UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAVIER TELLEZ LAUDINO Petitioner, v. SAM OLSON, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, WARDEN DOE, Warden of Broadview Processing Center Respondents.	Case No. 1:26-cv-00676 JUDGE JOAN H. LEFKOW

REPLY MEMORANDUM

Now comes the petitioner, Javier Tellez Laudino (hereinafter "Petitioner" or "Mr. Javier Tellez Laudino"), by and through his attorney, Isuf Kola, of the Law Office of Isuf Kola & Associates, LTD., and submits this reply memorandum in response to the respondent's opposition memorandum. In support of the petitioner's position, the following statements are made:

STATEMENT OF FACTS

The petitioner reiterates statements made forth in the petition for Writ of Habeas Corpus. Petitioner Javier Tellez Laudino is a native and citizen of Mexico who entered the United States

without inspection. He is currently detained by immigration authorities at Clay County Justice Center in Brazil Indiana.

Respondents allege that this Court lacks jurisdiction to review the detention under the jurisdictional bars set forth in 8 U.S.C. § 1252, including §§ 1252(g), 1252(b)(9), and 1252(a)(2)(B)(ii). They assert that the decision to detain Petitioner during the pendency of removal proceedings is discretionary and therefore not subject to judicial review. Respondents further contend that Petitioner is ineligible for a bond hearing because he was never formally admitted into the United States. In support, Respondents rely on the government's brief filed in *Ochoa Ochoa v. Noem*, No. 25-C-10865 (N.D. Ill.), which presents similar arguments regarding jurisdiction and eligibility for bond. Furthermore the Petitioner requested a custody redetermination pursuant to 8 C.F.R § 1236 and the Immigration Judge denied based on jurisdictional grounds citing Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

JURISDICTION

The respondents contend that this court lacks jurisdiction over these issues by virtue of jurisdictional bars set forth in 8 U.S.C. §1252. The respondents contend that the decision to detain Petitioner during removal proceedings is incidental to both the commencement of those proceedings and the adjudication of that case under 8 U.S.C. § 1252(g). The respondents also contend that review of the detention decision is also barred by 8 U.S.C. § 1252(b)(9) (review only available on judicial review of final order of removal) and 8 U.S.C. 1252(a)(2)(B)(ii) (no jurisdiction over discretionary immigration decisions).

Section 1252(b)(9) provides that the Court of Appeals is the exclusive forum for "judicial review of all questions of law . . . including interpretation and application of statutory provisions

. . . arising from any action taken . . . to remove an alien from the United States." 8 U.S.C. § 1252(b)(9).

Petitioner challenges the legality of his detention and the denial of his right to seek bond while his removal case proceeds—neither of which are actions arising from a decision to remove Petitioner from the United States. The Supreme Court has stated that § Section 1252(b)(9) "does not present a jurisdictional bar" where petitioners are "not asking for a review of an order 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." *Jennings v. Rodriguez, 583 U.S. 281, 294 (2018)*. Petitioner is not challenging the underlying removal proceedings in the habeas petition; rather, petitioner asserts he is being unlawfully detained under the mandatory detention framework of Section 1225(b), as opposed to the discretionary one under 8 U.S.C. §1226(a).

Section 1252(g) provides that "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). Respondents argue that Section 1252(g) "bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings (including the decision to detain a foreign national pending removal) and for immigration judges to adjudicate those cases—which includes bond determinations during those proceedings." (Id. at *7.)

Petitioner is not challenging the "commence[ment]" of removal proceedings, the "adjudication" of his case, or the "execut[ion] of removal orders against him. Petitioner is challenging the unlawful nature of his detention without a bond hearing. As the court in this

district reiterated, the Supreme Court has "rejected as 'implausible'" any claim that § 1252(g) covers "all claims arising from deportation proceedings." *Ochoa Ochoa v. Noem*, et. al., Case No. 25-cv-10865, (Oct. 16, 2025) (*Jennings, J.*) (quoting *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). See also *Jennings*, 583 U.S. at 294 (holding that § 1252(g) does not "sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General"; instead, the Supreme Court "read[s] the language to refer to just those three specific actions themselves."); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'").

Respondents also argue that this Court's jurisdiction in this case is limited by 8 U.S.C. § 1252(a)(2)(B)(ii). Section 1252(a)(2)(B)(ii) precludes judicial review of "any . . . decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B)(ii). The Petitioner challenges not a discretionary bond denial by an Immigration Judge under Section 1226(a), rather the "extent of the [Government's] authority under the . . . detention statute[s]," which the Supreme Court has held "is not a matter of discretion." *Zadvydas v. Davis, 533 U.S. 678, 688* (2001). Like in other cases in this district, Petitioner "has not been permitted such a hearing because Respondents maintain that he is mandatorily detained under § 1225 instead." *Ochoa Ochoa,* Case No. 25-cv-10865

BOND ELIGIBILITY

Respondents do not believe that due process is violated in this matter because the Seventh Circuit law does not recognize that foreign nationals who have not been lawfully admitted have a

liberty interest in release from custody into the United States. Respondents contend that foreign nationals who were never lawfully admitted into the United States do not qualify for bond under the Immigration and Nationality Act. Petitioner believes his detention should be analyzed under 8 U.S.C. § 1226(a). Respondents respond that the detention should be analyzed under 8 U.S.C. § 1225(b)(2). Respondents contend that Section 1225(b)(2) governs Petitioner's detention because he is, consistent with the statutory language, (1) an "applicant for admission" (2) who is seeking admission and (3) is "detained for a proceeding under section 1229a[.]" Another court in this district *Ochoa Ochoa,* Case No. 25-cv-10865, set the framework of both statutory provisions:

> Section 1226(a) sets out the "default rule" for the discretionary detention of noncitizens "already present in the United States." Jennings, 583 U.S. at 303. Under § 1226(a), immigration authorities may make an initial determination as to detention, but noncitizens may then request a bond hearing before an [Immigration Judge]. 8 C.F.R.§ 1236.1(c)(8), (d)(1). At that hearing, the noncitizen "may secure his release if he can convince the officer or immigration judge that he poses no flight risk and no danger to the community." Nielsen v. Preap, 586 U.S. 392, 397–98 (2019) (citing 8 C.F.R. §§ 1003.19(a), 1236.1(d); Matter of Guerra, 24 I. & N. Dec. 37 (BIA 2006)).
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> By contrast, § 1225 governs the detention of those "seeking admission." An applicant for admission is defined as a noncitizen "present in the United States who has not been admitted or who arrives in the United States," § 1225(a)(1), and "fall[s] into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." Jennings, 583 U.S. at 288. The second category creates a catchall mandatory detention provision: "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 [full removal proceedings under § 1229]." 8 U.S.C. § 1225(b)(2)(A). Unlike noncitizens detained under § 1226(a), those detained under § 1225 may only be released "for urgent humanitarian reasons or significant public benefit." *Jennings, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).*
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> Ochoa Ochoa, Case No. 25-cv-10865.

The Petitioner is not "seeking admission" at a port of entry or the border at the time of his arrest; rather, the Petitioner was already present in the United States when he was arrested. As Judge *Jenkins* in *Ochoa Ochoa* stated, "'seeking' implies action and that those who have been present in the country for years are not actively 'seeking admission.'" *Ochoa Ochoa, Case No. 25-cv-10865, (quoting Beltran Barrera v. Tindall, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025))*. In this case, Petitioner entered without inspection in 2023 and has resided continuously

in the United States since that time. He was not apprehended at a port of entry or while attempting to cross the border. As Judge Jenkins noted in *Ochoa Ochoa*, "'seeking' implies action, and those who have been present in the country for years are not actively seeking admission." *Ochoa Ochoa*, slip op. at *12 (quoting *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025)). Respondents' own response designated and charged Petitioner as having "entered the United States without inspection," not as an "arriving alien." This distinction is critical. Although Respondents argue that "applicant for admission" should be read synonymously with "seeking admission,"courts should be "'reluctant to treat statutory terms as' surplusage' in any setting." D*uncan v. Walker,* 533 U.S. 167, 174 (2001) (quoting *Babbitt v. Sweet Home Chapter, Communities for Great Ore..*, 515 U.S. 687, 698 (1995)); see id. ("[A] statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant[.]") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (quoting *Market Co. v. Hoffman*, 101 U.S. 112, 115 (1879)). This Court should reject Respondents' proposed interpretation, in that Petitioner was not "seeking admission" at the time of his arrest or at present, and to conclude that Section 1225(b)(2)(A)'s mandatory detention provision is inapplicable.

Respondents' interpretation of Section 1225 would also render meaningless the Laken Riley Act, 8 U.S.C. 1226(c)(1)(E), enacted in January 2025, which "amends the Immigration and Nationality Act (INA) to provide an additional category of aliens who are subject to mandatory detention." EOIR Policy Memo 25-11, (Jan. 30, 2025)[1]. Under that Act, a foreign national who is inadmissible under Section 1182(a)(6)(A) and "is charged with, is arrested for, is convicted of" certain other enumerated offenses is subject to mandatory detention. (8 U.S.C. 1226(c)(1)(E) (listing the following enumerated offenses: "burglary, theft, larceny, shoplifting, [] assault of a

[1] https://www.justice.gov/eoir/media/1387731/dl?inlinhearings to

law enforcement officer offense, or any crime that results in death or serious bodily injury to another person").) By implication, then, individuals who are inadmissible under Section 1182(a)(6)(A) but have not committed any of the Act's enumerated offenses are properly detained under Section 1226(a).

Respondents cite the Matter *of Yajure Hurtado*, a decision issued by the Board of Immigration Appeals ("BIA") on September 5, 2025. There, the BIA reversed course as to its longstanding interpretation of the Immigration and Nationality Act and held that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." 29 I&N Dec. 216 (BIA 2025).

The Court in *Ochoa* states that *Yajure Hurtado* is at odds with "longstanding agency practice of providing § 1226(a) bond hearings to noncitizens. . . who were released on recognizance upon entering the United States, placed in standard removal proceedings, and then redetained." *Ochoa Ochoa*, Case No. 25-cv-10865,; see also See *Loper Bright*, 603 U.S. at 386 ("[T]he longstanding 'practice of government—like any other interpretive aid—'can inform [a court's] determination of what the law is'") (citations omitted).

Finally, the Due Process Clause of the Fifth Amendment applies to noncitizens, "whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas, 533 U.S. at 693.* Government detention in immigration proceedings may violate that Clause unless "in certain special and narrow nonpunitive circumstances where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690. Courts apply a three-factor balancing test to determine whether a violation of procedural due process has occurred: (1) the private interest implicated by the government action; (2) "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;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

Petitioner has a private interest in release from custody; Respondents' action creates a substantial risk of an erroneous deprivation of Petitioner's interest; and the Government's interest (including fiscal and administrative burdens) is minimal here. See *Ochoa*, Case No. 25-cv10865

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's petition for writ of habeas corpus and order Respondent to either: (1) afford Petitioner a bond hearing before an immigration Judge; or (2) release Petitioner from custody.

Dated: February 5, 2026

Respectfully submitted,
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