UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Lokendra Kumar Chand,

Petitioner,

-v-

Todd M. Lyons, Acting Director of US ICE; Miguel Vergara, San Antonio Field Office Director, US Immigration and Customs Enforcement; Daren K. Margolin, Director of the Executive Office for Immigration Review; Warden, Karnes County Immigration Processing Center,

Respondents.

Case No: 5:25-CV-01521-XR

Petitioner's Brief

PETITIONER'S BRIEF IN SUPPORT OF RELIEF

Petitioner is unlawfully detained by Respondents pursuant to 8 U.S.C. § 1225, which deprives him of the opportunity to seek bond. Their response fails to certify "the true cause of the detention" as required by 28 U.S.C. § 2243 because their cited statutory provisions do not authorize detention. Nor have Respondents provided an arrest warrant, order revoking Petitioner's release on his own recognizance, or any other documentation that would demonstrate due process. This violates Petitioner's due process rights under the Fifth Amendment.

Petitioner asks the Court to order his release, or alternatively to order that Respondents provide him a bond hearing in which they bear the burden of demonstrating that his continued detention is justified by either dangerousness or a risk of flight.

I. Statement of the Facts

Petitioner entered the United States without authorization seeking asylum on February 6, 2024. He was briefly detained before being released on his own recognizance on or around February 7, 2024. At the time of his detention, Respondents informed Petitioner that he had "been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226] and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions…" ECF No. 1-2 at 2.

Despite having complied with all conditions imposed by Respondents, Petitioner was detained without cause on November 13, 2025. This detention occurred during a routine check-in with US Immigration and Customs Enforcement (ICE). No reason was provided for his detention and he was not provided with any documentation either terminating his release or justifying his new period of detention. Petitioner remains in detention today. Petitioner is seeking asylum and, if approved, would not be removable from the United States. He was previously scheduled for a final hearing on his asylum application, but due to his detention that hearing will now be canceled.

II. Argument

Petitioner is being unlawfully detained by Respondents and deprived of the ability to seek bond. Binding precedent of the Board of Immigration Appeals prevents any immigration judge from ordering his release at this time. That precedent asserts that any individual who has unlawfully entered the United States is permanently ineligible for bond, even if they were previously released under a different detention authority. This is a significant departure from prior interpretations of the law. There is no jurisdictional bar to the Court considering this case, and more than 220 federal judges have now decided against the government on substantially similar factual grounds.[1] Petitioner is not obligated to exhaust all

[1] Politico: More than 220 judges have now rejected the Trump admin's mass detention policy (available at https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861).

administrative remedies in these circumstances, especially since appeal to the Board of Immigration Appeals is futile.

Releasing Petitioner is the most appropriate remedy here because it would directly cure his unlawful detention. However, in the alternative, Petitioner asks the Court to order that he be provided a bond hearing in which Respondents bear the burden of demonstrating that he is a danger to his community or a flight risk.

A. Petitioner's Detention Is an Unlawful Application of 8 U.S.C. § 1225

Respondents contend that Petitioner is detained pursuant to 8 U.S.C. § 1225, yet this argument is contradicted by their own order releasing him pursuant to 8 U.S.C. § 1226. Their attempt to extend "mandatory detention" pursuant to 8 U.S.C. § 1225 to vast numbers of noncitizens is novel and unsupported by the law. In one similar case in the Western District of Texas, the court observed how "[i]n recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025). Respondents continue to assert the same arguments notwithstanding the fact that they have been rejected by more than 220 federal judges.

In their Response, Respondents acknowledge the inconsistent treatment of Petitioner, writing that he benefited from the prior administration's "prosecutorial discretion" and was released from detention while he continued with removal proceedings. ECF No. 4 at 3. There is no dispute that he complied with all conditions of release and was awaiting his final hearing in immigration court. *Id.* at 2. The only difference between his detention in 2024 and now is that the present administration has changed its stance on who should be subject to mandatory detention under the Immigration and Nationality Act.

The statutory provisions cited by Respondents do not support Petitioner's detention. Respondents assert that Petitioner is properly detained under 8 U.S.C. § 1225(b)(1)(A)(iii)(II) rather than other parts of 8 U.S.C. § 1225. ECF No. 4 at 3. However, 8 U.S.C. § 1225(b)(1)(A)(iii)(II) itself does not mandate detention of anyone and cannot serve as a basis for Petitioner's detention. More generally, 8 U.S.C. § 1225 does not apply in this particular case because Respondents already informed Petitioner that he was detained pursuant to 8 U.S.C. § 1226.

The detention authority cited by Respondents does not mandate detention. 8 U.S.C. § 1225(b)(1)(A)(iii)(II) states that:

> "An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph."

This provision of 8 U.S.C. § 1225 cannot serve as the basis for Petitioner's detention. Rather, it addresses the question of who may be subjected to expedited removal proceedings during an application for admission to the United States. In habeas proceedings, "[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention." 28 U.S.C. § 2243. Respondents have failed to certify the true cause of Petitioner's detention.

Furthermore, Respondents do not address the inconsistent treatment between now and Petitioner's earlier release from detention other than to call it an act of discretion. Petitioner has provided evidence showing that he was detained and released pursuant to 8 U.S.C. § 1226. Respondents have not provided any documentation, whether an arrest warrant, revocation of his order of release, or anything else, which would justify the change in policy. Respondents cite to one decision, *Florida v. United States*, 660 F.Supp.3d, 1239, 1270–77 (N.D. Fla. 2023), yet that case was decided even before Respondent's arrival in the United States. Respondents were aware of this non-precedent decision issued in the Northern

District of Florida before they released Petitioner pursuant to 8 U.S.C. § 1226. Petitioner asks the Court to find that he is unlawfully detained and must be released.

B. Respondents do not cite to any other authority mandating Petitioner's detention

Respondents argue that Petitioner was previously an applicant for admission to the United States and as such he is permanently subject to mandatory detention. ECF No. 4 at 5-8. However, Respondents have already conceded that he is not subject to detention under that provision of 8 U.S.C. § 1225. *Id.* at 3. Additionally, whether or not he is an applicant for admission is not dispositive here because Respondents already told Petitioner that he was detained and released pursuant to 8 U.S.C. § 1226.

Respondents have conceded that Petitioner is not detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates detention "in the case of an alien who is an applicant for admission". *Id.* at 3. Respondents state that Petitioner "is properly described under § 1225(b)(1)(A)(iii)(II), and not under the "catchall" provision. *Compare* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) with § 1225(b)(2)(A)." *Id.* Petitioner has already described why he could not be detained pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii)(II), and 8 U.S.C. § 1225(b)(2)(A) is similarly inapplicable here.

There are "three conditions" to mandatory detention under 8 U.S.C. § 1225(b)(2)(A): (1) the alien is an "applicant for admission"; (2) the alien is "seeking admission"; and (3) an "examining immigration officer determines" the alien "is not clearly and beyond a doubt entitled to be admitted." *Pereira-Verdi v. Lyons*, No. SA-25-CV-1187-XR at 7 (W.D. Tex. Oct. 10, 2025) (*citing* 8 U.S.C. § 1225(b)(2)(A)). Here, Petitioner was not "seeking admission" at the time of his detention. Nor have Respondents demonstrated that an examining officer determined that Petitioner was "not clearly and beyond a doubt entitled to be admitted". *Id.* Because Respondents have not demonstrated that these conditions apply to Petitioner, his detention would be unlawful even under 8 U.S.C. § 1225(b)(2)(A).

Recent amendments to the Immigration and Nationality Act also demonstrate that Congress does not interpret the statute to mandate detention in this way. The Laken Riley Act amendments which were passed in January of 2025 would be superfluous under such a reading. In a substantially similar case, a court found that:

> *"accepting Respondents' one-size-fits-all application of § 1225(b)(2) to all aliens, with no distinctions, would violate fundamental canons of statutory construction. Importantly, it would render § 1226 utterly superfluous. The recent Laken Riley Act amendments to § 1226(c), the legislative history of the IIRIRA, and longstanding practice supports this holding."*

Maldonado v. Olson, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025). Longstanding canons of statutory interpretation presume that Congress does not enact superfluous provisions and that statutes should not be interpreted in a manner that would render other statutes void, insignificant, or inoperative. *See, e.g.*, *Bilski v. Kappos*, 561 U.S. 593, 607–08, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010) and *Corley v. United States*, 556 U.S. 303, 314, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009) (cleaned up).

Respondents' interpretation of 8 U.S.C. § 1225(b)(2) would render the addition of Subsection (c)(1)(E) to § 1226 superfluous. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); *see also Maldonado* at 12. As the court in *Maldonado* opined, "If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." *Id.* The Court should find that Respondents have failed to support their detention of Petitioner under any law or regulation.

C. Petitioner's detention under 8 U.S.C. § 1225 is unconstitutional because it violates his due process rights

Should the Court find that Petitioner is detained pursuant to 1225, Petitioner argues that this detention authority is unconstitutional under the Fifth Amendment. Challenges to the extent of DHS' detention authority are permissible and do not relate to any discretionary determinations. *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018).

Petitioner is a civil detainee who has never been charged with or convicted of any crime. As an immigrant, he is entitled to the same due process protections afforded to civil detainees. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). Petitioner has a "constitutionally protected interest in avoiding physical restraint". *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). He may not be detained as a means of punishment for noncriminal purposes. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Due process protections apply even if a statute explicitly authorizes detention. *See Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 338 (S.D. Tex. 2020) (finding that plaintiffs who were at high risk of serious illness or death due to the COVID-19 Pandemic were detained for a purpose that did "not reasonably relate to a legitimate governmental purpose.").

Respondents' asserted detention authority is unlawful because it ignores the statutory scheme carefully set out by Congress and would eviscerate the due process rights of potentially millions of immigrants like Petitioner. As noted above, Congress created a statutory scheme that clearly distinguishes between expedited removals at border and general removals which occur outside of that context. The expedited removal scheme necessarily trades some due process protections for expedited processing. Such tradeoffs are not appropriate for individuals like Petitioner who were already processed under 8 U.S.C. § 1226.

The Supreme Court analyzed the interplay between both sections in *Jennings v. Rodriguez*. Section 1225 provides that "an alien who arrived in the United States or is present in this country but has not been admitted, is treated as an applicant for admission." *Jennings*, 583 U.S. at 287 (*citing* 8 U.S.C. § 1225(a)(1) (internal quotations omitted)). The Court there observed that the decision of who may enter this country "generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible. *Id.* at 287. The *Jennings* Court noted that § 1225(b), the provision at issue in the instant habeas petition, "applies primarily to aliens seeking entry into the United States." *Id.* at 297. Then the Court noted, § 1226 "applies to aliens already present in the United States." *Id.* at 303. "Section 1226(a) creates a default rule for those aliens by permitting – but not requiring – the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of this section.'" *Id.* at 303. Subsection (c) of Section 1226 pertains to aliens who fall into categories involving criminal offenses or terrorist activities. "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." Id. at 306 (*citing* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

Respondents would have Petitioner detained under Section 1225 even though his proceedings were initiated under Section 1226. Such a position destroys the balance created by Congress and outlined by the Supreme Court in *Jennings*. The Court should find that this overreach is unconstitutional, violates Petitioner's Fifth Amendment rights, and order his release.

D. Exhaustion before the BIA is futile in Petitioner's case

Petitioner is not required to exhaust administrative remedies here and such a requirement would be futile because Respondents have already clearly determined that they will not grant Petitioner bond. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. Courts have routinely reviewed the detention of immigrants pursuant to different statutes in habeas proceedings. *See, e.g.*, *Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). Furthermore, exhaustion is inappropriate here because appeal to the Board of Immigration Appeals is futile and inadequate.

Requesting bond and appealing to the BIA are futile because the agency has already issued a precedential decision holding that immigration judges unequivocally have no jurisdiction to entertain granting bond in these exact circumstances. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA described its holding in this case as:

> Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *Id.*

The requirement that Petitioner must exhaust all available appeals is subject to exceptions. The Fifth Circuit has held that "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (*citing Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam).

As of today, the BIA has issued at least two precedential decisions stating that Petitioner's exact circumstances deprive an immigration judge of jurisdiction to consider bond. There is no reason to believe that the BIA would not apply its own recent precedent decisions to Petitioner's case. That assertion is unsupported and cannot surmount Petitioner's clear due process interest in being released from detention. Respondents bear the burden of proving that Petitioner's detention is lawful and they

have not met that burden. In light of the above, Petitioner asks the Court to find that an appeal to the BIA is not required and futile.

E. There are no jurisdictional bars to the relief sought

In similar circumstances, Respondents have argued that the district courts are prohibited from deciding such matter for lack of subject matter jurisdiction. This argument is incorrect, and there are no jurisdictional bars whether under 8 U.S.C. §§ 1252(a)(5), (b)(9), (g), or 8 U.S.C. § 1226(e).

Section 1252(a)(5) narrowly "specifies that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals." *Duarte v. Mayorkas*, 27 F.4th 1044, 1051 (5th Cir. 2022). Here, there is no final order of removal which Petitioner seeks review before this Court.

Section 1252(b)(9) limits judicial review of "questions of law and fact…arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter". 8 U.S.C. § 1252(b)(9). This provision is a jurisdictional channeling provision intended to prevent review of issues prior to the end of administrative proceedings. *See Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *7 (D. Minn. Aug. 15, 2025) (*citing Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007)). Petitioner is not challenging the initiation of removal proceedings or any action that occurred during those proceedings. He is challenging the constitutionality of his detention.

Section 1252(g) strips jurisdiction over "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). Here, Petitioner does not seek this review, and Congress did not intend to sweep in additional claims that were not explicitly included here. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025) (*citing Jennings v. Rodriguez*, 583 U.S. 281 at 924 (2018). Additionally, this provision carves

out habeas petitions; the jurisdictional bar is "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241". 8 U.S.C. § 1252(g).

Section 1226(e) does not apply to Petitioner's claim because he "challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 583 U.S. at 295, 138 S.Ct. 830 (cleaned up) (quoting *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)); *see also Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Petitioner is not challenging an individualized bond hearing determination but rather his indefinite detention without the opportunity to have such a hearing. In other similar cases before the Western District, Respondents' jurisdictional arguments have been found unavailing. *See* Lopez-Arevelo at *5.

III. Conclusion

Because Respondents have unlawfully detained him, the only means that Petitioner has for being released is through an order of this Court. Therefore, Petitioner respectfully asks this Court to grant his Petition and issue a writ of habeas corpus ordering his release.

Respectfully submitted,

/s/ Joseph Krebs Muller

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