

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

VASYL MYKHAILIUK )

(A ) )

Petitioner, )

v. )

Case No. 3:25-cv-696

KRISTI NOEM, Secretary, U.S. Department )  
of Homeland Security; MARY DE ANDA-YBARRA )  
Field Office Director, El Paso Field Office, )  
Immigration and Customs Enforcement, )

Respondents. )

**REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S HABEAS PETITION**

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

**A. Petitioner's Parole Status is Current**

As a threshold matter, there exists a discrepancy between the documents submitted by Petitioner and Respondent. Petitioner submitted with his Petition a copy of his passport with a stamp from the U.S. Department of Homeland Security noting that Petitioner was paroled on May 10, 2024, until May 9, 2026, for the purpose of "U4U". *See* Dkt 1-2. Petitioner also submitted a print out from the U.S. Customs and Border Protection of his most recent Form I-94, establishing his travel information, which shows that he arrived on May 20, 2024 under "Class of Admission: UHP" and he was to be admitted until May 9, 2026. *See* Dkt 1-3. This is at odds with Respondent's submission of the Notice to Appear issued by the Department of Homeland

Security (“DHS”) which purports by the same agency that he entered at or near Chicago, Illinois, and was not then “admitted or paroled.” *See* Dkt 3-1.

Respondents make no mention in their response as to why DHS would grant Petitioner parole on May 1, 2024, while also issuing a Notice to Appear over a year later claiming that they did not parole Petitioner into the United States. Furthermore, Respondents incorrectly claim that Petitioner was “apprehended, processed, placed into removal proceedings” shortly after unlawfully entering the United States. *See* Dkt 3, pg. 2. The Notice to Appear submitted is dated October 22, 2025, not May 2024 when Respondent allegedly unlawfully entered the United States. The Notice to Appear initiates removal proceedings and as the Notice was not issued until October 22, 2025, Respondents mistakenly claim that proceedings began against Petitioner immediately upon his entry.

Moreover, per the Department’s own parole issuance, Petitioner continues to remain under a lawful grant of parole, until May 9, 2026. Respondents argue that Petitioner has “no claim to any lawful status...that would permit him to reside lawfully in the United States upon release.” *See id.* Respondents again fail to note that Petitioner was granted parole by the Department of Homeland Security until May 9, 2026. *See* Dkt 1-3. As of today’s date, Petitioner’s grant of parole remains lawful, and Respondents have not provided evidence of the Department’s revocation of parole. Should an immigration judge not terminate proceedings after Petitioner’s parole has expired or been lawfully revoked, Petitioner would then seek relief before the Immigration Court. However, Petitioner’s current petition before this Court does not allege relief before the Immigration Court, rather Petitioner seeks relief through the form of release. Respondents’ reply seemingly agrees that Petitioner’s relief is release from custody. *See* Dkt 3, pg 2.

**B. In the alternative, Petitioner would be detained under 8 U.S.C. § 1226(a) and not under 8 U.S.C. § 1225(b)(2).**

Alternatively, if Respondents were accurately stating that Petitioner was not admitted or paroled by the U.S. Department of Homeland Security, their argument would fail. 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. 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, district courts across the country have unanimously rejected this interpretation, in cases similar factually and procedurally to Petitioner. *See* Dkt. 1. While it is disputed that in May 2024 Petitioner was apprehended and detained after entering the U.S. without inspection, Respondents argue that he was an applicant for admission. However, this temporal “status” ended when he was paroled into the United States. Respondents argue that if Petitioner presented himself at a port of entry and applied for admission in 2024, he remains an applicant for admission under 8 U.S.C. § 1225, even a year later. However, their argument fails as they even admit and characterize Petitioner as a person who **applied** (in past tense) for admission at the Chicago port of entry. *See* Dkt 3, pg. 2. Indeed, when the government decided that Petitioner should be paroled into the country in 2024, they provided an “Admission I-94 Record Number,” (*see* Dkt. 1.2), which allowed him to remain out of mandatory custody, pursue immigration relief, if any, outside of custody, and he was no longer an arriving alien or an applicant for admission. Accordingly, the temporal limitation of the plain language of 8 U.S.C. § 1225 helps ensure that there is a distinction between people that are *currently* arriving aliens and applicants

for admission at a port of entry as we speak, and not someone like Petitioner who has lived and contributed to his community for nearly two years and whose detention is now governed by 8 U.S.C. § 1226.

Second, if Petitioner presented himself at a port of entry in 2024, the government had the option to place Petitioner in expedited removal proceedings or, at minimum, detain him pursuant to § 1225 of the Immigration and Nationality Act (“INA”). Instead, in this case, the narrative of Petitioner was granted parole as evidenced by his stamped passport and the Form I-94 issued by U.S. Customs and Border Protection. *See* Dkt 1-1, 1-2. Thus, the government chose to take Petitioner out of the mandatory detention category, pursuant to 8 U.S.C. § 1225 and into 8 U.S.C. § 1226, as a person already present into the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). This distinction illustrates Petitioner is currently detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

In sum, Respondent’s evidence related specifically to Petitioner’s case supports Petitioner’s argument and any attempt to construe Petitioner’s past status as “arriving alien” and as an “applicant for admission” in 2024 when he allegedly presented himself at a port of entry, as a continuing, present, and constant action is equivalent to arguing that an unannounced guest is still “arriving” after a year of living inside a house.

### **C. The Court has Jurisdiction Over the Matter**

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* also addresses the application of 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 his parole status does not appear to have been revoked properly and as he is currently still in active parole status. *See* Dkt. 1. Alternatively, given that his detention is currently governed by 8 U.S.C. § 1226, 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). Moreover, Petitioner is not challenging a removal order or anything else listed in Section 1252(b)(9) and (g)

which would strip this court of jurisdiction. Thus, this Court has jurisdiction over Petitioner's matter.

Lastly, this Court is not required, and should not, give deference to the recent Board decision cited in Respondent's brief. 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 Court in *Jennings* was abundantly clear about these interpretations. Petitioner in this case is not a new arrival and had been in the United States for over a year at the time of his detention and continues to have a lawful grant of parole.

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.

### **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: January 8, 2026

Respectfully Submitted,

/s/ Khiabett Osuna

One of his attorneys

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