

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ABDULLAH MAHMODI, and

HUSSAIN HUSSAINI,

Petitioners,

v.

25-CV-06762-MAV

TAMMY MARICH, in her official capacity as Acting Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, et al.,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

The legal issues presented in this Petition for Writ of Habeas Corpus concern the U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioners Abdullah Mahmodi and Hussain Hussaini pursuant to 8 U.S.C. § 1225(b)(2). While reserving all rights, including the right to appeal, Respondents submit this response to the order to show cause in lieu of an exhaustive responsive memorandum as has been previously filed, in order to preserve the legal issues and to conserve judicial and party resources. **If this Court deems a bond hearing warranted, Respondents respectfully request that they be given 14 days to hold such a hearing due to the upcoming holidays (December 24, 25, and 26, 2025 and January 1, 2026).**

Respondents acknowledge that this Court's prior rulings concerning similar challenges to the government policy or practice at issue in this case, and the common question of law between this case and those rulings, would control the result in this case should the Court adhere to its legal reasoning in those prior decisions. *See, e.g., Da Cunha v.*

Freden, 25-CV-06532-MAV, ECF No. 25 (W.D.N.Y. Oct. 20, 2025). While Respondents respectfully disagree with those decisions, in the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents hereby rely upon and incorporate by reference the legal arguments it presented in *Da Cunha* and submit that the Court can decide this matter without further briefing and without oral argument. Should the Court decide that Petitioner is subject to detention under 8 U.S.C. § 1226, the appropriate remedy is to order a bond hearing with the burden of proof on Petitioners, and not to immediately release them.

Should the Court prefer to receive a more exhaustive and fulsome opposition brief, Respondents respectfully request leave to file such a brief and will do so upon the Court's request.

BACKGROUND FACTS¹

Mahmodi and Hussaini are both Afghan nationals who entered the United States unlawfully in 2023. ECF No. 2-1 at ¶¶ 1, 27.

They were both arrested on December 1, 2025. *Id.* at ¶ 4.

ARGUMENT

In their Prayer for Relief, Petitioners seek an order enjoining their transfer outside of the Western District of New York, and ordering their immediate release or else a bond hearing. ECF No. 2-1 at pg. 18. Petitioners argue that their detention is governed by 8 U.S.C. § 1226, that they are being unlawfully detained and deprived of a bond hearing,

¹ Given the expedited briefing schedule for this matter, the facts here are taken from the Petition and the truth of such facts is not admitted.

and that their detention violates the Fifth Amendment to the United States Constitution and 8 U.S.C. § 1226.

As an initial matter, Respondents re-raise any and all jurisdictional defenses to this Petition, including that the Immigration and Nationality Act (“INA”) strips this Court of jurisdiction over the claims raised, pursuant to 8 U.S.C. § 1252.

Substantively, Respondents contend that Petitioners’ detention is governed by 8 U.S.C. § 1225, because as aliens who entered without inspection and parole were and remain applicants for admission. As such, they are subject to mandatory detention and not entitled to a bond hearing.

Respondents further rely upon *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). There, the Board of Immigration Appeals (“BIA”) examined the plain language of § 1225, the statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub L. No. 104-208, and DHS’s prior practices. After doing so, the BIA held that “under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), immigration judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission.” 29 I&N Dec. at 225. This Court should rule the same.

Respondents acknowledge that questions of law in this case, and the challenges to the government’s policy and practice, substantially overlap with those at issue in *Da Cunha*. Accordingly, while preserving all rights, Respondents incorporate by reference the legal arguments presented in that case. Should the Court apply the same reasoning it did in that case to this one, the legal principles espoused in that case would likely warrant the same

conclusion here. Because of this, Respondents submit that further briefing and/or oral argument on the legal issues addressed in *Da Cunha* would not be a good use of judicial or party resources. In its current posture, the Court can decide this matter without delay. If, however, the Court prefers to receive a formal and exhaustive opposition brief in this matter, Respondents will provide such a brief upon the Court's request.

Further, Respondents contend that should this Court determine that Petitioners' detention is subject to 8 U.S.C. § 1226, the only appropriate remedy is a bond hearing before an immigration judge, during which an immigration judge can properly determine in the first instance whether Petitioners are a flight risk or danger to the community, as was the remedy in *Da Cunha*. At any bond hearing, Petitioners should bear the burden of proof to show that they are neither a flight risk or a danger to the community for many reasons. First, the Attorney General is granted broad discretion over bond decisions. *See* 8 U.S.C. § 1226(a)(1)-(2) (Attorney General "may continue to detain the arrested alien" and "may release" the alien on bond); *Reno v. Flores*, 507 U.S. 292, 294-95 (1993) ("Congress has given the Attorney General broad discretion to determine whether, and on what terms, an alien arrested on suspicion of being deportable should be released pending the deportation hearing."). Second, the Supreme Court's recent decision in *Jennings* rejects any argument that § 1226(a) should be read to require the government to carry the burden of proof in a bond hearing under that section. In *Jennings*, the Court rejected the position that § 1226(a) required the Government to provide "periodic bond hearings every six months in which the Attorney General must prove by clear and convincing evidence that the alien's continued detention is necessary." 138 S. Ct. at 847. In rejecting that reading, the Court held: "Nothing in § 1226(a)'s text—which says only that the Attorney General 'may release' the

alien ‘on . . . bond’—even remotely supports the imposition of either of those requirements.” *Id.* While the precise question presented in *Jennings* was not identical to the one here, the *Jennings* Court held that it is “clearly contrary” to § 1226(a) to require the government to bear the burden of proof to justify prolonged detention, 138 S. Ct. at 848, it follows that § 1226(a) (and due process) should not require more robust procedures here. Lastly, in *Velasco Lopez v. Decker*, the Second Circuit required the burden to be shifted at a bond hearing only *after* a finding that detention had become prolonged. 978 F.3d 842, 854 (2d Cir. 2020) (“We believe that individuals subject to prolonged detention under § 1226(a) must be afforded process in addition to that provided by the ordinary bail hearing . . .”). Thus, there is no basis to require such additional protection here, and Petitioners should bear the burden of proof at any bond hearing this Court orders.

In any event, Petitioners’ request to enjoin their transfer should be denied in all respects. Under the INA, ICE has the authority to arrange for places of detention of aliens. 8 U.S.C. § 1231(g)(1). Indeed, Justice Sotomayor has noted that the government regularly transfers detainees between facilities, sometimes multiple times. *Garland v. Alerman Gonzalez*, 596 U.S. 543, 570 (2022) (Sotomayor, J., concurring in the judgment in part and dissenting in part). Similarly, Justice Souter has noted that in the ordinary course of immigration detention, aliens may be transferred away from lawyers, witnesses, and evidence. *Demore v. Kim*, 538 U.S. 510, 554 (2003) ((Souter, J., concurring in part and dissenting in part). Although a transfer may cause inconvenience to Petitioners, this is not reason enough to strip ICE of its legislatively authorized ability to house detainees where it sees fit. Additionally, because jurisdiction has already vested upon the filing of the Petition there is no reason in this case for this Court to interfere with that authority. *See, e.g., Walker v. Searls*,

No. 23-CV-140-LJV, 2024 WL 1735213, at *7 (W.D.N.Y. Apr. 23, 2024) (“In other words, regardless of where Walker is housed, this Court retains jurisdiction over his habeas petition. So there is no need to interfere with DHS's authority to “arrange for appropriate places of detention” under 8 U.S.C. § 1231(g)(1), and Walker's motion to prevent his transfer is denied.”); *Shaikh v. Barr*, No. 20-CV-6300 CJS, 2020 WL 7021443, at *3 (W.D.N.Y. Nov. 30, 2020) (same)).

CONCLUSION

Respondents thank the Court for its consideration of this abbreviated submission and respectfully request that the Court to deny this Petition.

Respectfully submitted,

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