IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

BRAYAN JOSUE LOPEZ SARMIENTO, *et al.*, *Petitioners*, v. KRISTI NOEM, *et al.*, *Respondents.*	Case No. 1:25-cv-1644 (AJT/WBP)

FEDERAL RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S REQUEST FOR IMMEDIATE RELEASE

In accordance with the Court's order of December 10, 2025 (Doc. No. 32), Federal Respondents respectfully submit their Response in opposition to Petitioner Axel Martinez Ucles' request for immediate release from custody.

INTRODUCTION

Despite already receiving a constitutional bond hearing pursuant to § 1226(a), as directed by this Court, Petitioner Axel Martinez Ucles' maintains that this Court should immediately release him from custody. Petitioner claims that his medical condition and Immigration and Customs Enforcement's ("ICE") alleged indifference towards Petitioner's medical needs require his release. But medical conditions alone cannot justify release. And Petitioner cannot show in any way that ICE is deliberately denying Petitioner medical care. To the extent Petitioner challenges his order denying bond, he seemingly excludes *why* he was denied bond. An Immigration Judge ("IJ") found Petitioner "is a flight risk based on multiple failure to appears." Ex. 1, Order of the Immigration Judge. And because the Immigration and Nationality Act ("INA") bars review of IJ

bond decisions, this Court cannot hear Petitioner's claims. Therefore, Federal Respondents respectfully request this Court deny Petitioner's request for immediate release.

DISCUSSION

I. Petitioner's Medical Condition is not a Basis for Habeas Relief.

Petitioner here asks this Court to grant him immediate release because of his medical condition. Petitioner further claims he is receiving a lack of medical while in Federal Respondents' custody. Currently, the Federal Respondents are in the process of gathering Petitioner's medical records composed while in Federal Respondents' custody as well as Petitioner's medical history and conditions while in Federal Respondents' custody. Federal Respondents are working towards submitting such information as quickly as possible prior to the December 17, 2025 hearing.

In any sense, habeas relief cannot be premised upon a medical condition, especially when the detention facility has the means to treat that condition in a constitutionally-satisfactory manner. *See, e.g., Aslanturk v. Hott*, 459 F. Supp. 3d 681, 699 (E.D. Va. 2020); *Toure v. Hott*, 458 F. Supp. 3d 387, 401-04 (E.D. Va. 2020). Indeed, Petitioner's questions of medical judgment by the Federal Respondents' health officials are not subject to judicial review, and allegations of mistreatment or nontreatment must reach a constitutional dimension in order to present a colorable claim. *Hirons v. Director*, 351 F.2d 613 (4th Cir.1965); *see also Shields v. Kunkel*, 442 F.3d 409 (9th Cir.1971). "[A]nd even if Petitioner's allegations of faulty medical care demonstrated a constitutional violation, [P]etitioner would still not be entitled to release from custody." *Stone v. Johnson*, 2005 WL 2045349, at *3 (E.D. Va. Aug. 25, 2005). "Rather, the appropriate remedy would be to enjoin any unconstitutional practices." *Id.* (citing *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973)).

Therefore, this Court should reject Petitioner's request for immediate release.

II. To extent Petitioner brings a deliberate indifference claim, he fails to plead facts sufficient to warrant immediate release.

A plaintiff "makes out a due process violation if he shows deliberate indifference to serious medical needs . . . because no legitimate nonpunitive goal is served by a denial or unreasonable delay in providing medical treatment where the need for such treatment is apparent." *Martin v. Gentile*, 849 F.2d 863, 871 (4th Cir. 1988) (internal quotations omitted); *see also Young v. City of Mt. Ranier*, 238 F.3d 567, 575 (4th Cir. 2001) ("The Fourteenth Amendment right of pretrial detainees, like the Eighth Amendment right of convicted prisoners, requires that governmental officials not be deliberately indifferent."). "The deliberate indifference standard is a two-pronged test: (1) the prisoner must be exposed to a substantial risk of serious harm, and (2) the prison official must know of and disregard that substantial risk to the inmate's health or safety." *Thompson v. Virginia*, 878 F.3d 89, 97-98 (4th Cir. 2017). Moreover, "[d]eliberate indifference is a very high standard—a showing of mere negligence will not meet it." *Shover v. Chestnut*, 798 F. App'x 760, 762 (4th Cir. 2020) (quoting *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999)). Thus, Petitioner must show that Respondents had "actual knowledge of the risk of harm to the inmate" and that they "must also have recognized that [their] actions were insufficient to mitigate the risk of harm to the inmate arising from his medical needs." *Id.* (quoting *Iko v. Shreve*, 535 F.3d 225, 241 (4th Cir. 2008). Petitioner cannot satisfy either element.

Petitioner has not established a risk of serious harm Petitioner's own medical judgments are insufficient to show that Petitioner is exposed to a substantial risk of serious harm. While in some instances the mere exposure to "an unreasonable risk of future harm" could satisfy the first element of the deliberate indifference claim, that alone is not enough. *Bartlett v. Pearson*, 406 F. Supp. 2d 626, 630 (E.D. Va. 2005) (Ellis, J.) (citing *Helling v. McKinney*, 509 U.S. 25, 35 (1993)).

Petitioner also cannot show that the Federal Respondents are deliberately indifferent to his

medical needs. He cannot show that Respondents knew of and disregarded that substantial risk. Deliberate indifference "is a higher standard for culpability than mere negligence or even civil recklessness." *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014) (citing Estelle, 429 U.S. at 106); *see also Farmer v. Brennan,* 511 U.S. 825, 839-40 (1994) (adopting "subjective recklessness as used in the criminal law . . . as the test for 'deliberate indifference' under the Eighth Amendment"). Deliberate indifference is "a very high standard" because "the Constitution is designed to deal with deprivations of rights, not errors in judgment, even though such errors may have unfortunate consequences." *Grayson v. Peed*, 195 F.3d 692, 695-96 (4th Cir. 1999). A deliberate indifference claim is reserved for those actions or treatments that are "[s]o grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Christian v. Wright*, 2011 WL 10621667, at *2 (E.D. Va. Nov. 9, 2011) (O'Grady, J.) (alteration in original) (quoting *Miltier v. Beorn*, 896 F.2d 848, 851 (4th Cir. 1990)). Here, Federal Respondents have been providing adequate medical. And while Federal Respondents' don't have such evidence in their position at the time of this filing, they are working towards gathering that evidence by this Court's hearing dated December 17, 2025.

Therefore, this Court should deny Petitioner's request for immediate release.

III. To the extent Petitioner challenges the IJ's decision to deny bond, the INA precludes judicial review.

A. 8 U.S.C. § 1226(e) expressly precludes district courts from reviewing decisions regarding the grant, revocation, or denial of bond.

The INA *expressly* precludes judicial review of the merits of an IJ's bond decision. *See* 8 U.S.C. § 1226(e) (emphasis added); *Hatami v. Chertoff*, 467 F. Supp. 2d 637, 641 (E.D. Va. Dec. 27, 2006) (Ellis, J.) (concluding that the Court lacked jurisdiction over petitioner's habeas claim seeking review of his bond denial); *see also Portillo v. Hott*, 322 F. Supp. 3d 698, 709 (E.D. Va.

July 3, 2018) (Brinkema, J.). 8 U.S.C. § 1226(e) provides in relevant part that "[n]o court may set aside *any* action or decision by the Attorney General under [] section [1226] regarding the detention of any noncitizen or the revocation or *denial* of bond or parole." *Id.* (emphasis added). The language of this section is crystal clear—this Court does not have jurisdiction to review Petitioner's bond decision. *See also Hatami*, 467 F. Supp. 2d at 641; *Asemani*, 140 F. App'x at 376; *Prieto-Romero v. Clark*, 534 F.3d 1053, 1067 (9th Cir. 2008).

Judge Ellis' decision in *Hatami* is illustrative. There, a noncitizen brought a petition for a writ of habeas corpus to challenge an IJ's decision to deny him bond. 467 F. Supp. 2d at 638. Mr. Hatami contended that the IJ failed to provide a "meaningful" bond hearing because of the government's "bare bones allegations" of dangerousness. *Id.* at 639. Nonetheless, Judge Ellis held that "Congress left *no room* for doubt that federal district courts have *no jurisdiction* to review the Attorney General's discretionary decision to deny bond." *Id.* at 641 (emphasis added). The Court further found that "[t]his statute 'plainly divests . . . the Court of authority to review the decision of an [IJ] . . . regarding the detention, release, or the grant, revocation or denial of bond[.]'" *Id.* (quoting *Galvez v. Lewis*, 56 F. Supp. 2d 637, 641 (E.D. Va. 1999)).

Hatami correctly emphasizes the plain language of § 1226(e)—this Court cannot review "*any* action or decision by the Attorney General under [] section [1226] regarding the detention of any noncitizen or the revocation or *denial* of bond or parole." *Id.* (emphasis added). Indeed, several jurists outside this Circuit have followed *Hatami*'s reasoning and found that 8 U.S.C. § 1226(e) bars district courts from reviewing an IJ's decision on bond. *See, e.g.*, *Prieto-Romero*, 534 F.3d at 1067 (review of bond amount barred by § 1226(e)); *Carrillo-Lozano v. Stolc*, 669 F. Supp. 2d 1074, 1079 (D. Ariz. 2009) (district court was barred by 8 U.S.C. § 1226(e) from reviewing discretionary determination regarding bond); *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 453

(D.N.J. 2004).

Federal Respondents recognize that this Court has found that "[§] 1226(e) does not deprive the federal courts of jurisdiction to review whether the factors considered in bond determinations are constitutionally compliant." *Mejia Orozco v. Lyons*, 1:25-cv-1762, Doc. No. 20, Order, at 4 (E.D. Va. Dec. 1, 2025) (Trenga, J.) (citing *Miranda v. Garland*, 34 F.4th 338, 352-53, 358-59 (holding that § 1226(e) does not bar constitutional review of whether § 1226(a) bond hearings violate the due process clause). However, this case differs as Petitioner's flight risk determination was made based on the *individualized* facts that Petitioner failed to appear in removal proceedings multiple times. *See* Ex. 1. And petitioner in Mejia Orozco claimed that the IJ only considered one factor to justify his decision to deny bond. Such allegations were not made by Petitioner.

Therefore, because § 1226(e) expressly precludes this Court from reviewing the IJ's bond decision, Petitioner's request for immediate release should be denied.

B. Because the decision of whether to grant or deny bond is committed to the discretion of the IJ, 8 U.S.C. § 1252(a)(2)(B)(ii) precludes judicial review over decisions regarding bond.

In addition to § 1226(e), the INA's general bar to review of discretionary decisions further precludes judicial review of an IJ's bond decision. Section 1252(a)(2)(B) provides in relevant part:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, *no court shall have jurisdiction to review--*
> * * *
> (ii) *any other decision or action* of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter[1] to be *in the discretion* of the Attorney General or the Secretary of Homeland Security,

[1] The decisions or actions "under this subchapter" subject to the jurisdictional bar include those described in 8 U.S.C. §§ 1151 through 1381—including bond decisions under § 1226(a). *See Shimisany v. Thompson*, 2017 WL 592160, at *3 (D.N.J. Feb. 14, 2017).

other than the granting of relief under section 1158(a) of this title.

Id. (emphasis added). As the Fourth Circuit has explained, "§ 1252(a)(2)(B)(ii) bars judicial review of decisions specified to be in the discretion of the Secretary." *Polfliet v. Cuccinelli*, 955 F.3d 377, 381 (4th Cir. 2020) (internal quotation marks omitted); *see Shaiban v. Jaddou*, 97 F.4th 263, 265-66 (4th Cir. 2024) (same).

To be subject to the jurisdictional bar of § 1252(a)(2)(B), the statutory provision establishing the benefit "need not literally contain the word 'discretion' in order to 'specify' discretion." *Polfliet*, 955 F.3d at 381-82; *see also Safadi v. Howard*, 466 F. Supp. 2d 696, 698 (E.D. Va. 2006) (Ellis, J.) (noting that § 1252(a)(2)(B) is "refreshingly free from ambiguity and its terms are pellucidly clear: It means that courts are precluded from reviewing *any* discretionary decision or action of USCIS"). Instead, the statute need only confer discretion upon the Attorney General or Secretary of Homeland Security to fall within the jurisdictional bar of § 1252(a)(2)(B). *See Polfliet*, 955 F.3d at 382 (holding visa revocations under § 1155 to be subject to the jurisdictional bar as the statute provides that the Secretary "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition"); *Roland v. U.S. Citizenship & Immigration Servs.*, 850 F.3d 625, 629 (4th Cir. 2017) (holding, in case involving petition for immediate relative status, that Secretary's decision that a citizen poses a risk to noncitizen spouse under 8 U.S.C. § 1154(a)(1)(A)(viii)(*I*), is discretionary and thus § 1252(a)(2)(B)(ii) precludes judicial review).

Relevant here, 8 U.S.C. § 1226(a) grants the Attorney General the discretionary authority to grant bond. Specifically, the statute provides that the Attorney General "(1) *may* continue to detain [an] arrested alien; and (2) *may* release the alien on—(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General[.]" *Id.*; *see*

Hatami, 467 F. Supp. 2d at 639 n.3. Indeed, the statutory provisions governing bond decisions contain only discretionary language. Because it is fully within the IJ's discretion whether to grant bond, § 1252(a)(2)(B)(ii) precludes district court review. *See id.* at 640.

Hatami is again illustrative. The Court concluded that § 1252(a)(2)(B)(ii) precluded judicial review of a challenge to the form of a bond hearing. *See Hatami*, 467 F. Supp. 2d at 640-41. The Court reasoned that Mr. Hatami's petition was "unreviewable because he challenges not the legislation establishing the framework for bond decisions, but rather the *manner and form* of the 'operational decision' to deny his bond application." *Id.* at 641 (citing *Loa-Herrera v. Trominski*, 231 F.3d 984, 991 (5th Cir. 2000)) (emphasis added); *see also Demore v. Kim*, 538 U.S. 510, 516 (2003) (distinguishing a challenge to a discretionary decision regarding detention or release, which is not reviewable, from a challenge to the legislation establishing the framework for those decisions, which may be reviewable). "As long as the challenge is to the form of the bond hearing, § 1252(a)(2)(B)(ii) precludes judicial review." *Hatami*, 467 F. Supp. 2d at 640 (citing *Turkmen v. Ashcroft*, 2006 WL 1662663, at *28 (E.D.N.Y. 2006) (holding that § 1252(a)(2)(B)(ii) "requires dismissal [] of the plaintiffs' claims that they were denied bond in violation of the Constitution" and in particular, in violation of the Due Process and Equal Protection clauses, when there was a "blanket no-bond policy")).

In sum, because the Attorney General provided IJs with clear discretionary authority to grant or deny bond, 8 U.S.C § 1252(a)(2)(B)(ii) bars this Court from reviewing any claims challenging the manner or outcome of a bond hearing.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court deny Petitioner's request for immediate release.

Dated: December 12, 2025

Respectfully submitted,

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