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

ARQUIMEDES FOORCHUE ALMONTER,	:	
Petitioner,	:	Civil Action No. 2:26-cv-00974
v.	:	
KRISTI NOEM, et al.,	:	
Respondents.	:	

RESPONDENTS' REPLY TO PETITIONER'S RESPONSE TO MOTION FOR RECONSIDERATION

Respondents file this Reply to Petitioner's response in opposition to Respondents' Motion for Reconsideration. Petitioner argues that the Court should deny the motion for reconsideration because Petitioner's discretionary detention under 8 U.S.C. § 1226(a), and in turn initiation of his removal proceedings under 8 U.S.C. § 1229(a), violated due process, since he had a pending Form I-130, Petition for Alien Relative with the United States Citizenship and Immigration Services (USCIS) at the time Immigration and Customs Enforcement (ICE) detained him and initiated removal proceedings. ECF 13 p. 3. The Court lacks jurisdiction under 8 U.S.C. § 1252(g) to review this claim because it challenges, at its core, ICE's decision to commence removal proceedings.

8 U.S.C. § 1252(g) deprives any court of jurisdiction to "hear 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." Here, after discovering that Petitioner lacked any valid immigration status in the United States, ICE initiated removal proceedings and

detained Petitioner under 8 U.S.C. § 1226(a) pending his removal proceedings. *See* 8 U.S.C. § 1226(a) ("[A]n alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."). In the case of individuals detained under 8 U.S.C. § 1226(a), the decision to arrest and initiate proceedings cannot be separated from the decision to detain for that same purpose. Therefore, under the plain language of the INA, the Court lacks jurisdiction to review ICE's decision to commence removal proceedings.

Petitioner cites to *Doe v. J.L. Jamison*, No. 26-cv-01906 (E.D. Pa. March 31, 2026) to support his due process argument, but that case was wrongly decided. First, the court incorrectly concluded that 8 U.S.C. § 1252 did not strip it of jurisdiction because the habeas petition did not challenge removal. *Doe,* No. 26-cv-01906 n. 29. Second, the court's analysis of the interplay between an affirmative asylum application filed with USCIS and the removal process is legally incorrect, as it creates an entirely new right for noncitizens by reading regulations related to affirmative asylum applications in a way that pre-empts the INA and its provisions related to removal proceedings. *Id.* at 8–12. Therefore, the Court's decision regarding § 1226(a) detention in *Doe* is erroneous in multiple respects and should have no bearing on this Court's analysis.

Even if this Court were inclined to follow *Doe*, that case is nonetheless factually distinguishable. As it stands, Petitioner is removable from the United States under 8 U.S.C. § 1227(a)(1)(B) for having overstayed the terms of his nonimmigrant visa. He presently has no lawful immigration status in the United

States, and a pending Form I-130 (or even approved Form I-130) does not confer any lawful immigration status on Petitioner. *See* Ex. C – Form I-130 Receipt Notice (dated Feb. 23, 2023) ("This notice does not grant any immigration status or benefit, nor is it evidence that this case is still pending. It only shows the application was received on the date shown."). Moreover, even if approved, the Form I-130 offers Petitioner no pathway to adjust his status in the United States given that such petition is not based on an immediate relative category. *See id.* (listing Petitioner's visa category as an unmarried son or daughter of a lawful permanent resident); *see also* 8 U.S.C. § 1225(a) (requiring a visa be immediately available to adjust status); 8 U.S.C. § 1225(c) (precluding from adjustment of status anyone who has failed to maintain continuously lawful status but carving out an exception for immediate relatives). Therefore, once ICE discovered Petitioner's unlawful status in the United States, it possessed the statutory authority to initiate removal proceedings and detain Petitioner under 8 U.S.C. § 1226(a) pending completion of his removal proceedings.

That discretionary decision to detain Petitioner is, of course, subject to review by an immigration judge and, later, the Board of Immigration Appeals through the administrative review process set forth in 8 U.S.C. § 1226(a) and 8 C.F.R. §§ 236.1(d), 1003.19. Petitioner, however, did not exhaust those administrative remedies and instead filed a habeas petition asking this Court to review issues it either has no jurisdiction to review or are not ripe for review. Therefore, the Court

should reject Petitioner's arguments and grant Respondents' motion for reconsideration.

Respectfully submitted,

DAVID METCALF
United States Attorney

/s/ Susan R. Becker for GBD
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

/s/ Daniella D. Lees
DANIELLA D. LEES
Special Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
(215) 861-8515
daniella.lees@usdoj.gov

Dated: April 8, 2026

CERTIFICATE OF SERVICE

I certify that on this date, the foregoing Reply, and its attached exhibit, were filed electronically and are available for viewing and downloading from the CM/ECF system and were electronically served on counsel for petitioner.

Dated: April 8, 2026

/s/ Daniella D. Lees
DANIELLA D. LEES
Special Assistant United States Attorney

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EXHIBIT LIST

Exhibit C: Form I-130 Receipt Notice, dated Feb. 23, 2023