his own removal efforts.

IV. THE PROPER REMEDY IS RELEASE OF PETITIONER FROM DETENTION

A habeas court has "the power to order the conditional release of an individual unlawfully detained." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Several courts have granted release from detention as opposed to ordering a bond hearing, including the court in *Zumba* where the Petitioner did not even complete a bond hearing before an IJ before his detention. *See Zumba*, 2025 LX 482036 at *32 (holding that "habeas does not provide meaningful relief with respect to some of the indignities petitioner has endured But due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to

her unlawful detention. The Court finds that release from detention is the appropriate relief”); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX 452767, at *23 (E.D. Cal. Sep. 23, 2025) (“[g]iven that the government does not assert any other basis for petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate remedy is petitioner's immediate release.”). The Government has already violated Petitioner's constitutional rights by continuing to detain him despite an IJ's finding that he should be released on bond. The Government does not contend (nor could they) that Petitioner is somehow a danger to the community or a risk of flight. Therefore, release is warranted.

CONCLUSION

For the foregoing reasons, the Court should grant habeas relief.

Respectfully submitted on 15th day of December 2025

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