

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

RANBEER SINGH

Alien #: 

Petitioner,

v.

Mike Lewis, HOPKINS COUNTY JAILER; Samuel
Olson, IMMIGRATION and CUSTOMS
ENFORCEMENT AND REMOVAL
OPERATIONS CHICAGO FIELD OFFICE
DIRECTOR; Todd M. Lyons, ACTING
DIRECTOR, IMMIGRATION and CUSTOMS
ENFORCEMENT; Kristi Noem,
SECRETARY OF THE DEPARTMENT OF
HOMELAND SECURITY; Pam Bondi,
ATTORNEY GENERAL OF THE UNITED
STATES

Respondents.

Case No. 4:25-cv-00153

Judge David J. Hale

**REPLY to the RESPONDENTS' MOTION TO DISMISS and
RESPONSE TO COURT'S ORDER TO SHOW CAUSE**

Petitioner submits his timely reply to the Respondents' Motion to Dismiss and Response to this Court's order to show cause (hereinafter "Response"). This Court permitted Petitioner a reply to the Response by November 25, 2025. Respondents argue the Court has no jurisdiction and that he is subject to the mandatory detention provision of 8 U.S.C. §1225(b)(2) (Section 1225) as opposed to 8 U.S.C. §1226(a), which would entitle him to "receive [a] bond hearing[] at the outset of detention" and be eligible for release on a minimum bond of \$1,500. *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing pertinent regulations).

Petitioner defers to this Court's ruling in *Hernandez Alonso v. Tindall*, 3:25-cv-652-DJH, 2025 WL 3083920 (W. D. Ky. Nov. 4, 2025) as dispositive to the issues raised by the Response.¹ This Court has jurisdiction over the Petition because the Petitioner is not challenging his underlying removal proceedings or "any part of the process by which [his] removability will be determined" but the denial of a bond hearing while his removability is resolved as well as the denial of procedural due process protections he was not afforded when Respondents changed his custody status and are now holding him without the possibility of release on bond. *Jennings*, 583 U.S. at 294; *Zadvydas v. Davis*, 533 U.S. 678, 687 (2002) ("We note ... that the primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases). The Government asserts jurisdictional stripping provisions which again relate to the administration and commencement of removal proceedings which Petitioner is not challenging. Prior to his immediate detention he was waiting for his final removal hearing date scheduled for March 23, 2029, when he was unexpectedly detained pursuant to an administrative warrant, despite having a pending application for asylum and being in immigration court removal proceedings with a final asylum merit hearing date already scheduled. (See Petition Ex. D: Case Information). No intervening criminal arrest or conviction exists which would subject Petitioner to a change in his custody status. Respondents admit Petitioner is "properly detained under 8 U.S.C. 1225", and therefore ineligible for release and would render any "exhaustion of administrative remedies" futile. Response at 1.

¹ The facts in *Hernandez Alonso* and Petitioner's case are substantially similar in that both noncitizens entered the U.S. without inspection, were apprehended by ICE about 12 years later in the interior, and have lawful family ties to the U.S. Of notable difference is that *Hernandez Alonso* has a criminal arrest and Petitioner does not and Petitioner filed an affirmative application for asylum which remains pending with the immigration court when it was referred by USCIS.

As numerous Courts including in this District have ruled, the correct detention provision governing Petitioner remains Section 1226(a) which would entitle him to a bond hearing. Until mid-2025, the Department of Homeland Security (“DHS”) “ha[d] applied §1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation.” See *Ortiz Donis v. Chestnut*, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514, at *5 (E.D. Cal. Oct. 9, 2025); *Balwinder Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Martinez-Elvir v. Olson*, No. 3:25-cv-589-CHB, 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025); *Hernandez-Cuevas v. Olson*, No. 28-0830-CV-W-BP, at *2 (W.D. Mo. Nov. 5, 2025) (“in September 2025, the Board of Immigration Appeals (the “BIA”) held that a person in Petitioner’s circumstances is not entitled to consideration for release on bond.” citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As Respondents maintain, there are several District Courts finding otherwise and that Section 1225 applies to “[a]ll aliens ... who are applicants for admission or otherwise seeking admission.” *Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). *Olalde* purports to be based on a reading of the “text of the statute” yet does not reconcile, among other things, that Section 1225’s title refers to “arriving aliens” for which there is a corresponding box on a Notice to Appear that has not been checked in Petitioner’s case and that the “seeking admission” language in Section 1225 does not mean that all “arriving aliens” are “seeking admission”. See also *United States v. Taylor*, 596 U.S. 845, 857 (2022) (“courts do not lightly assume Congress adopts two separate clauses in the same law to perform the same work.”) cited in *Alonso v. Tindall*, 2025 WL 3083920 at *13. While Petitioner did file an affirmative application for asylum, it does not change the legal analysis that he “seeking admission” to qualify under Section 1225 since it was not made in conjunction with his entry to the United

States as an applicant for admission at a port of entry. Rather, the plain reading of Section 1226 titled “Apprehension and detention of aliens” states “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General –

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole ...

Petitioner’s case is governed by 8 U.S.C. § 1226(a) and he is entitled to a bond hearing while he waits the outcome of his removal proceedings.”

The Fifth Amendment’s Due Process Clause provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law. The Supreme Court has held that the Due Process Clause “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”).

Respondents have not provided a basis for why Petitioner must be detained pending the outcome of his removal proceedings and his interests in not being detained outweigh the Government’s interest.

Petitioner entered the United States without inspection on or about September 20, 2013.² He was not apprehended at the U.S. border. However, he filed an affirmative application for asylum with USCIS on August 7, 2014. USCIS did not approve his application for asylum, and he was referred to an immigration court via a Notice to Appear (“NTA”). (See Petition Ex. C: Notice to Appear). Almost twelve years later and since his initial entry at the U.S. Southern border at or near McAllen, Texas, he has lived and resided in California until his apprehension on November 17, 2025, in Plainfield, Indiana. No intermediary factors such as a criminal arrest or any other ground warranting detention without bond exist yet Respondents now seek to classify Petitioner as subject to detention pursuant to Section 1225.³ Rather, the detention provisions which allow for a bond hearing under Section 1226(a) govern and absent a finding that he is a flight risk or a danger to the community, he is entitled to release on bond pending his removal proceedings.

Jurisdiction

Contrary to the Government’s assertions 8 U.S.C Sections 1252(e)(3), 1252(g), and 1252(b)(9) do not deprive this Court from reviewing Petitioner’s habeas petition. Petitioner points to this Court’s decision in *Hernandez Alonso, Id.* at *5 (“In accordance with the Supreme Court precedent cited above and other relevant case law, the Court concludes that § 1252(g) does not bar jurisdiction here and that review of Alonso’s claims is appropriate”).

First, title 28 U.S.C. § 2241 codifies federal habeas corpus subject-matter jurisdiction and provides that a Court may grant the writ of habeas corpus for any person held “in custody in

² Respondents’ I-213 submitted with the Response indicates he entered on December 20, 2013, but Petitioner’s asylum application indicates the date of entry as September 20, 2013. Nevertheless, pertinent to this complaint, both parties agree he entered without inspection.

³ Respondents bring up an allegation that he was arrested “in conjunction with an Indiana State Police investigation of his trucking company falsifying driver logs; Singh’s CDL had been revoked ten days earlier.” Response at 4 – 5. Petitioner, however, has not been charged with any criminal offense associated with such allegations.

violation of the Constitution or laws or treaties of the United States.” Limits to subject-matter jurisdiction in the immigration context can be found in 8 U.S.C. § 1252(g), which indicates in relevant part “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 Supreme Court has held 8 U.S.C. § 1252(g) to be construed narrowly. In *Reno v. American-Arab Anti-Discrimination Committee*, the Supreme Court held that three distinct actions were covered by this jurisdictional stripping provision: the authority to ‘commence proceedings, adjudicate cases, or execute removal orders. *Reno*, 525 U.S. 471, 482 (1999). The Government’s Response claims that “[t]he decision to detain Singh, through processing him after his arrest, arose from the commencement of his removal proceedings, which began once Singh’s Notice to Appear was issued. His detention, therefore, is connected directly and immediately with the commencement of his removal proceedings.” Response at 6 (cleaned up). As in *Reno*, in *Jennings* the Supreme Court rejected this expansive reading as Section 1252(g) does not “sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.” *Jennings*, 583 U.S. at 294; *see also Cifuentes Rivera v. Arnott*, No. 4:25-cv-00570-RK, 2025 WL ---, at * 6 – 9 (W.D. Mo. Oct. 7, 2025) (extensive discussion on why Section 1252(g) does not deprive the Court of jurisdiction and this type of habeas challenge does not arise from the three discrete actions the Attorney General may take).

Removal proceedings generally commence when a NTA is issued. 8 U.S.C. § 1229a. Petitioner’s NTA was issued after USCIS referred his asylum claim to the Immigration Court on July 12, 2016, and unlike Respondents’ reading not “connected directly and immediately” with

his detention on November 17, 2025. Petitioner was not detained or apprehended crossing the U.S. border in 2013. He did not file a habeas action challenging the issuance of his NTA and there has been no final adjudication of his asylum case and thus no execution of an outstanding removal order. Thus, under the plain language of Section 1252(g), nothing strips this Court of jurisdiction over this Petition as the three actions delineated in Section 1252(g) are not implicated.

Second, 8 U.S.C. § 1252(b)(9) does not divest this Court of jurisdiction. The Government argues “habeas petitions challenging the legal basis for detaining in the first place require a court to answer legal questions that arise from an action taken to remove an alien ...”. Response at 5 (*internal quotations and citations omitted*). Again, Petitioner is not challenging his removal proceedings as there has been no adjudication of his claims for relief, primarily his pending asylum claim. In fact, an Immigration Judge had scheduled him for a final hearing on whether he is removable and any other applications for relief from removal. His Petition, therefore, solely challenges the Government’s decision to deny him a bond hearing under Section 1225, which is beyond the scope of 8 U.S.C. § 1252(b)(9). *See Guerra Orellana v. Moniz*, No. 25-cv-12664-PBS, 2025 WL 2809996, at *3 (D. Mass. Oct. 3, 2025) (holding that Section 1252 (b)(9) does not apply to a challenge of ongoing detention without bond). In addition, a broad review of the petition for review process before the court of appeals is not the proper forum for a habeas challenge.

Third, Petitioner is not required to exhaust all his administrative remedies by requesting a bond hearing from an Immigration Judge or filing an appeal of any adverse IJ decision with the BIA. Response at 22. As previously stated, the Government admits Petitioner is subject to detention under section 1225(b)(2)(A) and under the BIA’s opinion, which all IJs are required to

follow, he is subject to mandatory detention without bond pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 221 (BIA 2025). To make a bond request or file any appeal of a denial of one, would be futile and cause prejudice. *See Hernandez Alonso, Id.* at *6 (“no rule or statute requiring exhaustion appears to be applicable here”); *Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Sanchez Ballestros v. Noem*, No. 3:25-cv-594-RGJ, 2025 WL 2880831, at *2-3 (W.D. Ky. Oct. 9, 2025).

Petitioner’s detention is governed by Section 1226(a) rather than Section 1225(b)(2)

The Petitioner is challenging his detention without a bond hearing as numerous individuals in similarly-situated positions have challenged the Government’s new interpretation that individuals detained within the United States and not at the border are subject to mandatory detention without a bond hearing. Specifically, that any noncitizen apprehended inside the United States is an “alien who is an applicant for admission”. 8 U.S.C. § 1225(b)(2)(A). In so doing, the Government has rendered 8 U.S.C. § 1226(a)(2) moot because this provision allows noncitizens to seek release on bond or conditional parole.

The Government uses the BIA’s decision in *Matter of Yajure Hurtado* to support its position that he is an applicant for admission and thus “properly detained under 8 U.S.C. § 1225. Response at 19. The term applicant for admission includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140, 140 S. Ct. 1959, 1983 (2020) (“an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”) (*internal quotations omitted*). Because all noncitizens subject to Section 1225(b)(2) must be detained and ineligible for a bond hearing, the

BIA held in *Matter of Yajure Hurtado* that “Immigration Judges lack authority to hear bond requests or to grant bond”. *Id.* at 225.

As numerous courts around the country and this Court have found, Sections 1226(a) and 1225(b)(2)(A) are distinct provisions of law and only one can govern Petitioner’s detention situation. *See Patel v. Crowley*, No. 25-cv-11180, 2025 WL 2996787, at *9-10 (N.D. Ill Oct. 24, 2025); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL2829434, at *4 (E.D.N.Y Oct. 5, 2025). In this case, Petitioner has always been treated as detained under the authority of Section 1226(a). On his NTA, Respondents checked the box labeled “alien present in the United States ...” rather than the box of “arriving alien”, the first option. (Petition Ex. C: Notice to Appear). “The manner of which the boxes were checked on [the] NTA shows that the Government determined that [the noncitizen] was detained under Section 1226(a)—not under Section 1225(b)(2)—because Section 1225(b)(2)(A) would correspond to those arriving while Section 1226(a) would correspond to those present.” *Patel*, at *11 citing *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *7 (E.D. Mich. Aug. 29, 2025) *internal citations and quotations omitted*.

Twelve years later Petitioner cannot be re-categorized as an “arriving alien” simply because of a desire to reclassify aliens present in the United States when no other conditions have changed which would impact their detention, such as a criminal arrest or a final removal order.⁴ The *Chenery* doctrine requires an agency to “defend its actions based on the reasons it gave when it acted” and the Petitioner was not detained at the border, allowed to remain in

⁴ Petitioner is not subject to 8 U.S.C. § 1226(c) mandatory detention provisions as there are no crime or security-related grounds which apply to him.

Indiana and California for years, obtain work authorization, and pursue his pending asylum claim. *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020).

Jennings provides the necessary analysis of Sections 1226(a) and 1225(b)(2) regarding which detention provision governs noncitizens in Petitioner's situation. Section 1226(a) governs noncitizens "already present in the United States" and by contrast Section 1225 governs the detention of those "seeking admission". *Jennings*, 583 U.S. 303 & 288, respectively. The *Jennings* court defines "seeking admission" under the plain language of the term as a noncitizen 'seeking admission into the country' whereas Section 1226 governs aliens 'already in the country'. *Id.* at 288-89 (cleaned up). As this Court held in *Hernandez Alonso*, 2025 WL 3083920, at *10 – 11 ("When the Court interprets a statute, the inquiry begins with the statutory text and ends there as well if the text is unambiguous. If the statutory language is plain, the Court must enforce it according to its terms.") (internal quotations marks and citation omitted).

The Government's Response attempts to categorize arriving aliens and aliens present without admission as "applicants for admission" and subject to mandatory detention and expedited removal procedures. Response at 18.⁵ However, in this analysis Respondents fail to reconcile the difference between aliens at the port of entry "seeking admission" and those who are already present pending the outcome of removal proceedings. Had Respondents detained the Petitioner at the border in November 2023 and placed him in expedited removal proceedings, his detention would likely have been governed under Section 1225. Rather, what occurred is that

⁵ The remainder of the Government's Response relies upon statutory interpretation of various other immigration provisions related to whether applicants for admission can obtain release on parole and the BIA's various case law governing the treatment of applicants for admission and why *Yajure Hurtado* is entitled to *Skidmore* deference. Response at 19-20.

Petitioner was released on his own recognizance and allowed to remain in the U.S. to complete his removal proceedings and thus his detention is clearly governed by Section 1226.

The BIA's decision in *Yajure Hurtado* is entitled to little deference. This decision on September 26, 2025, upended years of BIA case law and regulations which held that individuals detained within the United States are governed under Section 1226, and not Section 1225. *See Patel v. Crowley*, at *13 citing *Martinez*, 2025 WL 2772765, at *7; *Ochoa Ochoa v. Noem*, No. 25-cv-10865, 2025 WL 2938779, at 11 (N.D. Ill. Oct. 16, 2025) ("Since both [Sections] 1225 and 1226 discuss the detention of noncitizens who have not been admitted—for instance, those who [are] inadmissible and subject to mandatory detention under § 1226(c) as an exception to § 1226(a)—the term “applicant for admission” alone does not mean that § 1225 governs detention here.”).

Conclusion

Petitioner was not apprehended at the southern border in 2013, and he was only served a Notice to Appear (NTA) placing him in removal proceedings pursuant to 8 U.S.C. § 1229a and charged him with being present in the United States without admission and therefore removable pursuant to *inter alia* 8 U.S.C. § 1182(a)(6)(A)(i), after his affirmative asylum application was referred to an Immigration Court. The Immigration Court has scheduled him for a final removal hearing date to 2029 and its this court date he was waiting for while he worked and resided in the United States. He is no longer “seeking admission” when he was detained almost 12 years later. Section 1225(b)(2) detention provisions require that he be “seeking admission” as an “applicant for admission” for mandatory detention to apply. The facts and the law in this case support he does not fall in that category.

Petitioner was detained on November 17, 2025, without adequate notice and “an opportunity to be heard” and is being denied a bond hearing pursuant to the Immigration and Nationality Act section 1226. *See generally Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner has been deprived of his procedural due process and therefore constitutional rights by not being permitted a bond hearing or an opportunity to be released on an “order of release on recognizance.” His habeas petition should be granted as Respondents have violated his due process legal and procedural rights to contest his current detention and the Motion to Dismiss should be denied.

Respectfully submitted,

s/Saadia Siddique
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 25, 2025, I served a copy of this Reply on counsel for all parties through the Court's CM/ECF system which will send a notice of electronic filing to counsel for the Respondents.

s/Saadia Siddique

SAADIA SIDDIQUE

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