UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Genesis Bautista Flores, *Petitioner*, -v- Todd M. Lyons, Acting Director of US ICE, *et al.*, *Respondents*.	Case No: 5:26-CV-00229-JKP **Petitioner's Traverse**

PETITIONER'S TRAVERSE

Petitioner was unlawfully detained by Respondents without due process and remains subject to mandatory detention. In response to this Petition, Respondents assert a novel interpretation of longstanding federal statutes. However, the detention authorities asserted by Respondents apply to individuals who are arriving in the United States and are inapplicable here. For these reasons, Petitioner asks the Court to grant a writ of habeas corpus and order "release from unlawful detention". *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

I. Respondents do not dispute any factual matters presented in the Petition

Petitioner has stated sufficient facts to show that they are "in custody in violation of the Constitution or laws or treaties of the United States..." 28 U.S. Code § 2241. The Response does not dispute those facts, and Petitioner has provided all available evidence to support each claim. In particular, Respondents do not contest that Petitioner was detained without a warrant or any legal process, or that Petitioner is in "full" removal proceedings. The Response relies only on

Respondents' novel interpretation of the law, which this Court and many others have already rejected.

II. The detention authorities cited by Respondents do not apply to Petitioner

Respondents contend that Petitioner's detention is governed by INA § 235, 8 U.S.C. § 1225. Under 8 U.S.C. § 1225, an alien who entered without inspection and admission or parole is considered an applicant for admission. In Respondents' view, this permits warrantless arrest and mandates detention, depriving Petitioner of the right to a bond hearing before the immigration judge which would otherwise be available under 8 U.S.C. § 1226(a)(2).

This argument has been rejected by this Court and many others across the United States in recent months. Neither statute nor precedent supports Respondents' novel reading of 8 U.S.C. § 1225. The proceedings set out in 8 U.S.C. § 1225 are "expedited" proceedings which apply to an "applicant for admission." *Id.* The Supreme Court has detailed how at the time of inspection, "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to aliens who have been found inadmissible due to fraud, misrepresentation, or lack of valid documentation. *See* § 1225(b)(1)(A)(i) (citing §§ 1182(a)(6)(C), (a)(7)). Section 1225(b)(2) applies to most applicants for admission not covered by § 1225(b)(1). Both require detention while in expedited proceedings, but the Department of Homeland Security may exercise its discretion to instead place an individual in full removal proceedings. No provision allows for an individual to be placed back into expedited proceedings if they have been transferred to full removal proceedings.

Respondents seek to subject Petitioner only to the mandatory detention provisions of expedited removal proceedings rather than the entire expedited removal process. This change in policy comes long after Petitioner was placed into full removal proceedings. No statute or regulation permits Petitioner to be in both expedited removal proceedings and "full" removal proceedings at the same time. *Perez-Puerta v. Johnson*, No. SA-25-CV-01476-OLG (W.D. Tex. Dec. 15, 2025). Respondents are conflating two separate statutory schemes in a way that Congress never intended.

Petitioner asks the Court to find that Respondents' novel interpretation is incorrect and order that Petitioner be released from detention. This request comports with numerous decisions from this Court in recent months. *See, e.g. Perez-Puerta v. Johnson*, No. SA-25-CV-01476-OLG (W.D. Tex. Dec. 15, 2025); *Mendoza Euceda v. Noem*, No. SA-25-CV-01234-OLG (W.D. Tex. Nov. 17, 2025); *Rahimi v. Thompson*, No. SA-25-CV-01338-OLG (W.D. Tex. Dec. 4, 2025); *Navarro v. Bondi et. al*, No. 5:25CV1468-FB (W.D. Tex. Dec. 2, 2025); *Moradi v. Thompson et al*, No.5:25CV1470-OLG (W.D. Tex. Dec. 18, 2025); *Reyes v. Thompson et al*, No.5:25CV1590-XR (W.D. Tex. Dec. 12, 2025); *Acosta-Balderas v. Bondi et al*, No.5:25CV1629-JKP (W.D. Tex. Dec. 11, 2025); *Tisighe v. De Anda-Ybarra et al*, 3:25CR593-KC (W.D. Tex. Dec. 5, 2025); *Chauhan v. Noem et al*, 3:25CV574-DB (W.D. Tex. Dec. 8, 2025); and *Gvedashvili v. Mooneyham et al*, 6:25CV552-ADADTG (W.D. Tex. Dec. 22, 2025).

III. Respondents unlawfully detained Petitioner without due process

Respondents also violated Petitioner's due process rights because statutory and regulatory procedural protections apply to individuals detained pursuant to 8 U.S.C. § 1226. Petitioner may only be detained "[o]n a warrant issued by the Attorney General…" 8 U.S.C. § 1226(a). Regulations detail

specific procedures that must be followed as well as the immigration officers who are authorized to issue a warrant. 8 CFR 236.1(b)(1). These same officers may exercise their discretion to release someone from detention. 8 CFR 236.1(c)(8). Should officials determine to revoke such an order of release, regulations again specify who may revoke that order of release and what procedures must be followed. 8 CFR 236.1(c)(9).

Petitioner is a civil detainee who has never been convicted of any crime. As an immigrant, Petitioner is entitled to the same due process protections afforded to civil detainees. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). Petitioner has a "constitutionally protected interest in avoiding physical restraint". *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). Petitioner may not be detained as a means of punishment for noncriminal purposes. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Due process protections apply even if a statute explicitly authorizes detention. *See Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 338 (S.D. Tex. 2020) (finding that plaintiffs who were at high risk of serious illness or death due to the COVID-19 Pandemic were detained for a purpose that did "not reasonably relate to a legitimate governmental purpose.").

At a minimum, due process protections require following established statutes and regulations. Respondents failed to do so here. The procedures listed here must be undertaken *prior* to an individual's detention and cannot be remedied after the fact. As such, Petitioner asks the Court to order release from detention as the most appropriate remedy.

IV. Administrative exhaustion is not required in these proceedings

Petitioner is not required to exhaust administrative remedies here and such a requirement would be futile because Respondents have already clearly determined that they will not grant Petitioner bond. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. Courts have routinely reviewed the

detention of immigrants pursuant to different statutes in habeas proceedings. *See, e.g., Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). Furthermore, exhaustion is inappropriate here because appeal to the Board of Immigration Appeals is futile and inadequate.

The requirement that Petitioner must exhaust all available appeals is subject to exceptions. The Fifth Circuit has held that "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (*citing Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam).

Requesting bond and appealing to the BIA are both futile here because the BIA has already issued a precedential decision holding that immigration judges unequivocally have no jurisdiction to entertain granting bond in these exact circumstances. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA stated in that case that "[i]mmigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Id.* There is no reason to believe that the BIA would not apply its own recent precedent decision to Petitioner's case. In light of the above, Petitioner asks the Court to find that requesting bond and appealing any denial to the BIA are not required and would be futile.

V. This Court has jurisdiction to decide these issues

There are no jurisdictional bars to relief in this case, even considering the jurisdiction-stripping statutes at 8 U.S.C. §§ 1252(a)(5), (b)(9), (g), or 8 U.S.C. § 1226(e). Section 1252(a)(5) narrowly "specifies that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals." *Duarte v. Mayorkas*, 27 F.4th 1044, 1051 (5th Cir. 2022). Here, there is no final order of removal which Petitioner seeks review before this Court.

Section 1252(b)(9) limits judicial review of "questions of law and fact…arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter". 8 U.S.C. § 1252(b)(9). This provision is a jurisdictional channeling provision intended to prevent review of issues prior to the end of administrative proceedings. *See Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *7 (D. Minn. Aug. 15, 2025) (*citing Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007)). Petitioner is not challenging the initiation of removal proceedings or any action that occurred during those proceedings.

Section 1252(g) strips jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Here, Petitioner does not seek this review, and Congress did not intend to sweep in additional claims that were not explicitly included here. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025) (*citing Jennings v. Rodriguez*, 583 U.S. 281 (2018)). Additionally, this provision carves out habeas petitions; the jurisdictional bar is "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241". 8 U.S.C. § 1252(g).

Section 1226(e) does not apply to Petitioner's claim because it "challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 583 U.S. at 295, 138 S.Ct. 830 (cleaned up) (quoting *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)); *see also Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Petitioner is not challenging an individualized bond hearing determination but rather Respondents' novel interpretation of the statutory framework at issue here.

VI. Conclusion

Because Respondents have unlawfully detained Petitioner in violation of the law and regulations, Petitioner respectfully asks this Court to grant this Petition and issue a writ of habeas corpus ordering immediate release.

Respectfully submitted,

/s/ Joseph Krebs Muller

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