UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

JOSE MIGUEL JIMENEZ, Petitioner, v. SAMUEL OLSON Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, in his official capacity; KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; PAMELA BONDI, U.S. Attorney General, in her official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; MIKE LEWIS, Hopkins County Jail Jailer in his official capacity, Respondents.	Case No. 4:25-cv-00147-BJB

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner has lived in the United States for approximately 14 years, cumulatively, and was arrested during a sweeping raid on a residential building in Chicago, Illinois on September 30, 2025. As he was present within the United States at the time of his arrest and has never sought admission, 8 U.S.C § 1226 should govern his detention. Respondents, however, erroneously insist that he is "seeking admission" and, therefore, subject to 8 U.S.C. § 1225(b)(2)'s mandatory

detention provision. After Petitioner submitted his Petition for Writ of Habeas Corpus ("Pet.") (Dkt. 1) on November 17, 2025, Respondents moved to dismiss the action, arguing in part that this Court lacks jurisdiction to consider the petition, that Petitioner is correctly detained under 8 U.S.C. § 1225(b)(2), and that his due process rights begin and end with 8 U.S.C. § 1225(b)(2). Although these arguments appear distinct, they rely on a misreading of sections 1225(b)(2) and 1226 and the mistaken premise that Petitioner is challenging his removal proceedings. Rather, Petitioner challenges the statutory authority being used to detain him without bond. As Petitioner is detained in violation of the Immigration Naturalization Act and the Constitution, the Court should order his immediate release or, in the alternative, require Respondents to provide him with a prompt bond hearing pursuant to 8 U.S.C. § 1226.

ARGUMENT

I. THIS COURT HAS JURISDICTION TO CONSIDER THIS HABEAS PETITION.

A. 8 U.S.C. § 1252(b)(9) and (g)'s jurisdictional bars do not apply as Petitioner's claim of unlawful detention does not arise from Respondents' commencement of removal proceedings.

Respondents' argument that section 1252(g) bars this Court from considering this Petition is based on the incorrect premise that this action arises from the government's decision to commence removal proceedings. Rather, Petitioner challenges his detention without bond under 8 U.S.C. § 1225. Specifically, the instant petition contests Respondents' improper application of section 1225 to mandatorily detain individuals like Petitioner who are not seeking admission.

As Respondents acknowledge and the Supreme Court has held, section 1252(g) is narrow. "That provision limits review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders,'" and the Court has "rejected as 'implausible'" any claim that it covers "all claims arising from deportation proceedings." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). Section 1252(g) states (emphasis added):

> 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.**

The statute makes clear that the jurisdictional bar only applies to claims arising from three specific situations – none of which apply here.

Respondents insist that their decision to detain Petitioner arises from the decision to initiate removal proceedings despite the fact that they detained him prior to commencing removal proceedings, issuing an Notice to Appear, or an arrest warrant. Further, courts have overwhelmingly held that challenges to the legality of a noncitizen's detention are distinct from removal-based claims and, therefore, not barred by section 1252 (g). *See e.g. Singh, v. Lewis, et al.,* Civil Action No. 4:25-CV-133-DJH, 2025 WL 3298080, at *2 (W.D. Ky. Nov. 26, 2025) ("…Singh asks the Court to review his detention without the opportunity for release on conditional parole or bond . . . which is not prohibited under § 1252(g)."); *Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018) (acknowledging that "the district court had jurisdiction over the detention-based claims and that this jurisdiction is an independent consideration that is not tied to whether the district court has jurisdiction over the removal-based claims"); *Carrera-Valdez v. Perryman,* 211 F.3d 1046, 1047 (7th Cir. 2000) ("nothing in § 1252(g) precludes review of the decision to confine").

The Western District of Kentucky has recently rejected Respondents' perspective in a case strikingly similar to the instant case. Like Respondents here, the respondents in *Alonso v. Tindall* argued the court lacked jurisdiction under 8 U.S.C. § 1252(b)(9) and (g) to review a habeas corpus petition because their decision to detain the petitioner "arose from the commencement of his

removal proceedings", therefore falling under section 1252(g)'s jurisdictional bar. Civil Action No. 3:25-CV-652-DJH, 2025 WL 3083920 at *2 (W.D. Ky. Nov. 4, 2025). The court disagreed, finding that a "claim of unlawful detention does not arise from the commencement of removal proceedings 'within the meaning of § 1252(g) simply because the claim[] relate[s] to that discretionary, prosecutorial decision.'" *Alonso*, 2025 WL 3083920, at *2 (quoting *Ozturk v. Hyde*, 136 F.4th 382, 397 (2d Cir. 2025). The court was also unpersuaded by the cases offered by the respondents, calling them "inapposite". Several of those cases, including *Karki v. Jones*, No. 25-3440, 2025 U.S. App. LEXIS 20660, at 8-9 (6th Cir. Aug. 13, 2025) ("noncitizen challenging enforcement of his removal order did 'not seek 'core' habeas relief: relief from his detention'"), *Tsering v.* ICE, 403 F. App'x 339, 343 (10th Cir. 2010) ("noncitizen [brought] a claim 'directly and immediately connected to the execution of his removal order'"), *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("noncitizen's 'removal [was] fully adjudicated, and ICE [had] already released him from custody'"), are cited by Respondents and are similarly misapplied. *Alonso*, 2025 WL 3083920, at *2; *see* Respondents' Motion to Dismiss and Response to Order to Show Cause ("MTD") at 5-6 (Dkt. 11).

Respondents' argument that this Court lacks jurisdiction to hear this petition rests on the mistaken belief that the decision to detain Petitioner arose from the commencement of his removal proceedings. However, Respondents confuse the order of events that led to the removal proceedings against Petitioner. Respondents detained Petitioner on September 30, 2025, the day *before* a Notice to Appear ("NTA") was issued. [1] His detention, therefore, is not "directly and immediately" connected with the commencement of Petitioner's removal proceedings – a point

[1] In their Motion to Dismiss, Respondents mistakenly state the decision to detain Petitioner was prompted by the August 4, 2025 issuance of a NTA. MTD at 6. Petitioner received his NTA on October 1, 2025, when he was already in custody.

fundamental to Respondents' argument. MTD at 6. Therefore, even if Respondents were correct that claims of unlawful detention "arise" from the commencement of removal proceedings, 1252(g)'s jurisdictional bar could not apply here as Petitioner was detained the day *before* a NTA was issued.

Respondents argue that Petitioner's claim requires the Court to answer legal and factual questions arising from "action taken or proceeding brought to remove" him and, therefore, are subject to 8 U.S.C. § 1252(b)(9)'s jurisdictional bar. MTD at 7 (quoting 8 U.S.C. § 1252(b)(9)). Once again, their argument rests on the mistaken premise that Petitioner is challenging his removal proceedings. Instead, Petitioner challenges the use of section 1225 to mandatorily detain him.

Section 1252(b)(9) precludes courts from making factual determinations that should be left to DHS. It does not reach "claims that are independent of, or wholly collateral to, the removal process," or that bear "only a remote or attenuated connection to the removal of a[] [noncitizen]." *Aguilar v. ICE*, 510 F.3d 1, 10-11 (1st Cir. 2007). As Respondents correctly note, the Supreme Court has rejected an overbroad application of section 1252(b)(9), stating in *Jennings* that the statute "does not present a jurisdictional bar" where those bringing suit "are not asking for review of an order of removal," "the decision to detain them in the first place or to seek removal," or "the process by which their removability will be determined." *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018). Like the petitioner in *Jennings*, Mr. Jimenez does not challenge his removal here, nor does he challenge the decision to detain him. He instead challenges the misapplication of section 1225 and his continued detention without a bond hearing. section 1252(b)(9)'s jurisdictional bar, therefore, does not apply here.

II. PETITIONER HAS CLEARED HIS BURDEN OF PROOF TO SHOW UNLAWFUL DETENTION.

A. Petitioner is incorrectly detained under 8 U.S.C. § 1225(b)(2).

Respondents argue that Petitioner is seeking admission and is therefore lawfully detained under 8 U.S.C. § 1225(b)(2)'s mandatory detention provisions. MTD at 11-14. Respondents bolster their misapplication of section 1225 by citing *Jennings*, which itself draws the distinction between section 1225(b)(2) and 1226. 583 U.S. at 289 (explaining that section 1225 authorizes the Government "to detain certain [noncitizens] seeking admission into the country," while section 1226 "authorizes the Government to detain certain [noncitizens] already in the country.").

Respondents' reasoning fails as Petitioner is not seeking admission. As courts across this country, including in this District, have held, noncitizens whose detention relates to neither their entry into the country nor an application for admission are not "seeking admission" and, therefore, not subject to section 1225(b)(2). Respondents try to torture a novel definition out of section 1225(b)(2) that would give it sweeping authority to cover individuals, like Petitioner, who have not sought admission and whose detention occurred without connection to their entry into the United States. Respondents attempt to circumvent section 1225(b)(1)'s "seeking admission" requirement by claiming there is no distinction between the term "seeking admission" and the term "applicant for admission." MTD at 18. This position, however, "'completely ignore[s],' or even read[s] out[] the term 'seeking' from 'seeking admission.'" *Barrera v. Tindall*, Civil Action No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025). The court *in Barrera* noted that "'seeking' implies action" and that those who have been "present in the country for years . . . are not actively 'seeking admission.'" *Id.*; *Avila v. Bondi*, Civil No. 25-3741 (JRT/SGE), 2025 WL 2976539, at *5 (D. Minn. Oct. 21, 2025) ("The problem with Respondents' argument is that it ignores the phrase 'seeking admission' found in § 1225(b)(2), which implies a current action.").

Respondents' argument that Petitioner is seeking admission is contrary to both common sense and the interpretation of section 1225(b)(2) favored by the majority of courts. Unable to produce binding opinion to support their position that noncitizens arrested in the interior after several years in the country are "seeking admission" under section 1225(b)(2), Respondents offer a case from the Eastern District of Missouri (*Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025)), and one from the Eastern District of Wisconsin (*Rojas v, Olson*, Case No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025). The *Olalde* court relied on a reading of the statute that collapses the terms "applicant for admission" and "seeking admission". *Mejia Olalde*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (reasoning that "all 'applicants for admission' are 'seeking admission' because [the phrase 'or otherwise seeking admission'] recognizes that there are other ways to seek admission besides being an 'applicant for admission.'") (cleaned up). As described above, such a reading makes no sense when referring to noncitizens, like Petitioner, who were already in the United States at the time of their arrest and detention. Further, as other courts have explained, reading the categories as equivalent misunderstands "how lists work [and] how the word 'or' works." *J.G.O. v. Francis*, 25-cv-7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025). The "ordinary use [of 'or'] is almost always disjunctive, that is, the words it connects are to be given separate meanings." *Loughrin v. United States*, 573 U.S. 351, 357 (2014). "Similarly, 'otherwise' means 'something or anything else.'" *J.G.O.*, 2025 WL 3040142, at *3 (quoting *Otherwise*, Merriam Webster's Collegiate Dictionary (10th ed. 2001)). "Taken together, 'or otherwise' is 'used to refer to something that is different from something already mentioned.'" *Id.* (quoting *Or otherwise*, Merriam Webster Online, https://www.merriam-webster.com/dictionary/or% 20otherwise (last visited October 27, 2025)).

In just a few months, over three hundred cases in courts around the country have rejected Respondents' novel interpretation of section 1225(b)(2) and supported Petitioner's position that section 1226(a) governs noncitizens apprehended while already living within the United States. *See e.g., Barrera,* 2025 WL 2690565, at *5 ("...*every court* who has examined this novel interpretation of Section 1225 by the United States has rejected their theory and adopted Petitioner's."); *Bautista v. Santacruz,* Case No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *10 (C.D. Cal. Nov. 20, 2025) (declining to follow *Rojas v. Olson*, stating "Thus, Respondents' expansive interpretation of 'applicants for admission' would effectively nullify a portion of the INA through the DHS's legislative or interpretive exercise of power"); *Anicasio v. Kramer*, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025) ("Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of 'aliens already in the country.'"); *Barrajas v. Noem*, Case No. 4:25-cv-00322-SHL-HCA, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Lopez Benitez v. Francis*, 25 Civ. 5937 (DEH), 2025 WL 2371588, at *5–8 (analyzing "the plain text of the statute" and holding that it applied at the borders of America, not within); *Samb v. Joyce*, 25 Civ. 6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025) (following *Lopez*); *Doe v. Moniz*, Civil Action No. 1:25-cv-12094-IT, 2025 WL 2576819, at *4 (D. Mass. Sept. 5, 2025) ("Respondents' argument that section 1225's detention provisions apply is a nonstarter[.]"); *Romero v. Hyde*, Civil Action No. 25-11631-EM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) ("the interpretation [of § 1225] being advanced by the Government, which would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States, is contrary to the plain text of the statute") (gathering 13 cases from

District Courts in Washington, Massachusetts, Arizona, New York, Minnesota, California, Nebraska, and Maine); *Leal-Hernandez v. Noem,* Civil No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *2 (D. Md. Aug. 24, 2025) ("The Government appears willfully blind to the operation of 8 U.S.C. § 1226(a)"); *Kostak v. Trump*, Civil Action No. 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) ("Respondents' interpretation of section 1225 would render section 1226 unnecessary"); *Lopez-Campos v. Raycraft, Case No. 2:25-cv-12486*, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025) ("The plain language of the statutes, the overall structure, the intent of Congress, and over 30 years of agency action make clear that section 1226(a) is the appropriate statutory framework for determining bond for noncitizens who are already in the country[.]"); *Mosqueda v. Noem*, Case No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at *4-5 (C.D. Cal. Sept. 8, 2025) ("The Court agrees with petitioners that the plain text of section 1226(a) applies to them . . . The Court disagrees with respondents' contention that Congress intended to create a conflict between juxtaposing sections of the same statute."); *Pizarro Reyes v. Raycraft*, Case No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) (collecting 15 cases). The above-listed cases are in addition to the over eleven cases Petitioner cited in his petition. Pet. at 15.

Confronted with the reality that most district courts have interpreted section 1225(b)(2) in a manner consistent with Petitioner's analysis, Respondents throw up their hands and state that "the overwhelming majority of district courts sometimes get the law very wrong." MTD at 14 (quoting *Olalde*, 2025 WL 3131942 at *1). While courts occasionally misinterpret law, the sheer number of decisions finding that section 1225(b)(2) does not apply to noncitizens like Petitioner is undeniable. The dearth of opinions supporting Respondents' position is equally telling.

B. Other INA statutes and DHS practices support Petitioner's interpretation of § 1225(b)(2).

In support of his position that section 1225(b)(2) was never intended to subject noncitizens like himself to mandatory detention, Petitioner points to the Laken Riley Act, arguing that its requirement that certain categories of noncitizens be subject to mandatory detention is evidence that these categories of noncitizens were not already subject to mandatory detention under section 1225(b)(2). Pet. at 13. In their response, Respondents once again confuse Petitioner's argument. Petitioner does not argue that the Laken Riley Act "disturb[s]" or "eviscerate[s]" sections 1225 or 1226, rather, Petitioner argues that the Laken Riley Act's amendments to section 1226 make it clear that 1225(b)(2) does not apply broadly to all non-admitted noncitizens present in the United States. MTD at 15 and 17. As Petitioner argues, without the Laken Riley Act, certain noncitizens present in the United States who had not been admitted would not be subject to mandatory detention. In support of their position, Respondents offer case law with wildly different facts from the instant case featuring a noncitizen who, unlike Petitioner, was admitted to the United States and was convicted of a crime. MTD at 15. But neither the cases they offer nor their contention that the Laken Riley Act merely represents a "belt and suspenders approach to legislation" make sense. MTD at 16; *See Avila*, 2025 WL 2976539, at *6 (noting that, under Respondents' interpretation, "amendments to § 1226(c) in the Laken Riley Act would be rendered superfluous"); *Barrajas*, 2025 WL 2717650, at *4 (same).

In arguing the Court should accept their novel reading of section 1225(b)(2), Respondents urge the Court to pay no mind to the government's longstanding practice of detaining noncitizens who enter the country without inspection under section 1226 rather than section 1225(b)(2). But their argument and the cases cited support breaking with longstanding practice when that practice is inconsistent with the "fairest reading" of the statutory text. MTD at 18 (quoting *Loper Bright*

Enters. v. Raimondo, 603 U.S. 369, 386 (2024). Here, as argued at length above and as supported by numerous courts across the country - including many decided after the *Yajure Hurtado* decision that Respondents urge this Court to follow – the plain language of the statute, agency practice, and common-sense support Petitioner's position. MTD at 20 (urging the Court to rule consistently with *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216, 223 (BIA 2025); *See, e.g., Avila*, 2025 WL 2976539, at *5 (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters.*, 603 U.S. at 413); *Barrera*, 2025 WL 2690565, at *5 (same); *Sampiao v. Hyde*, 1:25-cv-11981-JEK, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Salcedo Aceros v. Kaiser*, Case No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

III. PETITIONER'S DUE PROCESS RIGHTS HAVE BEEN VIOLATED.

Lastly, Respondents claim that Petitioner has been afforded all the due process to which he is entitled under section 1225(b)(2). In support of this contention, Respondents flippantly point to 53-year-old case law to declare that "due process is flexible". MTD at 22 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). While the question of which specific process is due will depend on the context of a given situation, due process rights are not so flexible as to allow the government to detain someone under a misguided interpretation of a statute. Respondents assert that that the "power to admit or exclude aliens is a sovereign prerogative". MTD at 22. But the power to admit or exclude Petitioner is not at issue here: Respondents' authority to detain him without bail is. Courts have consistently recognized that custody determinations and removal proceedings are distinct processes. *See Eliseo A.A.*, 2025 WL 2886729, at *6 ("A petition for review with the BIA and then the court of appeals cannot substitute for habeas review of ongoing detention.").

No statute blots out the Constitution. Petitioner has shown that he is improperly subjected to section 1225(b)(2)'s mandatory detention and that he should instead be detained under section

1226's discretionary framework. He is therefore entitled to release or, in the alternative, a bond hearing where an immigration judge can make an individualized assessment of whether he is a flight risk or a danger to the community. *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348, at *9 (S.D. Ind. Oct. 11, 2025) ("Mr. Alejandro has shown a likelihood of success on his claim that § 1225(b)(2)(A) does not apply to him. Given that Respondents do not assert any other basis for Mr. Alejandro's detention and do not argue that he presents a flight risk or danger, the appropriate remedy is his immediate release.")

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his petition for writ of habeas corpus and order his immediate release or, in the alternative, require Respondents to provide a prompt bond hearing pursuant to section 1226.

Dated: December 8, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brigid Carmichael, hereby certify that on December 8, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice.

/s/Brigid Carmichael
Brigid Carmichael (*pro hac vice)*