

United States District Court
Western District of Texas
Austin Division

Dick Perry Chimel Nkondi,
Petitioner,

v.

No. 1:26-CV-00330-RP

Todd Lyons, *et. al.*,

Respondents.

Federal Respondents' Response to Corrected Petition for Writ of Habeas Corpus

Federal¹ Respondents provide the following response to Petitioner's corrected habeas petition. ECF No. 8. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, and this Court should deny this habeas petition as moot without the need for additional briefing or hearing.

The instant case is not at all similar or governed by the same analysis that this Court and other Courts within the Western District have applied regarding habeas petition grounded in issues stemming from *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner in this case is detained pursuant to 8 U.S.C. § 1226 and not 8 U.S.C. § 1225. He received two §1226 bond hearings in immigration court in which the immigration judge denied bond. Those detention decisions are unreviewable by the district court. 8 U.S.C. § 1226(e). The petition should be denied on jurisdictional grounds.

I. Introduction

Petitioner seeks release from custody or another bond hearing in immigration court. *See* ECF No. 8, ¶¶ 60 and 61. However, Petitioner has already received at least two bond hearings

¹ The Department of Justice represents only federal employees in this action.

under 8 U.S.C. § 1226 and the immigration judge determined he poses a flight risk and denied bond. ECF No. 8 ¶ 30. This Court is divested of jurisdiction to review such a challenge to his detention as it is a discretionary judgment related to the Attorney General's decision on whether to release Petitioner. 8 U.S.C. § 1226(e); *see Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)

II. Relevant Facts and Procedural History

Petitioner is a native and citizen of Congo. ECF No. 8 ¶ 22. Petitioner entered the United States as a nonimmigrant with temporary authorization to stay as a visitor until March 16, 2025. *Id.* Petitioner remained in the United States beyond the period of his authorize stay. *Id.* at ¶ 27. Petitioner requested and received a 1226 bond hearing in immigration court on June 23, 2025. *Id.* at ¶ 30. The immigration judge denied bond finding Petitioner was a flight risk. Exh A. Bond Order June 23, 2025. Petitioner, who was represented by counsel in immigration court, reserved appeal of that bond decision. *Id.* Petitioner then hired a new attorney in immigration court, the same attorney who represents him in these proceedings, and obtained another bond hearing before the immigration court. Exh B. Bond Order August 5, 2025. The second bond hearing was denied. *Id.* Both bond hearings were conducted pursuant to § 1226 and bond was not denied based upon Hurtado decision or a change in immigration policy. While Petitioner reserved appeal of the bond decisions, it is not clear if an appeal with the Board of Immigration Appeals was filed.

Petitioner's case proceeded in immigration court where he was ordered removed by the immigration judge on March 9, 2026. Exh C. Removal Order.

III. Argument

A. Petitioner Does Not Overcome Jurisdictional Hurdles.

Petitioner was provided with a bond hearing pursuant to 8 U.S.C. § 1226. Petitioner cannot

now use this petition as a vehicle to dispute the immigration judge's discretionary findings. 8 U.S.C. § 1226(e). 8 U.S.C. § 1226 strips this Court of jurisdiction to hear such a challenge. Section 1226(e) states:

“(e) Judicial review

“The Attorney General's discretionary judgment regarding the application of this section **shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.** [emphasis added]”

The bar to judicial review was discussed and analyzed by the Supreme Court and also found that 8 U.S.C. § 1226(e) barred challenges to discretionary decisions. *See Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (explaining that 8 U.S.C. § 1226(e) bars an alien's challenge to “a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release” (internal quotation marks omitted)); *Pensamiento*, 315 F. Supp. 3d at 688 (“Congress has eliminated judicial review of discretionary custody determinations); *See Blandon v. Barr*, 434 F. Supp. 3d 30, 36 (W.D.N.Y. 2020) (while the Court may consider whether the IJ complied with the Court-ordered procedural protections, it does not reweigh the evidence nor consider whether it would have made the same determination as the IJ).

Petitioner's detention is governed by 8 U.S.C. 1226 and the immigration judge's decision to detain is discretionary. The immigration judge did not base his finding on any statutory or jurisdictional issues regarding *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). To the extent that Petitioner asks the Court to second-guess the IJ's weighing of the evidence, that claim is directed solely to the IJ's discretion and is unreviewable.

B. Petitioner's Detention Comports with Due Process.

Section 1226 provides for a bond hearing, and Petitioner was given said bond hearing. The Supreme Court's reasoning in *Department of Homeland Security v. Thuraissigiam*, 59 U.S. 103 (2020) further supports this notion. Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *Id.*; *see also Jennings*, 583 U.S. at 297–303. He has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5). Petitioner is taking full advantage of the due process provided by congress, and this Court does not have jurisdiction to provide more.

Furthermore, he cannot use his appeal to the BIA, if he has filed an appeal, and due process as both a shield and a sword. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite). Alternatively, if he has not filed an appeal with the BIA, he is required to as that is the appropriate mechanism to review the bond determination in this case.

IV. Conclusion

The Court is stripped of jurisdiction to review the discretionary determination of the immigration judge and may not consider whether it would have made the same finding. 8 U.S.C. § 1226(e).

As such the Court no longer has jurisdiction on the matter, and there is no longer a live controversy regarding the procedural protections provided to the Petitioner. Due process has been provided. The hearing currently set for Friday, March 20, 2026 should be canceled.

Respectfully submitted,

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