UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ENES ABAK,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 3:25-cv-604
KRISTI NOEM, *et al.*	)	
	)	Hon. Leon Schydlower
Respondents.	)	

REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S HABEAS PETITION

The Petitioner, ENES ABAK, 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. Introduction

Petitioner entered the United States in November 2022 at or near El Paso, Texas and he was apprehended by Customs and Border Protection (CBP) and issued a Notice to Appear, placing him into removal proceedings under Section 240 of the Immigration and Nationality Act. He remained in custody for around two weeks and then he was released and paroled into the United States pursuant to section 212(d)(5)(A) of the Immigration and Nationality Act. *See* Dkt. 1, Ex A. Petitioner's parole was valid for one year and expired in December 2023. *Id.* The Notice to Appear does not charge him as an arriving alien, but rather an alien who had not been admitted or paroled upon his entry. *See* Ex A., Notice to Appear. By issuing Petitioner a Notice to Appear upon his entry (rather than placing him into Expedited Removal Proceedings) and later paroling him into the United States, he was not and is not now subject to mandatory detention.

Petitioner is currently, and for over three years, has been subject to removal proceedings pursuant to Section 240 of the Immigration and Nationality Act and is not currently "seeking admission;" rather he had been pursuing his asylum claim before an immigration judge in Chicago prior to his detention.

B. 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.

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.

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

C. Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

Respondents argue that Petitioner is detained under 8 U.S.C. § 1225(b)(1), not 8 U.S.C. § 1225(b)(2). However, this argument fails for several reasons.

First, when parole is terminated upon written notice, the noncitizen "shall be restored to the status that he or she had at the time of parole." 8 CFR § 212.5(e)(2)(i). In other words, in December 2023, upon the expiration of Petitioner's parole, Petitioner's status reverted to his previous immigration status, effectively turning him into a noncitizen present in the United States without being admitted or paroled pursuant to 8 USC § 1182(a)(6)(A)(i), as he had originally entered the U.S. without inspection. Therefore, he cannot be regarded as being detained under 8 U.S.C. § 1225(b)(1). Further, the plain language of the Notice to Appear charges him as such – as a noncitizen present in the United States without being admitted or paroled. *See* Ex. A. Defendants concede that Petitioner was previously placed in full removal proceedings under 8 U.S.C. section 1229a (Section 240 of the INA) and was released under section 1226(a). Dkt. 3 at p.4. Now, Respondents contend that the government can pursue mandatory detention under section 1225(b) at any time.

Respondents' arguments regarding Petitioner's detention under 1225(b)(1) are also in direct contradiction of several district court holdings on this issue that have held that noncitizens who have been paroled "cannot later be designated for expedited removal." *See Mejia v. Woosley*, No. 4:25-CV-82-RGJ, 2025 WL 2933852, at *4 (W.D. Ky. Oct. 15, 2025) *Coal. Humane Immigr. Rights v. Noem*, 2025 WL 2192986, at *23-32 (D.D.C. Aug. 1, 2025). Further, the plain language of the statute demonstrates that section 1225(b) generally involves a decision at the border. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (finding 1225(b)(1) applies to aliens ***initially*** determined to be inadmissible due to "fraud, misrepresentation, or lack of valid

documentation). Expedited removal proceedings under § 1225 only apply if three conditions are met: the applicant (1) is inadmissible because he or she lacks a valid entry document; (2) has not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal. § 1225(b)(1)(A)(i), (iii)(I)-(II); *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). Here, Petitioner specifically fails to meet the standards for § 1225 under the second and third conditions. *Lopez Santos v. Noem,* No. 3:25-CV-01193, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025). Respondents' interpretation of § 1225 would render § 1226 unnecessary. *Id.*

District courts within this Fifth Circuit and in other circuits across the country have overwhelmingly confirmed that 8 U.S.C. § 1226 is the proper statute to apply for detention of those already within the United States and have rejected the Board of Immigration Appeals new interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), 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.

Further, 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).

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.

D. Petitioner's Continued Detention Without a Bond Hearing is a Fifth Amendment Violation.

Petitioner's deprivation of his liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Clause of the Fifth Amendment. Petitioner has not been found to be a danger to the community and Respondents do not allege that detention is to ensure Petitioner's appearance during removal proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents have not put forth a credible argument that Petitioner could not be safely released to his community and family.

Respondents contend Petitioner has no claim of right under the Fifth Amendment's Due Process Clause because he is only entitled to the due process provided to him under the INA. Dkt. 3, p. 8. Respondents cite to *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) to support their position. *Id.* But as Respondents acknowledge, Petitioner in this matter was issued a Notice to Appear and the noncitizen in *Thuraissigiam* was not. Respondents' position also overlooks the well-established "distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout immigration law." *Zadvydas*, 533 U.S. at 693. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*

The Supreme Court's balancing test in *Mathews v. Eldrige* is dispositive. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors": (1) "the private interest that will be affected by the official action"; (2) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," and (3) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Id.* at 335.

In regard to the first *Mathews* factor, Petitioner has a significant private interest in avoiding detention, one of the "most elemental of liberty interests." *See Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Additionally, Petitioner resides in the Chicagoland area and is married to a US citizen and supports himself and his family. *See* Dkt. 1. ¶ 21. Petitioner is now detained in another state, "experiencing [many of] the deprivations of incarceration, including loss of contacts with friends and family, loss of income earning…lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025).

As to the second *Mathews* factor, a risk of erroneous deprivation is minimized through a bond hearing, where an Immigration Judge can determine whether Petitioner is a flight risk or a danger to the community. *See Lopez Campos*, 2025 WL 2496379, at *9. Petitioner has been in the United States for over three years, is married to a US citizen, and has a pending timely filed

asylum application with the immigration court, factors that would minimize his flight risk. *See* Dkt. 1. ¶¶ 20-21.

Finally, as to the third factor, while Respondents do have "a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community," here, Respondents have not established an interest in regards to detaining Petitioner who may well convince "a neutral adjudicator, following a hearing and assessment of the evidence, that his ongoing detention is not warranted." *Sampiao v. Hyde,* No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

As such, Petitioner's current detention under the framework of Section 1225(b)(2)(A) violates Petitioner's Fifth Amendment Due Process rights.

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 30, 2025

Respectfully Submitted,

/s/ Khiabett Osuna
One of his attorneys

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