

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Mr. ALI LIEOGO,
Petitioner,
v.

JOSEPH FREDEN,
in his official capacity as Deputy
Field Office Director, Buffalo
Field Office, U.S. Immigration &
Customs Enforcement;

STEVEN KURZDORFER,
In his official capacity as Field
Office Director, Buffalo Field Office,
U.S. Immigration & Customs
Enforcement;

TODD LYONS,
In his official capacity as Acting
Director, U.S. Immigration and
Customs Enforcement,

KRISTI NOEM,
In her official capacity as Secretary
of Homeland Security,

Respondent.

Civil Action No. 25-cv-06615-EAW

Immigration No. 

**RESPONSE IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS**

Oral Argument Requested

RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Respondents have filed a motion to dismiss. The Motion argues that the Petition for a Writ of Habeas Corpus should be dismissed for five reasons. The reasons are: 1) that the Court lacks jurisdiction under 8 U.S.C. § 1252(E)(3); 2) that review of Petitioner's claims is barred under 8 U.S.C. § 1252(g); 3) that review of Petitioner's claims is barred under 8 U.S.C. § 1252(b)(9); 4) because Petitioner purportedly failed to exhaust administrative remedies, and 5) because Petitioner is detained under 8 U.S.C. § 1225(b) and his detention is mandated until he is

removed. All five of these arguments fail, and the Motion to Dismiss should be denied as it is without merit. Petitioner responds as follows:

Jurisdictional Arguments under § 1252

In the instant case, there is no final order of removal in place, and Petitioner is detained by ICE pending final resolution of his immigration proceedings. Yet, the government argues here that ICE's mere decision to commence removal proceedings against the Petitioner is sufficient to strip the district court of its jurisdiction. The government claims that because "detention clearly aris[es] from the decision to commence removal proceedings against an alien" (internal quotation marks omitted), § 1252(g) bars district courts from reviewing that decision to detain a noncitizen. DHS Memorandum of Law at Document 7-1, page 6, citing *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016). This argument falls flat on its face, as the result would be that habeas corpus would be suspended, in clear violation of the suspension clause, Article I, Section 9, Clause 2 of the U.S. Constitution ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."). Indeed, "district courts can—and do—entertain challenges to the procedural processes that the executive branch follows during the removal process." *Velasquez v. Kurzdorfer*, 25-CV-493-LJV, (W.D.N.Y. July 15, 2025) (finding jurisdiction exists because "Mata Velasquez argues that ICE violated the statutory framework as well as constitutional law when it re-detained him. That is a question that falls squarely within this Court's habeas jurisdiction").

Section 1252(b)(9) provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove a [noncitizen] from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9).

And section 1252(g) states that:

[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by [ICE] to commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen] under this chapter.

8 U.S.C. § 1252(g).

This Court has held, however, that sections 1252(b)(9) and (g) do not preclude this Court from exercising jurisdiction over a habeas corpus petition for a noncitizen detainee. *Cesay v. Kurzdorfer, et. al*, 781 F.Supp.3d 137, 154 (W.D.N.Y. May 2, 2025). The Court acknowledged that Section 1252 effectively strips district courts of jurisdiction to review a final order of deportation (citing *De Ping Wang v. Dep't of Homeland Sec.*, 484 F.3d 615, 615-16 (2d Cir. 2007)) and also bars a district court from reviewing either a direct or an indirect challenge to an order of removal (citing *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011)). However, in his analysis, Judge Vilardo stated that the district court retains jurisdiction over *habeas corpus* petitions.

The Court, in *Cesay*, went on to point out that, in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491 (2001), the Supreme Court explicitly held that “[section] 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.” 533 U.S. at 688. More recently, in *Jennings v. Rodriguez*, the Supreme Court rejected a reading of section 1252(b)(9) that would have limited detained noncitizens to challenging their detentions only through petitions for review of the underlying removal orders in the court of appeals. 583 U.S. 281, 292-95 (2018) (plurality opinion). As Justice Alito explained, writing for a plurality of the Court, while “it [could] be argued that” such

a challenge arose from the government's decision to remove the noncitizen "in the sense that if those actions had never been taken, the [noncitizens] would not be in custody at all," such an "expansive interpretation of [section] 1252(b)(9) would lead to staggering results." *Id.* at 293. Indeed, "[i]nterpreting 'arising from' in this extreme way would also make claims of prolonged detention effectively unreviewable." *Id.*

The *Ceesay* Court went on to state:

Moreover, and as the Second Circuit has held, "a suit brought against immigration authorities is not per se a challenge to a removal order; whether the district court has jurisdiction . . . turn[s] on the substance of the relief that a [litigant] is seeking." *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (italics omitted). Accordingly, district courts in this circuit have distinguished between challenges to ICE's discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not. See *Torres-Jurado*, 2023 WL 7130898, at *2 (collecting cases); *Ahmed v. Freden*, 744 F. Supp. 3d 259, 264 (W.D.N.Y. 2024) (noting that while "[d]istrict courts do not have jurisdiction over challenges to the legality of final orders of deportation, exclusion, and removal," they retain "jurisdiction to hear immigration-related detention cases").

Ceesay, 781 F.Supp. 3d. at 152.

Although this is not a post-order case, where detention authority falls under Section 1231, the same constitutional principles apply here. This Court has held that it has authority to review legal challenges to bond determinations. *Onosamba-Ohindo v. Barr*, 483 F. Supp. 3d 159 (W.D.N.Y. 2020). In *Onosamba-Ohindo*, this Court held that challenges to the procedures used during § 1226(a) bond hearings are "outside the scope of the jurisdiction-stripping provisions of §§ 1226(e) and 1252(a)(2)(B).

With respect to the government's arguments pertaining to Section 8 U.S.C. § 1252(e)(3), the same arguments regarding the availability of habeas corpus proceedings to challenge government detention of noncitizens apply, but the government's argument here is likewise

misplaced as § 1252(E)(3) only precludes judicial review of determinations made under § 1225(b) in district courts other than the District Court for the District of Columbia; it does not entirely preclude judicial review of such determinations. “1252(e)(3) narrowly applies only to systemic challenges to regulations implementing expedited removal, not to constitutional or statutory claims which precede and are collateral to that process, including, as relevant here, unlawful arrest or detention.” *Velasquez v. Kurzdorfer*, 25-CV-493-LJV, (W.D.N.Y. July 15, 2025) (internal quotation marks omitted) (holding that “Sections 1252(a)(2)(A) and 1252(e)(3) therefore do not bar this Court from considering [Velasquez’s] petition”).

Where, as in here, the government’s claim of having made a determination under § 1225(b) flies in the face of decades of precedent and the clear statutory language, the government cannot shield itself from district court jurisdiction by claiming that its bad faith decision to apply § 1225(b) against a noncitizen is, in and of itself, unreviewable. Petitioner’s detention is clearly under § 1226(a), not § 1225(b), as explained in detail in the Petition.

Failure to Exhaust Administrative Remedies

Petitioner did, indeed, request a bond hearing, and he was denied one by an Immigration Judge on December 6, 2025. See *Exhibit A*, Bond Order dated December 6, 2025 by Immigration Judge Brian Counihan. Irrespective of such, exhaustion of administrative remedies here would be futile as the Board of Immigration Appeals precedent decision in *Matter of Yajure Hurtado* is being followed by all Immigration Courts nationwide, as part of a wide-reaching bond denial policy in violation of the law. In *Alvarez Ortiz*, Judge Vilardo stated, after finding that Alvarez had exhausted his administrative remedies by requesting bond, that “even if he had not, this Court would find that exhaustion was futile because immigration judges are bound to follow

Hurtado absent an order from this Court.” *Alvarez Ortiz*, p. 10, citing *Guerrero Orellana v. Moniz*, --- F.Supp 3d. ---, 2025 WL 2809996 (D. Mass. Oct 3, 2025), at *4 n.2 (explaining that “[t]he BIA made its position on the scope of [section] 1225(b)(2)(A) crystal clear in *Matter of Hurtado* such that further agency proceedings would be futile” (citation and internal quotation marks omitted)).

Appeal of an Immigration Judge decision to the Board of Immigration Appeals would be futile as a bond appeal takes an average of six months or more, a single member of that Board cannot overrule Board precedent, and the likelihood of a three-member panel convening and overturning *Matter of Yajure Hurtado* is so remote that exhaustion would be futile and would also cause irreparable harm; the likelihood of the bond matter being moot by the time the BIA reviews it is also very high.

Petitioner’s Detention is Under 8 U.S.C. § 1226(a), Not 8 U.S.C. § 1225(b)

For the reasons as stated in the Petition, the government’s contention that 8 U.S.C. § 1225(b) controls Petitioner’s detention is legally incorrect. As of today, Petitioner’s counsel is aware of 176 favorable district court decisions rejecting the government’s contention that 8 U.S.C. § 1225(b) provides the authority for mandatory detention. Judge Lawrence J. Vilardo of this District recently followed the weight of authority in *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV (W.D.N.Y. November 4, 2025). Petitioner submits that this case is identical in the issues presented and that the Court should follow the holding of *Alvarez Ortiz*.

We are only aware of 10 unfavorable decisions nationwide, but that counts denials of TRO motions and denials on the basis of jurisdiction or lack of exhaustion. In actuality, only two of those decisions were actually on the merits. Of the unfavorable decisions, one decision was

subsequently overruled by the same judge (*Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025)); overruled by *Lema Zamora v. Noem*, 2025 WL 2958879 (D. Mass. Oct. 17, 2025)); and one was dismissed for failure to exhaust administrative remedies but actually reached a favorable result on the statutory question (*Quinonez Mercado ex rel. Abarca-Jovel v. DHS*, 2025 WL 2430423 (D. Mass. Aug. 22, 2025)). In one case, *Pipa-Aquise v. Bondi*, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025), the Court was dealing with a distinct issue and although the government has cited this as a case that breaks from the weight of authority on the issue of 1225(b)(2) versus 1226(a) detention, the same judge, Judge Nachmanoff issued *Teyim v. Perry*, which addresses this issue directly and concluded that 1226(a), not 1225(b), controls.

Judge Philip Calabrese in the Northern District of Ohio has denied three petitions for failure to exhaust administrative remedies, but one of the cases, *Monroy Villalta v. Greene*, 2025 WL 2472886 (N.D. Ohio Aug. 5, 2025), predates *Yajure Hurtado*. The second petition was denied based on a purported lack of exhaustion (*Laguna Espinoza v. Director of Detroit Field Office*, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025)) where the Petitioner did not make a robust argument about the futility of such, and the third petition was likewise denied due to a lack of exhaustion without addressing futility at all (*Abdoulaye Ba v. Director of Detroit Field Office*, 2025 WL 2977712 (N.D. Ohio Oct. 22, 2025)).

In *S.Q.D.C. v. Bondi*, 2025 WL 2617973 (D. Minn. Sept. 9, 2025), Judge Paul Magnuson denied a petition based on lacking jurisdiction to review detention under 1252(b)(9) and 1252(g), but this issue was acknowledged and rejected by Judge Katherine Menendez in *Belsai D.S. v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025). In *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), Judge Brian Buescher in the District of Nebraska denied habeas relief but did not grapple with the reasoning in the weight of authority going the other

way, did not address the meaning or import of “seeking admission” under 1225(b)(2)(A), and accepted the government’s argument that 1225(b)(2) and 1226(a) overlap, ignoring superfluity issues. The remaining two cases that we are aware of were denials of TRO only. *Huaman Villanueva v. Chestnut*, 2025 WL 2996559 (E.D. Cal. Oct. 24, 2025); *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

As such, it appears that out of these ten “denials,” only one, *Vargas Lopez v. Trump*, purported to actually reach the merits of the issue and was not subsequently overturned by the same judge. The rest of these cases were either TRO denials, denials based on a supposed lack of jurisdiction, denials based on a purported lack of exhaustion of administrative remedies, or, in one case, subsequently overruled by the same judge after considering the arguments and the weight of authority.

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