UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS LUFKIN DIVISION

MICHEL JHOVANI HERNANDEZ SILVA,
Petitioner,

v.

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY**; **TODD LYONS**, Acting Director of the US. Immigration and Customs Enforcement; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**; **PAMELA BONDI**, Attorney General of the United States; **CARLO JIMINEZ**, Acting Assistant Field Office Director of the Houston Field Office of U.S. Immigration and Customs Enforcement; and **ALEXANDER SANCHEZ**, Warden, IAH Polk Adult Detention Facility, in their official capacities,

Case No. 9:25-cv-251-MJT-CLS

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Michel Jhovani Hernandez Silva, by and through his attorney, respectfully submits this Reply to Respondents' Response to Petitioner's Petition for Writ of Habeas Corpus. ECF No. 4. Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules governing Section 2254 cases.

The DHS is detaining Petitioner solely on the purported ground that Petitioner is not eligible for bond under 8 U.S.C. § 1225. However, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) and § 1225(b)(2)(A) do not apply to Petitioner. Therefore, his detention violates both the Immigration and Nationality Act ("INA") and his Fifth Amendment right to due process.

Procedural History

Petitioner entered the United States in 2003. In July 2025, over two decades later, the DHS filed a "Notice to Appear" against Petitioner pursuant to 8 U.S.C. § 1229, notifying him they were initiating removal proceedings under INA § 240, 8 U.S.C. §1229a. The NTA charged Petitioner with being "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." *See* NTA.

An NTA is the charging document that initiates removal proceedings in Immigration Court before an Immigration Judge (IJ) and constitutes written notice to noncitizens of their placement in removal proceedings before the Immigration Court. *See* 8 U.S.C. §1229(a); 8 C.F.R. §1003.14(a) (2025).

The DHS's filing of the NTA against Petitioner in this case initiated "full" removal proceedings in Immigration Court pursuant to 8 U.S.C. §1229a, which vests jurisdiction with the IJ and constitutes "the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. §1229a(a)(3). As the Board of Immigration Appeals ("BIA") recently stated, "DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(1) of the INA, 8 U.S.C. §1225(b)(1), **or** full removal proceedings under section 240 of the INA, 8 U.S.C. §1229a." *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (emphasis added). Full removal proceedings and expedited removal proceedings are mutually exclusive. The government concedes that Petitioner is in full proceedings.

On September 8, 2025, the IJ issued an opinion stating that he lacked jurisdiction to consider or grant bond pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Respondents argue that Petitioner is detained under 8 U.S.C. § 1225 and subject to mandatory bond. This contradicts statutory construction, years of agency interpretation and violates Petitioner's Fifth Amendment rights.

ARGUMENT

1. This Court has jurisdiction to review Petitioner's claims

Respondents argue that 8 U.S.C. § 1252(g) bars Petitioner's claims because his "detention arises from the decision to commence and adjudicate [removal] proceedings." ECF No. 4 at 14. But Petitioner is not challenging any decision to "commence" or "adjudicate" proceedings within the meaning of § 1252(g).

Accepting Respondents' interpretation would be at odds with the narrow interpretation of this subsection that courts have consistently adopted and would bar nearly all detention challenges brought by noncitizens. As the Supreme Court has explained, § 1252(g) is "much narrower" than what Respondents claim. *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 482 (1999). Rather than encompass "all deportation-related cases," *id.* at 478, § 1252(g) insulates from litigation the immigration authorities' "exercise of [their] discretion," *id.* at 484 (emphasis added), with respect to the three specified actions: "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders," *id.* at 483 (alterations in original). The subsection was thus "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *See id.* at 485 n.9; *see also id.* at 485 (providing as an example of such prosecutorial discretion "'no deferred action' decisions and similar discretionary determinations"). Indeed, the Court found it "implausible" that "the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.* at 482.

Subsequent Supreme Court precedent has affirmed § 1252(g)'s narrow scope and focus on discretionary decisions. *See*, e.g., *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (noting § 1252(g) is "narrow"). With these principles in mind, 1252(g) does not "sweep in any claim that can technically be said to 'arise from' the three listed actions," including challenges to the proper interpretation of the INA's detention provisions. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In fact, although the Supreme Court has reviewed several cases involving the government's application of immigration detention authorities, it has never held that such claims might be barred by § 1252(g)—including in cases concerning § 1226. *See Jennings*, 583 U.S. at 281 (§§ 1226 & 1225); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (§ 1231); *Demore v. Kim*, 538 U.S. 510 (2003) (§ 1226); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) (§§ 1226 & 1231); *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) (§ 1231).

That omission is significant because "courts, including th[e] [Supreme] Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Moreover, in *Jennings*, the Court expressly reiterated that § 1252(g) must be "read . . . to refer to just those three specific actions themselves." 583 U.S. at 294.

Here, Petitioner does not challenge any discretionary action to "commence proceedings." Rather, he challenges Respondents' independent conclusion that he is subject to mandatory detention while those proceedings take place. Cf. 8 C.F.R. § 1003.19(d) (noting IJ consideration of requests for "custody or bond . . . shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding"). Determining the detention provision under which Petitioner is detained is not discretionary, nor does resolving that question challenge Defendants' discretionary decision to place class members in removal proceedings. See *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (clarifying § 1252(g) does not prevent district court jurisdiction over "a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority"). As a result, § 1252(g) does not bar Petitioner's claims.

Respondents' argument with respect to § 1252(b)(9) is similarly and directly foreclosed by Supreme Court precedent. Paragraph 1252(b)(9) is a "zipper clause" that channels review of final orders of removal into petitions for review before a federal court of appeals. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (en banc) (quoting *AADC*, 525 U.S. at 483). Respondents contend that § 1252(b)(9) applies here because Petitioner "challenge[s] the decision and action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an action taken to remove them from the United States." ECF No. 4 at 17. *Jennings* squarely refutes this argument. There, similar to here, the Court addressed a statutory interpretation question regarding bond hearings under § 1226 and § 1225. Before reaching the merits, the Court first addressed whether such detention could be said to "'aris[e] from' the actions taken to remove" the noncitizen class members in Jennings, thus barring the claims under § 1252(b)(9). 583 U.S. at 293 (alteration in original). The Court rejected that proposition—i.e., the same one Defendants now make—as "absurd." *Id.* As the Court explained:

> Here is no different. In fact, Defendants' position is now even more extreme.1 The Bond Denial Class asserts that they are detained under § 1226(a) and thus are entitled to a bond hearing at the outset of their detention, rather than after prolonged detention, as in Jennings. Forcing them to wait years for a petition for review to resolve that claim would "depriv[e] [them] . . . of any meaningful chance for judicial review." *Id.*

Once again, it is notable that the Supreme Court has never demanded that noncitizens like Petitioner raise their challenges to detention in a petition for review in any of the immigration detention challenges the Court has heard. *See* supra p. 6 (citing cases). Furthermore, courts across the country have recently held that they have jurisdiction to hear habeas petitions with identical issues.[1]

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[1] Including *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV-25-11613-BEM, 2025 W: 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,

The Southern District of Texas, Houston Division, issued an order on October 7, 2025, which cites to the "tsunami" of cases granting relief on these exact claims. *Buenrostro-Mendez v. Bondi*, et al., No. H-25-3726 (S.D. Tex. Oct. 7, 2025), citing *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sep. 25, 2025). The Western District of Texas has issued a similar opinion. *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC (W.D. Tex. Sept. 22, 2025).

The cases that Respondents cite to in supporting their contention that this court is without jurisdiction over Petitioner's claims are clearly distinguishable from Petitioner's in one significant way – those cases cited by the Respondents are focused on an immigration judge's discretionary control over the facts of the specific case. *El Gamal v. Noem* and the collected cases all examine the IJ's discretionary decision to detain someone without bond pursuant to 8 U.S.C. § 1226. The courts in those cases hold that they lack jurisdiction because the Petitioners are being held pursuant to a judge's examination of that Petitioner's facts under the framework of 8 U.S.C. § 1226.

2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

Petitioner is seeking an individual determination of the facts surrounding his continued detention pursuant to 8 U.S.C. §1226. He is challenging the broad policy of considering him detained pursuant to §1225 instead of §1226, contrary to decades of agency practice, statutory framework, and controlling case law.

II. Petitioner is not Required to Exhaust Administrative Remedies

Petitioner is not required to exhaust administrative remedies when, as here, he is challenging his ongoing detention as a violation of due process in a system where the IJ has already stated he lacks jurisdiction to hold a bond hearing or release him on bond.

Exhaustion is not required by statute and when a "legal question is fit for resolution and delay mean hardship, a 'court may choose to decide the issues itself.'" *Buenrostro-Mendez* at *4, citing *Lopez Benitez v. Francis*, 25 Civ 5937, 2025 WL 2371588 at *13 (S.D.N.Y. Aug. 13, 2025), *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 at *2 (E.D. Mich. Sept. 9, 2025) (citing 28 U.S.C. § 2241).

Further, any appeal to the BIA would be futile as they are likely to deny his appeal based on the *Matter of Yajure Hurtado, supra*. "Requiring him to wait, indefinitely, for a ruling on [the BIA] appeal would be inappropriate because it would exacerbate his alleged constitutional injury – detention without a bond hearing." *Lopez Arevalo, citing Petgrave* 529 F. Supp. 3d at 672 n.14.

III. Petitioner is not subject to mandatory detention under the expedited removal statute.

Respondents argue Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b). ECF. Doc. 4 at 8-13. The record and statutory framework show otherwise.

The statutory text confirms that § 1226, not § 1225, governs this case. Courts interpret statutes by their plain language as a whole. No clause or word should be rendered "superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Context, structure, and purpose remain relevant. *Gundy v. United States*, 588 U.S. 128, 141 (2019).

A plain reading of the statute implies that the default bond procedures in section 1226(a) apply to noncitizens like Petitioner who are "present in the United States without being admitted or paroled" under section 1182(a)(6)(A) but have not been implicated in any crimes as set forth in section 1226(c).

The Supreme Court has recognized that when Congress creates specific exceptions to a statute's applicability, it proves that absent those exceptions, the statute generally applies. *Rodriguez v. Bostock*, No. 3:25-cv-05240, 2025 WL 2782499, at *36 (W.D. Wash. Sept. 30, 2025), *citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 US. 393, 400 (2010).

Almost every district court to consider this interplay between § 1225 and § 1226 has concluded that "the statutory text, statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" support finding that § 1226 applies to these circumstances." *See Buenrostro-Mendez* at *5, citing *Pizarro Reyes*, 2025 WL 2609425, at 4, *Lopez-Arevalo*, 2025 WL 269128, at 7 ("in recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect."); *Rodirguez v. Bostock* at 1 &n.3 (collecting cases); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947 at 6 (D. Minn. Oct. 1, 2025) (joining the "chorus" of courts concluding that § 1226 applies).

Respondents cite one case, *Pena v Hyde*, to support their position that "an alien, unlawfully present in the country for approximately 20 years, was nonetheless an 'applicant for admission.'" ECF. No. 4 at 11. However, their reliance on this case is misleading – the issue in *Pena* was whether or not Petitioner, who was mandatorily detained under § 1225, was entitled to remain in the country because the I-130 petition filed on his behalf had been approved. The court, finding that an approved I-130 did not endow Petitioner with any legal status, concluded that Petitioner's continued detention was authorized by § 1225(b)(2)(A). That opinion does not discuss the interplay between § 1225 and § 1226. In fact, § 1226 is not even mentioned in the opinion – the entirety of the holding in that case focuses on determining whether Petitioner is protected from removal proceedings based solely on the fact that he is the beneficiary of an approved I-130. *See generally*, *Pena v. Hyde*, Civ. Action No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025).

By contrast, Petitioner's argument is focused on the statutory interplay of § 1225 and § 1226. District courts across the country have considered the statutory scheme at the heart of this case – whether noncitizens residing in the United States and are placed in removal proceedings are entitled to a bond hearing before an IJ and the possibility of release under 8 U.S.C. § 1226(a) or if they are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

Every district court to address this question has concluded that the Respondents' position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice. Respondents have not cited a single case in their response where a court has agreed with the government's position in similar cases where the petitioner is alleging that he is entitled to release on bond and maintains that he should be considered under the framework of § 1226 instead of § 1225.

IV. Petitioner has a Right to Due Process in his Immigration Proceedings

Petitioner has a constitutionally protected interest in procedural due process in his removal proceedings and applications for relief. *See Yamataya v. Fisher*, 189 U.S. 86 (1903) (holding that immigrants have procedural due process rights).

"[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission...and those who are within the United States after an entry." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). The government is arguing that Petitioner is seeking admission, but this belies the undisputed facts of this case.

In this case. Petitioner is not an arriving alien, was neither paroled nor had his parole revoked. One of the due process rights afforded to alien in deportation proceedings is full and fair hearing. *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). In that hearing, the government must prove that the noncitizen is a danger by clear and convincing evidence or a flight risk by preponderance of the evidence. *Id.* at 31. If the government cannot meet its burden, it must offer bond or conditional parole. *Id.*

In this case, Respondents claim that Petitioner has received all process that is due – focusing on the fact that Petitioner has had a bond hearing. ECF. No. 4 at 19-20. However, the bond hearing that Petitioner had far from a full and fair hearing - the IJ, citing *Matter of Yajure Hurtado, supra*, held that he lacks jurisdiction to consider or grant bond in this case. Respondents did not have to meet their burden to show Petitioner was a flight risk or a danger and the IJ did not have to examine those factors either – instead, bond was denied on a cursory and incorrect interpretation of the statutory and constitutional protections that Petitioner is due.

CONCLUSION

For the reasons described above, Petitioner's Petition for Writ of Habeas Corpus should be granted, and Respondents should be ordered to release Petitioner immediately pursuant to his statutory eligibility for release.

Dated this 9th day of October, 2025,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ Frances Bourliot

Frances Bourliot