

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

BHUPINDER SINGH,)	
)	
Petitioner,)	
)	
v.)	
)	Case No. 25-cv-962
BRIAN ENGLISH, <i>et al.</i>)	
)	Hon. Damon R. Leichty
Respondents.)	

REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S HABEAS PETITION

The Petitioner, BHUPINDER SINGH, by and through his own and proper person and through his attorneys, KRIEZELMAN BURTON & ASSOCIATES, LLC, submits this reply to Respondents' Response to his Petition for Writ of Habeas Corpus, and in support thereof, states as follows:

A. Petitioner Does Not Challenge His Ongoing Removal Proceedings and 8 U.S.C. § 1252 does not deprive this Court of jurisdiction

This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(b)(9) and (g) as Petitioner's claims do not challenge any decision to commence proceedings, adjudicate cases, or execute removal orders. This Court is also not deprived of jurisdiction by 8 U.S.C. § 1252(e)(3) as Petitioner is not challenging the implementation of 8 U.S.C. § 1252(b)(2).

Section 1252(b)(9) provides:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision

of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added).

The Supreme Court's decision in *Jennings v. Rodriguez* is instructive here and supports Petitioner's position that this Court does have jurisdiction and that Section 1252(b)(9) does not present a jurisdictional bar. The Supreme Court determined that the "arising from" language of Section 1252(b)(9) should not be interpreted so expansively as to include any action that technically follows the commencement of removal proceedings, because that would bar judicial review of questions of law and fact that are unrelated to the removal proceedings until a final order of removal was issued. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018). Petitioner, like the class in *Jennings*, "are not asking for review of an order of removal, they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined." *Id.* at 294-95.

Section 1252(g) provides:

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.

8 U.S.C. § 1252(g) (emphasis added).

The Supreme Court's decision in *Jennings* is again instructive here related to Section 1252(g). The *Jennings* court writes that "[w]e did not interpret [section 1252(g)] to 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 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)).

An immigration judge's (IJ) review of a bond determination is a distinct proceeding from an alien's underlying removal proceeding. 8 C.F.R. § 1003.19(d). It is “clear bond hearings are separate and apart from deportation proceedings.” *Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982). Here, Petitioner is seeking review of his unlawful detention, as he is unable to seek a bond hearing in front of the Immigration Court as a result of the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). He is not challenging a removal order or anything else listed in Section 1252(b)(9) and (g) which would strip this court of jurisdiction.

Respondents also argue that 8 U.S.C. § 1252(e)(3) prevents judicial review. They maintain that section 1252(e)(3) provides the U.S. District Court for the District of Columbia with exclusive authority to review challenges to regulations and policies issued to implement 8 U.S.C. § 1225(b). But Petitioner is not challenging the *implementation* of 8 U.S.C. § 1225(b)(2), and he does not dispute that § 1225(b)(2) requires detention of aliens detained under that subsection. Rather, Petitioner asserts that Respondents lack statutory authority to detain him under § 1225(b)(2) because that statute does not apply to a noncitizen in his circumstances. Petitioner maintains instead that 8 U.S.C. § 1226(a) provides the statutory authority for his detention. Accordingly, § 1252(e)(3) does not deprive this Court of jurisdiction.

For these reasons, this Court has jurisdiction over Petitioner’s matter.

B. Petitioner is detained under 8 U.S.C. § 1226(a) and not under 8 U.S.C. § 1225(b)(2).

By way of review, 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of “Applicants for Admission.” Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA

§ 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. The Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge's authority to hear a bond request for any noncitizen present in the United States without having been inspected and admitted and who are later apprehended by DHS.

Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226(a). This argument fails for several reasons.

First, Respondents acknowledge that their arguments were recently rejected by your Honor in *De Jesus Aguilar v. English*, 2025 WL 3280219 (N.D. Ind. Nov. 25, 2025). In that matter, your Honor found that petitioner, who had entered the United States without inspection and had been in the United States for years prior to his detention by ICE, is subject to discretionary detention under 8 U.S.C. § 1226(a). Your honor granted in part that petition and ordered that petitioner to be immediately released from custody. The same circumstances are present in this matter. Petitioner entered the United States without inspection in January 1993, resided in the United States for a number of years, got married, had children, and then was recently detained by Respondents. Dkt. 1, ¶¶ 25-26. Albeit, Petitioner had a prior exclusion order, but that has since been reopened, and he is currently in immigration court proceedings before the Indianapolis Immigration Court. Dkt. 6, Ex. C.

Prior to and since the decision in *Matter of Yajure Hurtado*, other judges within the district courts of the Seventh Circuit, have similarly rejected Respondents' interpretation and

have subsequently granted relief to habeas petitioners. *Lopez Briseno v. Noem*, No. 25 C 12092, 2025 WL 3145985 (N.D. Ill. Nov. 11, 2025); *Ramirez Martinez v. Noem*, No. 25-CV-12029, 2025 WL 3145103 (N.D. Ill. Nov. 11, 2025); *Lira Perez v. Noem*, No. 25 C 13442, 2025 WL 3140692 (N.D. Ill. Nov. 10, 2025); *Sumba v. Crowley*, No. 1:25-CV-13034, 2025 WL 3126512 (N.D. Ill. Nov. 9, 2025); *Garcia Rios v. Noem*, No. 25-CV-13180, 2025 WL 3124173 (N.D. Ill. Nov. 7, 2025); *Munoz Arredondo v. Olson*, No. 25-CV-12882, 2025 WL 3124149 (N.D. Ill. Nov. 7, 2025); *Mirzoev v. Olson*, No. 25-CV-12969, 2025 WL 3101969 (N.D. Ill. Nov. 6, 2025); *Pacheco Carrillo v. Noem*, No. 25 C 12963, 2025 WL 3101993 (N.D. Ill. Nov. 6, 2025); *Sanchez Guzman v. Noem*, 1:25-cv-13415 (N.D. Ill. Nov. 6, 2025); *Arizmendi v. Noem*, No. 25 C 13041, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025); *D.E.C.T. v. Noem*, No. 25 C 12463, 2025 WL 3063650 (N.D. Ill. Nov. 3, 2025); *Flores v. Olson*, No. 25 C 12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *Galvis Cortes v. Olsen*, No. 25 C 6293, 2025 WL 3063636 (N.D. Ill. Nov. 3, 2025); *Magallanes Sanchez v. Olson*, Case No. 25-cv-13226 (N.D. Ill. Nov. 3, 2025); *Rosales Ponce v. Olson*, No. 25-CV-13037, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *Valencia v. Noem*, No. 25-CV-12829, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Singh v. Bondi*, No. 1:25-CV-02101-SEB-TAB, 2025 WL 3029524 (S.D. Ind. Oct. 30, 2025); *Corona Diaz v. Olson*, No. 25 CV 12141, 2025 WL 3022170 (N.D. Ill. Oct. 29, 2025); *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Sanchez v. Olson*, No. 25 CV 12453, 2025 WL 3004580 (N.D. Ill. Oct. 27, 2025); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025); *Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025).

These decisions join other district courts across the country that have overwhelmingly rejected *Matter of Yajure Hurtado*'s new interpretation that those who entered unlawfully and are later apprehended are now subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner provided a sampling in his Petition of the over 300 and counting cases that have rejected Respondents' interpretation and granted relief. Dkt. 1, App'x.

This Court is not required, and should not, give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and indeed “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

Respondents' new interpretation of § 1225 is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. “[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when “the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 at *2 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*,

583 U.S. 281, 289 (2018)).

The “seeking admission” language, “necessarily implies some sort of present tense action.” *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) (“The use of the present progressive tense ‘arriving,’ rather than the past tense ‘arrived,’ implies some temporal or geographic limit”); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of verb tense is significant in construing statutes.”). In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation’s border or another point of entry. It does not apply to noncitizens “already present in the United States”—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

When interpreting a statute, “every clause and word . . . should have meaning.” *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And “the words of the statute must be read in their context and with a view to their place in the overall statutory scheme.” *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government’s position requires the Court to ignore critical provisions of the INA.

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the numerous district court decisions confirm that he is subject to section 1226(a)’s discretionary detention scheme.

C. Exhaustion is not required and should be excused as seeking bond redetermination before the immigration court in the first instance would be futile.

Respondents state in their response that this case concerns, in part, whether Petitioner must first exhaust his administrative remedies, but without explaining where and how that might be done. Dkt. 6, p. 2. Exhaustion is not required, as alluded to by Respondents, and requesting a

bond hearing before an Immigration Judge would be futile at this juncture. The Immigration and Nationality Act mandates exhaustion in order to challenge “final order[s] of removal.” 8 U.S.C. § 1252(d)(1). However, this provision does not cover challenges to preliminary custody or bond determinations, which are quite distinct from “final order[s] of removal.” *See Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982). (“[I]t is clear bond hearings are separate and apart from deportations hearings.... A bond determination is not a final order of deportation ... and does not effect [sic] the deportation proceeding.”).

Congress does require exhaustion for certain types of habeas petitions, but not for those petitions, such as Petitioner’s, brought under 28 U.S.C. § 2241. *See James v. Walsh*, 308 F.3d 162, 167 (2d Cir.2002) (“Section 2254(b)(1) requires state prisoners to exhaust all available state court remedies before filing a Section 2254 petition, whereas Section 2241 contains no such exhaustion requirement.”).

“[W]here Congress has not clearly required exhaustion, sound judicial discretion governs.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In exercising that discretion, we must balance the individual and institutional interests involved, taking into account “the nature of the claim presented and the characteristics of the particular administrative procedure provided.” *Id.* at 146. We start with “the general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts.” *Id.* at 144-45; *see also Sanchez v. Miller*, 792 F.2d 694, 697 (7th Cir.1986) (accord). This rule, however, is not absolute.

The Seventh Circuit has held that individual interests demand that exhaustion be excused when:

- (1) requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an indefinite timeframe for administrative action;

- (2) the agency lacks the ability or competence to resolve the issue or grant the relief requested;
- (3) appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or
- (4) where substantial constitutional questions are raised.

Iddir v. INS, 301 F.3d 492, 498 (7th Cir.2002) (internal quotations and citations omitted).

Here, requiring exhaustion would be futile due to the Board of Immigration Appeal's September 5th decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which proclaimed for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond. The Board's decision, in contravention of decades of immigration law, precedent by the Supreme Court, and Executive Office of Immigration Review policies and procedures, takes a new reading of INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), which requires mandatory detention of "Applicants for Admission," to include those present in the United States without having been inspected and admitted and who are later apprehended.

Prior to the Board's decision, noncitizens present in the United States without having been inspected and admitted and who are later apprehended are subject to detention under INA § 236(a), 8 U.S.C. § 1226(a). Noncitizens detained under this section are not subject to mandatory detention and may be released on bond or on their own recognizance.

Therefore, requiring Petitioner to request a bond redetermination with the immigration court in the first instance would be futile as the bond would undoubtedly be denied in light of *Matter of Yajure Hurtado*. It would prejudice to Petitioner by prolonging his detention to request a bond that will ultimately be denied.

Further, even if Petitioner had received a bond denial order prior to filing the instant petition, an appeal to the BIA would also be futile because the BIA is without jurisdiction to

decide constitutional questions, such as Petitioner's due process question. *See Gonzalez v. O'Connell*, 355 F.3d 1010 (7th Cir. 2004) (citing *Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994)).

CONCLUSION

For the foregoing reasons, this Court should order Petitioner's immediate release or in the alternative, order Respondents to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order.

Dated: December 5, 2025

Respectfully Submitted,

/s/ Nicole Provax

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