

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

Pablo AGUILAR,

Petitioner,

v.

2:25-cv-13497-LJM-CI

Kevin RAYCRAFT,
Acting Director of Immigration
Customs Enforcement and Removal
Operations, Detroit Field Office;
Kristi NOEM, Secretary of the
Department Of Homeland Security;
and Pamela BONDI, United States
Attorney General,

Respondents.

PETITIONER's REPLY

NOW COMES the Petitioner Pablo Aguilar, by and through his undersigned attorneys, and submits his Reply to the government's Response to his habeas corpus petition brought under 28 USC §2241.

Respondents do not challenge the essential verified facts stated in this petition, namely, that the Petitioner is a foreign national who entered the United States without inspection some 26 years ago and has since lived peaceably with his U.S. citizen father and legal permanent resident mother in Aurora, Illinois. Critically, Respondents do not challenge the verified fact that aside from traffic violations,

Petitioner has never been arrested, charged, and convicted of a crime, and certainly none of the type that might otherwise subject him to mandatory detention under 8 USC § 1226(c).

Rather, Respondents challenge whether venue (or “habeas jurisdiction”) is proper in this Court; whether due process has been violated by the Petitioner’s detention; whether Petitioner has exhausted the administrative remedies alleged to be available to him before petitioning this Court; and whether Petitioner’s assertion that he is *not* subject to mandatory detention under 8 USC § 1225(b), as the Government claims (in light of its *very* recently discovered interpretation of the statute), but is instead subject to § 1226(a), which affords him the opportunity to be heard on a motion for release on bond.

This Court is familiar with Respondents’ challenges here and with the arguments raised in their support, and has soundly rejected them in matters having facts essentially similar to the verified facts here. *See Gonzales v. Raycraft*, 25-13502 (E.D. Mich., Nov. 17, 2025) (granting habeas corpus petitions brought by three foreign nationals who entered the U.S. without inspection, who have resided in the U.S. for many years with their families, some of whom are U.S. citizens, and who have no criminal history aside from minor traffic violations). As U.S. District Court Judge F. Kay Behm recently observed, “[t]his Court, along with at least seven other judges in [the U.S. District Court for the Eastern District of Michigan] as of this

writing, have joined their peers nationwide to conclude that the interpretation [of 8 USC §1225(b)] being advanced by the Government, which would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States, is contrary to both the plain text of the statute and the overall statutory scheme. *Kadagan v. Raycraft*, 25-13602, **2-3 (E.D. Mich. Nov 24, 2025) (listing cases).

Therefore, for his reply to Respondents' arguments in opposition to this petition, Petitioner adopts the analysis and findings of this Court and of other courts in this District in granting the habeas corpus petitions in other similar cases, and reiterates his prayer for relief set forth in the petition.

Respondents also *implicitly* argue that the matter here is moot in any case, because the Petitioner was released from confinement on **Friday, November 21, 2025**. (See Notification of Parole, issued by ICE to Petitioner upon his release, a copy of which is attached to the Government's response as **Exhibit 2, Doc. 6-3**.) Petitioner replies that at this juncture his habeas corpus petition is *not* moot, for the following reasons.

The Notification Granting Parole is issued by ICE, specifically, its Detroit Field Office, and requires Petitioner to report to the *Chicago* Field Office on **Monday, December 1, 2025**. (**Doc. 6-3**) Reading 8 USC §1225(b) and §1226(a) strictly, only the Attorney General may issue paroles. However, 8 CFR §212.5(b), a

regulation, allows ICE Field Offices to exercise the Attorney General's authority under INA 212(d)(5)(A) [aka 8 USC 1182(d)(5)(A)] to issue humanitarian and public interest paroles to "arriving aliens," that is, to aliens who are subject to removal under 8 USC §1225(b). There is no similar regulation allowing DHS/ICE to issue paroles to aliens subject to removal under §1226(a). Although the Notification does not specify, it is reasonably inferred that the parole was issued to the Petitioner in the belief that he is subject to removal under §1225(b). If so, then DHS/ICE may, under such authority it considers granted by 8 CFR §212.5(b), *re-detain* Petitioner at its discretion and transfer him to any detention facility within the purview of ICE's *Chicago* Field Office¹, to the extent its authority mirrors that of the Attorney General as granted by INA §212(d)(5)(A) (wherein the Attorney General may parole an arriving alien for humanitarian reasons or for public benefit, although such parole may not be considered an admission into the U.S., and may be revoked and the alien returned to detention at the Attorney General's discretion).

If, on the other hand, the Petitioner's removal proceedings are found to be subject to §1226(a), Petitioner may request the Attorney General (or the EOIR², on

¹ The number of immigration detention facilities overseen by the Chicago Field Offices is large and far-flung: it oversees 8 such facilities in Kentucky, 4 in Indiana, 4 in Missouri, 2 in Kansas, 1 in Oklahoma, and 1 in Wisconsin. See www.ice.gov/detention-facilities.

² *I.e.*, the "Executive Office of Immigration Review," which includes the Board of Immigration Appeals and immigration judges.

whose authority it acts) to release him on bond or conditionally parole him, presuming a finding that he is neither a flight risk nor a danger to the community. See 8 USC §1226(a).

If Petitioner is re-detained during his meeting with ICE in Chicago on December 1, 2025, Petitioner will necessarily proceed with his pending petition for habeas relief based on his claim that §1226(a) governs his removal proceedings, not §1225(b), that this Court should declare as much, and that he is accordingly entitled to a bond hearing or conditional parole. If he is *not* detained, and if the Government stipulates that his parole has been granted by the Attorney General under §1226(a), then Petitioner will consider whether voluntary dismissal of his petition is appropriate.

It is recognized that the Government might have argued that “habeas jurisdiction” is no longer proper in this Court, insofar as neither the Petitioner³ nor his present “immediate custodian” (having been, apparently, recently transferred to the Chicago Field Office⁴) is physically within the boundary of this Court’s reach, nor is the Petitioner in custody (at least for the present). However, “[o]nce the federal

³ The undersigned attorney verifies by his signature below that he is informed and thus believes that the Petitioner was released from confinement at the Northlake Detention Center in Baldwin, Michigan, on Friday, November 21, 2025, at 7:30 p.m., whereupon he was picked up by family members and driven to his home in Aurora, Illinois, where he presently remains.

⁴ See Exhibit 2, Doc. 6-3.

jurisdiction has attached in the District Court, [the habeas petition] is not defeated by the release of the petitioner prior to completion of proceedings on such application.” *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). Moreover, “[i]t is well established that jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change.” *Santillanes v. U.S. Parole Comm’n*, 754 F.2d 887, 888 (10th Cir. 1985). Accordingly, this Court should find that it retains jurisdiction and/or venue in this matter, despite the changes of past few days.

Given the present changed circumstances, the Petitioner now seeks from this Court a finding and declaration that his removal proceedings are subject to §1226(a) and *not*, as the Government argues, §1225(b), relief that he has prayed for in his petition, and which, if granted, may secure his continued liberty from future possible detention that is unauthorized by statute and due process. Although “declaratory relief claim is moot if the relief would not affect the behavior of the defendant toward the plaintiff” (*Robert v. Austin*, 72 F.4th 1160, 1164 (10th Cir. 2023)) such claims are not moot if “(1) secondary or collateral injuries survive after resolution of the primary injury; (2) the issue is deemed a wrong capable of repetition yet evading review; (3) the defendant voluntarily ceases an allegedly illegal practice but is free to resume it at any time; or (4) it is a properly certified class action suit” (*Riley v. I.N.S.*, 310 F.3d 1253, 1257 (10th Cir. 2002)). Here, Petitioner has demonstrated that

Petitioner is capable of being re-detained by ICE, so long as DHS/ICE's original assertion, implicit in its Exhibit 2, Doc. 6-3, remains unreviewed, namely, that Petitioner is paroled as an "arriving alien," and that the parole that may thus be discretionarily revoked at any time and Petitioner returned to confinement.

Petitioner also requests that this Court issue an order enjoining Respondents from pursuing the detention of Petitioner on the basis of 8 USC § 1225(b), habeas relief that has been granted by several courts in this District. *See, e.g., Lopez-Campos v. Raycraft*, 2:25-cv-12486 (E.D. Mich. Aug. 29, 2025).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jeffrey W. Gunn, certify that on November 26, 2025, I served the foregoing instrument on the Respondent's attorney, listed below, via this Court's electrical filing:

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I so certify:


