

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WENDING MAI, Clinton Cnty.
Corr. Facility ID No. 1005092,
DHS File No. A 

Plaintiff,

v.

UNITED STATES
IMMIGRATION AND
CUSTOMS ENFORCEMENT,
et al.,
Respondents.

Case No. 1:21-CV-1839

Hon. Joseph F. Saporito,
United States District Judge

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

This is a habeas action filed on April 28, 2025, by Petitioner Wending Mai,¹ an immigration detainee in the custody of the United

¹ Mai's wife, Huan Wang, filed this habeas petition as "his Next Friend." Doc. 1 at 1. It is unclear why the Petitioner cannot file this habeas petition. *See Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990) (noting that the two requisites for "next friend" standing are (1) an adequate explanation, such as incompetence or disability, as to why the real party in interest cannot appear on his own behalf, and (2) showing that the "next friend" is truly dedicated to the best interests of the person on whose behalf he seeks to litigate and has some significant relationship with the real party in interest). Without further information, the Court should deny this petition because Mai and Huang have not met the requisite prerequisites for "next friend" standing. *See In re Zettlemoyer*, 53 F.3d 24, 28 (3d Cir. 1995) (per curiam) (denying next friend standing to mother where incompetent son waived right to file habeas petition).

States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) at the Clinton County Correctional Facility in McElhattan, Pennsylvania. *See* Doc. 1, Petition, at 1, ¶ 1. Mai requests the Court “[d]eclare that Plaintiff’s detention is unlawful,” and “[o]rder Plaintiff’s immediate release from custody.” *Id.* at 4. Later that day, April 28, 2025, this Court entered an order directing Respondent to respond to the Petition on or before May 12, 2025. Doc. 3, Order to Show Cause. This Response is filed in accordance with that Order.

FACTS

Wending is a native and citizen of the People’s Republic of China. Exhibit 1, Record of Deportable/Inadmissible Alien, at 1-3; Exhibit 2, Notice to Appear, at 2. On June 12, 2019, Mai was admitted to the United States at New York, New York, as a nonimmigrant J-1 exchange visitor. Exhibit 1 at 2; Exhibit 2 at 2. Mai was admitted to perform research at Penn State University in University Park, Pennsylvania, for a temporary period not to exceed September 9, 2022. Exhibit 1 at 2; Exhibit 2 at 2.

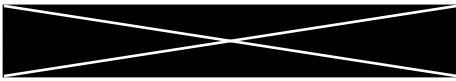

 Mai remained in the United States beyond September 9, 2022.

On November 15, 2024, Mai attempted to purchase a firearm from Savage Arms, Inc. Exhibit 1 at 3, 11-27. In applying for the purchase, Mai indicated that he was lawfully present in the United States. *Id.* at 16 (answering “no” to question “[a]re you an alien illegally or unlawfully in the United States?”). Mai’s application was denied. *Id.* at 22. On February 14, 2025, the Pennsylvania State Police requested the State College Borough Police Department investigate Mai for a potential violation of 18 P.A. CS 61 § 6111(g)(4). *Id.* at 3, 11-14. Around this time, ICE Enforcement and Removal Operations (ERO) became aware of Mai’s attempt to purchase a firearm. *Id.* at 2.

On March 5, 2025, ICE served Mai with a Notice to Appear via regular mail. Exhibit 2 at 3. Specifically, the Notice to Appear charged Mai as removable pursuant to Immigration and Nationality Act § 237(a)(1)(C)(i), in that he failed to maintain or comply with the conditions of the nonimmigrant status under which he was admitted. *Id.* at 2. Mai was scheduled for a hearing with the Executive Office for Immigration Review (EOIR) on May 5, 2025. *Id.*

On April 22, 2025, ERO officers observed Mai exiting his known residence in State College, Pennsylvania, and he was placed under arrest

shortly thereafter. Exhibit 1 at 1-2; *see also* Doc. 1 at 2, ¶ 7. ICE ERO transferred Mai to Clinton County Correctional Facility. Exhibit 4, Notice to EOIR, at 1.

On April 29, 2025, ICE filed a motion to change venue from the Philadelphia (Pennsylvania) immigration court to the Elizabeth (New Jersey) immigration court. *See* Exhibit 5, Motion to Change Venue. Mai is currently scheduled for a master calendar hearing on his removal proceedings  with the Elizabeth immigration court on May 20, 2025. *See* Exhibit 6, Master Calendar Hearing Notice.

Currently, Mai is scheduled for a custody redetermination hearing tomorrow, May 13, 2025. *See* Exhibit 7, Notice of Custody Redetermination Hearing. Mai remains detained at Clinton County Correctional Facility. *See* U.S. Immigration and Customs Enforcement Detainee Locator (available at <https://locator.ice.gov/odls/#/search>) (enter Mai's alien number and country of birth).

ARGUMENT

I. Mai is lawfully detained under 8 U.S.C. § 1226(a).

The Court should deny the petition because Mai's detention is lawful and does not offend due process because the Attorney General of the United States is authorized to detain noncitizens during determination of their removal status, and Mai will be provided a chance to administratively contest his detention.

Section 1226(a) of Title 8, United States Code, provides that the Attorney General "may" issue a warrant for the arrest and detention of a noncitizen pending a decision on whether the noncitizen is to be removed. Provided the noncitizen is not subject to mandatory detention under Section 1226(c), the Attorney General, through the DHS district director, makes an initial custody determination as to whether it should detain a noncitizen pending completion of the removal proceedings, or whether it should release the noncitizen on bond. *See* 8 C.F.R. § 236.1(c).

If the district director denies bond and the noncitizen is not subject to an administratively final order of removal, the noncitizen may seek his release by requesting an initial bond redetermination hearing before an immigration judge. *See* 8 C.F.R. § 236.1(d), 1003.19. A noncitizen may

appeal an immigration judge's decision on a bond redetermination to the Board of Immigration Appeals (BIA). *See* 8 C.F.R. § 236.1(d)(3). The BIA's decision to detain or release an arrested noncitizen on bond is discretionary and is not subject to judicial review. 8 U.S.C. § 1226(e).

If denied bond, a noncitizen can subsequently request an additional bond redetermination hearing before an immigration judge, which he must make in writing. 8 C.F.R. §1003.19(e). This request "shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination." *Id.*

As of the date of this Response, Mai has been detained for twenty (20) days. *See* Doc. 1 at 2, ¶ 7; Exhibit 4. Mai is being held pursuant to 8 U.S.C. § 1226(a), as he is alleged to have failed to follow the conditions of his nonimmigrant status and is removable. *See* Exhibit 2 at 2. Mai is entitled to his administrative process before the EOIR, at which DHS must establish that he is removable, and Mai may request forms of relief against removal. Because Mai is considered to be in pre-removal detention, "decisions concerning his ongoing detention are at the discretion of the immigration judge." *Perez-Cobon v. Bowen*, No. 1:CV-17-1550, 2017 WL 6039733, at *3 (M.D. Pa. Dec. 6, 2017).

Here, the Attorney General has the statutory authority and discretion to detain Mai pending a decision on his potential removal. *See* 8 U.S.C. § 1226(a). Notwithstanding that fact, Mai has been granted a custody redetermination hearing, which is scheduled to occur on May 13, 2025, pursuant to the immigration regulations. *See* Exhibit 7; *see also* 8 C.F.R. § 236.1(d), 1003.19. In the event that Mai's detention is continued, he may appeal the immigration court's decision to the BIA. Because Mai's detention is lawful and statutorily authorized, his petition is premature and should be denied.

Courts may only grant habeas relief if a petitioner can establish that his present detention is unlawful. 28 U.S.C. § 2241(c)(3). As repeatedly recognized by the Supreme Court, “[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Demore v. Kim*, 538 U.S. 510, 522 (2003) (*quoting Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976)); *Reno v. Flores*, 507 U.S. 292, 305-306 (1993). Therefore, while the Fifth Amendment entitles noncitizens to due process in deportation proceedings, “detention during deportation proceedings is a constitutionally valid aspect of the deportation process.” *Demore*, 538

U.S. at 523; *see also Reno*, 507 U.S. 292 (upholding INS's detention policies regarding juvenile aliens with its "blanket" presumption of the unsuitability of custodians other than parents, close relatives, and guardians). Here, as indicated above, Mai is being held pursuant to statutory and discretionary authority. Moreover, he is being offered an opportunity to contest his detention. Therefore, Mai cannot demonstrate that his detention is currently unlawful or his due process is being violated, and his petition must be denied.

Numerous courts, including the Supreme Court, have looked favorably on the procedures governing section 1226(a). For example, the Third Circuit rejected a due process challenge to detention under section 1226(a). *See Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274 (3d Cir. 2018). In *Borbot*, a habeas petitioner argued that, based on the *length* of his detention under section 1226(a) – over one year – he was constitutionally entitled to a second bond hearing at which the Government would bear the burden of proof. *Id.* at 276-77. The Third Circuit rejected petitioner's argument, which relied on cases involving prolonged detention under the mandatory detention statute, *see* 8 U.S.C. § 1226(c), and noted that, "unlike § 1226(c) detainees . . . who were

detained for prolonged periods without being given any opportunity to apply for release on bond, [petitioner] *was granted meaningful process* prior to filing his habeas petition.” *Id.* at 279 (emphasis added).

The alien in *Borbot* predicated his challenge to section 1226(a) on the length of his detention and did not take issue with his initial bond hearing. The Third Circuit’s central holding was that no additional procedures were required because the existing procedures for bond hearings under section 1226(a) are constitutionally adequate. 906 F.3d at 278-29. The Court specifically noted that “*Borbot* was afforded a prompt bond hearing, *as required by § 1226(a) and its implementing regulations*,” and it was on this basis that the court concluded he was “granted meaningful process.” *Id.* (emphasis added). *Borbot* thus stands for the proposition that section 1226(a) and its implementing regulations fully satisfy the requirements of due process. Here, ICE is providing Mai the same type of process that was afforded the petitioner in *Barbot*. Moreover, it cannot be said that Mai’s detention has been prolonged, as he has been detained for approximately three weeks. *See Contant v. Holder*, 352 Fed.Appx. 692 (3d Cir. 2009) (affirming denial of a petitioner’s habeas where he had received process under 8 U.S.C. §

1226(a) and his 19 months' detention was not overly prolonged). Thus, the petition must be denied.

CONCLUSION

For the foregoing reasons, the Court should deny Mai's habeas petition.

Respectfully submitted,

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Dated: May 12, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on May 12, 2025, she served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Scranton, Pennsylvania.

Mai Wending
A 
Clinton County Correctional Facility
P.O. Box 419
58 Pine Mountain Road
McElhattan, PA 17748

Huan Wang
720 Tanager Drive
State College, PA 16803

/s/ Stephanie Kakareka
STEPHANIE KAKAREKA
Legal Administrative Specialist