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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUAN DAVID LOPEZ YEPES)
)
Petitioner,)
v.)

PAMELA JO BONDI,)
Attorney General of the)
United States of America,)

KRISTI NOEM,)
Secretary of the Department of)
Homeland Security, (DHS),)

TODD LYONS,)
Acting Director,)
United States Immigration and)
Customs Enforcement (ICE), and,)

THE WARDEN OF THE)
PHILADELPHIA FEDERAL)
DETENTION CENTER)
Respondents.)
_____)

Civil Action No. 26-CV-00002-KNS

PETITION FOR WRIT OF
HABEAS CORPUS

PETITIONER’S REPLY IN SUPPORT OF PETITION FOR A WRIT OF
HABEAS CORPUS

Petitioner Juan David Lopez Yepes, by and through undersigned counsel, respectfully submits this reply in further support of his petition for a writ of habeas corpus and in response to Respondents' Answer.

The factual and legal issues presented in this habeas petition are settled. They have been considered and decided by this Court within the last couple of months. See Respondents' Response, ECF No. 8, at 1-2 (hereinafter, "Response"). The Honorable Judges from this Court and the district courts around the country overwhelmingly decided that individuals such as Mr. Lopez Yepes are unlawfully detained and subjected to mandatory, indefinite detention based on the Government's legally unsound interpretation of the Immigration and Naturalization Act provisions.

Because (1) this Court has jurisdiction; (2) Mr. Lopez Yepes is unlawfully detained under § 1225(b)(2), (3) his detention falls under § 1226(a); (4) exhaustion is not required; and (5) Mr. Lopez Yepes' detention violates his Due Process Rights; the Court should grant the writ and order his release from detention under § 1225(b)(2), or, in the alternative, order the Respondents to schedule a bond hearing under 8 U.S.C. § 1226(a).

LEGAL STANDARDS

As this Court recognized in Demirel v. Fed. Det. Ctr. Phila., No. 25-cv-5488, 2025 WL 3218243, at *3 (E.D. Pa. Nov. 18, 2025), habeas relief can be granted "to any person in custody in violation of the Constitution or laws or treaties of the United States." (citing 8 U.S.C. § 2241(c)(3). "Habeas is a core remedy for unlawful executive detention" that is "regularly invoked on behalf of noncitizens." Boumediene v. Bush, 553 U.S. 723, 779 (2008);

Respondents' position that Petitioner is detained under § 1225(b)(2) is legally erroneous, and that various provisions of 8 U.S.C. § 1252 strip this Court of jurisdiction. Those arguments misread § 1252 and attempt to insulate an unlawful detention decision from judicial review.

Respondents' interpretation of § 1225(b)(2)(A) is not entitled to deference. Instead, this Court must "exercise independent judgment" to answer the underlying legal question of which statute governs Petitioner's detention. See, Loper Bright Enters. v. Raimondo, 603 U.S. 369, 394 (2024).

ARGUMENT

I. The Court Has Jurisdiction Over the Instant Case Regarding the Petitioner's Unlawful Detention without a Custody Redetermination Hearing.

Respondents contend that 8 U.S.C. § 1252(g), § 1252(b)(9), and § 1252(a)(2)(B)(ii) strip this Court of jurisdiction over Petitioner's habeas petition. As explained herein, those provisions do not bar a challenge to the legality of detention or to the denial of access to a bond hearing.

First, Respondents argue that 8 U.S.C. § 1252(g) deprives this Court of jurisdiction in this matter because Petitioner's claims "arise from" the commencement of removal proceedings and "Congress has provided that 'no court shall have jurisdiction to hear any cause or claim' that arises from 'the decision or action' to 'commence' removal proceedings or 'adjudicate those cases.'" See Response at 7. The Respondents' contention that Petitioner's claims "arise from" the commencement of removal proceedings is incorrect. Section 1252(g) "applies to only three discrete actions that the Attorney General may take": "the decision or action to commence proceedings,

adjudicate cases, or execute removal orders." Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999)

Here, Petitioner does not challenge the commencement, adjudication, or execution of removal proceedings. He challenges the legality of him being arrested and detained under § 1225(b)(2). Therefore, Section 1252(g) does not bar jurisdiction over this habeas petition.

Next, Respondents argue that 8 U.S.C. § 1252(b)(9) also bars jurisdiction in matters “challenging the decision to detain them in the first place.” See Response at 9, citing Jennings v. Rodriguez, 583 U.S. 281, 294 (2018). The Government’s reliance on Jennings is misplaced. In Jennings, the Supreme Court cited § 1252(b)(9) to explain why jurisdiction was proper—not to expand the statute’s reach. The Court emphasized that § 1252(b)(9) did not apply because the detainees “are not asking for review of an order of removal,” “are not challenging the decision to detain them in the first place or to seek removal,” and “are not even challenging any part of the process by which their removability will be determined.” Id. at 294.

Here, Petitioner challenges the legality of his arrest and continued detention without a custody redetermination hearing—claims that are independent of and collateral to the removal process. Such detention-related challenges “do not seek review of a removal order” and therefore fall outside the scope of § 1252(b)(9). E.O.H.C. v. Sec’y U.S. Dep’t of Homeland Sec., 950 F.3d 177, 186 (3d Cir. 2020). Accordingly, § 1252(b)(9) does not bar this Court from exercising jurisdiction over Petitioner’s challenge to his ongoing detention and the denial of a custody redetermination hearing.

Finally, Respondents argue that 8 U.S.C. § 1252(a)(2)(B)(ii) bars jurisdiction over Petitioner’s claim as a discretionary matter. Response at 10. But Petitioner does not ask this Court to review a discretionary judgment about whether he should have been granted bond. He challenges the Respondents’ legal position that his detention is governed by § 1225(b)(2), which makes him ineligible for bond. He contests the statutory source and lawfulness of his detention.” Therefore, § 1252(a)(2)(B)(ii) does not bar jurisdiction in this case.

Because each of the Respondents’ jurisdictional arguments fails, the Court should hold that it has and affirmatively retains jurisdiction over Petitioner’s habeas claim.

II. Petitioner’s Detention is Governed By 8 U.S.C. § 1226(a), not § 1225(b)(2) and therefore Petitioner is not subject to mandatory detention.

Respondents argue that Petitioner is subject to mandatory detention because he is an applicant for admission, and an applicant for admission is “seeking admission.” In the United States. This position is not supported and has been rebuked by the district courts around the country, this Court included.

Two provisions of the INA govern the detention of noncitizens during removal proceedings. Section 1225(b) applies to certain “applicants for admission”—generally those at the border or a port of entry—and mandates detention in limited categories. Individuals detained pursuant to § 1225(b) are subject to mandatory detention and receive no bond hearing before an Immigration Judge. 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). They may only be released under humanitarian parole at the agency’s discretion. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1182(d)(5).

By contrast, § 1226(a) applies to noncitizens “already in the country” who are entitled to consideration for release on bond or conditional parole. 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If Immigration and Customs Enforcement (ICE) denies release, these individuals can seek a custody redetermination hearing—commonly known as a bond hearing—before an Immigration Judge. 8 C.F.R. § 1236.1(d). At that hearing, the noncitizens must present evidence to show that they are (1) not a flight risk, and (2) not a danger to the community. *See generally*, Matter of Guerra, 24 I&N Dec. 37, 40 (BIA 2006).

The difference between these statutes reflects Congress’s long-recognized “plenary power” to regulate admission at the border and the different considerations that apply to long-term residents apprehended in the interior. Prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), the statutory authority for custody determinations was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen's detention during "deportation" proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a) (1994).

Those "deportation" proceedings governed the detention of anyone in the United States, regardless of the manner of entry. *Id.* IIRAIRA maintained the same basic detention authority and access to release on bond as set forth in the provisions now codified at 8 U.S.C. § 1226(a). As Congress explained, the new provisions at § 1226(a) merely “restate[d] the current provisions in [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996); see also H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Separately, through IIRAIRA, Congress enacted new detention and removal authorities for people apprehended upon arriving in the United States. *See* 8 U.S.C. § 1225(b)(1)-(2). These individuals can be placed in special (1) expedited removal proceedings where DHS officers issue administrative removal orders without any hearings before an IJ, *see* 8 U.S.C. § 1225(b), or full removal proceedings before an IJ, *see* 8 U.S.C. § 1229(a). Individuals arrested and detained upon arrival in the United States, in either type of proceeding, are nonetheless subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A).

When implementing IIRAIRA, the former INS confirmed this reading. In its 1997 interim rule, INS explained that noncitizens placed in removal proceedings after being apprehended in the interior would continue to receive custody redeterminations before Immigration Judges under § 1226(a), and that the new mandatory detention provisions would apply only to specific categories of arriving noncitizens and criminal aliens. *See Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (describing “[t]his procedure” as maintaining “the status quo”).¹

A plain reading of the language of § 1226(a) demonstrates that it governs Petitioner’s detention and affords him a right to seek bond.

The text of 8 U.S.C. § 1226(a)—which expressly provides access to custody redetermination hearings and bond for noncitizens in removal proceedings—covers noncitizens who, like Mr. Lopez Yepes, “are detained “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). This includes both people who entered without inspection, were never formally admitted to the country,

¹ The exception is for those separately subject to the expanded expedited removal scheme under § 1225(b)(1)(A)(iii)(II).

and thus are charged as “inadmissible”, as well as people who were originally admitted to the country and are charged as “deportable” under the INA.

The Congress carved out distinct categories of noncitizens ineligible for bond hearings. It outlined a specific list of individuals present without admission or inspection who are ineligible for bond due to criminal issues—regardless of their status as noncitizens present without admission or inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Thus, mandatory detention applies to noncitizens inadmissible under 8 U.S.C. § 1182(A)(6)(A) who must also have been charged with, arrested for, convicted of, or admitted to having committed certain criminal offenses. 8 U.S.C. § 1226(c)(1)(E)(ii). When Congress creates “specific exceptions” to a statute’s applicability, it “proves” that, absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

The text and structure of Section 1225(b) further demonstrate Congress’s intention to distinguish between noncitizens like the Petitioner, whose detention fails under § 1226(a) because they are “already in the country” and detained “pending the outcome of removal proceedings,” and other categories of aliens. Section 1225(b)(2)’s detention scheme applies “at the Nation’s borders and ports of entry, where the Respondents must determine whether [a noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287, 289. In contrast to § 1226(a), the whole purpose of § 1225 is to define how DHS should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. *See Id.* at 297 (“[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the United States. . .”).

The text of paragraph (b)(2) underscores this point. The paragraph specifies that it applies only to “applicants for admission” who are “seeking admission.” 8 U.S.C. § 1225(a)(1), (b)(2), (b)(2)(A). By stating that (b)(2) applies only to those “seeking admission,” Congress confirmed that it did not intend to sweep into this section individuals like the Petitioner, who have already entered and are now residing in the United States, and who did not take affirmative steps to obtain admission when they arrived. *See generally* 8 U.S.C. § 1225; H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209.

Until recently, Respondents took the same position, explaining that “[t]o ‘seek admission’ . . . entails affirmative actions to gain authorized entry.” Crane v. Johnson, No. 14-10049 (5th Cir. Sept. 29, 2014), Dkt 78-1; *accord* Tr. Of Oral Argument at 44:23-45:2, Biden v. Texas, 597 U.S. 785 (2022) (No. 21-954) (“[Solicitor General]: . . . DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”

“This active construction of the phrase ‘seeking admission’” accords with the plain language in § 1225(b)(2)(A) by requiring that a person be an “applicant for admission” and “also [be] doing something” following their arrival to obtain authorized entry. Diaz Martinez, 2025 WL 2084238, at *6-7; *see also* Lopez Benitez, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7. As the Court in Lopez Benitez recently analogized, “someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be described as already present there.” 2025 WL 2371588, at *7.

The Supreme Court in Jennings further supports the interpretation that § 1225(b) governs the detention authority “at the Nation’s borders and ports of entry,” while § 1226 governs detention of noncitizens already living in the United States. See Jennings, 583 U.S. at 287–89; see also 8 U.S.C. § 1225(a)(3), (b)(1), (d). Mr. Lopez Yepes falls squarely into the latter category.

Thus, Petitioner is not subject to mandatory detention because he was not “seeking admission at the time of his arrest, but he was already present in the United States for four years.

III. Petitioner’s Detention Violates his Due Process Rights

Respondent argues that Petitioner’s mandatory detention does not violate his constitutional rights because it will only last the duration of his removal proceedings. Response at 19, citing Demore v. Kim, 538 U.S. at 512.

“It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” Demore v. Kim, 538 U.S. 510, 523 (2003) (quoting Reno v. Flores, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); see also Id. at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. See Id. at 693; Plyler v. Doe, 457 U.S. 202, 212 (1982); Wong Wing v. United States, 163 U.S. 228, 238 (1896).

Under Mathews v. Eldridge, 424 U.S. 319 (1976), due process is measured by balancing three factors: (1) the private interest affected; (2) the risk of erroneous deprivation under existing procedures and the value of additional safeguards; and (3) the Government's interest, including the burdens of procedural reform. *Id.* at 335. In the immigration detention context, this framework guides whether continued confinement without adequate procedural protections is constitutionally permissible.

First, Petitioner's private interest in physical liberty is at its zenith. Petitioner's detention violates his due process rights because he is neither subject to mandatory detention under §1226(c) as a criminal alien or § 1225(b)(2), as an applicant "seeking admission." Petitioner is a father and a business owner who, since his arrival to the United States four years ago, applied for asylum and complied with all conditions imposed by the immigration authorities. He is not a danger to the community or a flight risk. Civil immigration detention entails complete restraint and separation from family, work, and community. The Supreme Court has recognized that the interest in avoiding physical confinement is among the most significant liberty interests protected by due process. *See Boumediene v. Bush*, 553 U.S. 723, 743 (2008) (describing habeas as one of the "fundamental safeguards of liberty").

Second, the risk of prolonged deprivation under the current procedures is unacceptably high and not meaningfully reduced by a bond hearing. In recent months, experienced Immigration Judges have been terminated or have. Some of them were replaced with inexperienced "temporary judges" recruited from the Judge Advocate General's ranks. Respondent Noem advertised on her verified X account the hiring of "Deportation Judges" as Immigration Judges. The Immigration Judges routinely deny

bond in cases where the risk of flight is nonexistent or minimal without considering meaningful alternatives to detention and without justifying why those alternatives are ineffective to achieve its asserted interests.

Further, even where an Immigration Judge orders release, the Respondents may prolong detention through a DHS custody appeal: EOIR's published guidance confirms that if DHS files the required paperwork, a stay "remains in effect until the Board decides the appeal, or 90 days from the filing of the appeal," with additional tolling/extension mechanisms. In short, directing a bond hearing does not reliably provide the prompt and meaningful protection due process requires when liberty is at stake; it risks continuing unlawful confinement through a process that can be unfair in practice and prolonged by automatic-stay procedures.

The Government's interest in ensuring appearance and community safety while legitimate, can be satisfied through less restrictive conditions of release such as reporting requirements, electronic monitoring, bail supervision, or other court-ordered conditions. Indeed, the Supreme Court has recognized that in immigration detention contexts, courts may condition release on such measures when detention is not reasonably necessary to achieve the Government's asserted interests. Zadvydas v. Davis, 533 U.S. 678, 700 (2001). The adoption of conditional release does not impose undue burden on the Government; it accommodates legitimate interests without perpetuating unlawful confinement.

Balancing these factors, the Mathews framework supports the argument that the Petitioner detention violates his constitutional rights and that additional custody litigation is likely to prolong Petitioner's confinement without satisfying the Government's burden.

The habeas court has the power to order the conditional release of an individual unlawfully detained. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). In the immigration context, the Supreme Court has likewise explained that when detention exceeds what is reasonably necessary to serve its purpose, “the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.” *Zadvydas v. Davis*, 533 U.S. 678, 700 (2001).

Finally, immediate release is an appropriate—and already utilized—remedy in closely analogous circumstances in this District. *See Kanaut v. Rose*, No. 2:25-cv-06869 (E.D. Pa. Jan. 6, 2026) (Hodge, J.) (granting petition for writ of habeas corpus, concluding § 1225(b)(2) did not authorize mandatory detention, and ordering immediate release subject to conditions and bond hearing procedures under § 1226(a)).

CONCLUSION


In sum, the Court has jurisdiction over Petitioner's claim, and administrative exhaustion is not required in this matter. Furthermore, the plain text of 8 U.S.C. § 1226 and § 1225, the statute’s structure and various canons of statutory interpretation, and the legislative and statutory history of § 1226(a) to individuals such as the Petitioner all demonstrate that his detention is unlawful.

For the foregoing reasons, Petitioner respectfully requests that the Court grant his petition for a writ of habeas corpus. Specifically, he requests the Court to order that the Petitioner must be released from custody no later than three days from the date of the Court’s order.

In the alternative, Petitioner requests that the Court order that Petitioner receive a bond hearing under 8 U.S.C. § 1226(a) where the Government bears the burden to

demonstrate that Petitioner is a flight risk and/or a danger to community and the risk cannot be mitigated by any alternatives to detention.

Respectfully submitted this 11th day of January 2026.

A handwritten signature in black ink, reading "Adriana Mitchell", is written over a horizontal line.

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