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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ismael AVALOS GONZALEZ,

Petitioner,

v.

John MATTOS, Warden, Nevada Southern Center; Brian HENKE, Las Vegas/Salt Lake City Regional Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE/ERO); Kristi NOEM, Secretary, United States Department of Homeland Security, Pamela BONDI Attorney General of the United States, Daren K. MARGOLIN, Director Executive Office for Immigration Review

Respondents.

Case No. 2:26-cv-00462-RFB-DJA

Federal Respondents' Response to Petition for Writ of Habeas Corpus, ECF No. 1

The Federal Respondents hereby submit this Response to Petitioner Avalos Gonzalez ("Petitioner" or "Avalos Gonzalez") Petition for Writ of Habeas Corpus, ECF No. 1.

I. Introduction

Petitioner ("Petitioner") seeks a writ of habeas corpus under 28 U.S.C. § 2241 challenging the legality of his immigration detention. ECF No. 1.

Federal Respondents have carefully reviewed the Petition and submit this response to address the issues identified by the Court. While Respondents do not consent to issuance of the writ and expressly reserve all rights, including the right to appeal, Federal Respondents respectfully submit that further briefing is unnecessary because the legal issues presented are controlled by this Court's recent decisions in *Baca Beltrand v. Mattos*, Case No. 2:25-cv-01430-CDS-EJY, and *Jacobo Ramirez v. Noem,* Case No. 2:25-cv-02136-RFB-MDC, and the material facts are not meaningfully distinguishable.

II. Background and Issues Presented

Petitioner challenges ICE's statutory authority to detain him, asserting that detention is governed by 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b)(2)(A). Among other things, Petitioner requests as relief that the Court issue an order requiring that Respondents immediately provide Petitioner with a constitutionally adequate bond hearing, and that Petitioner be allowed to post the bond and be released. ECF No. 1, at 18–19.

Respondents' position is that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) because Petitioner was present in the United States without being admitted or paroled. *See Buenrostro-Mendez v. Bondi,* No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026) (holding that because petitioners were "inadmissible as alien[s] present in the United States without having been admitted or paroled," they were subject to detention under 8 U.S.C. § 1225(b)(2)(A)); *see also Yinxiao Chen v. Almodovar*, 25-CV-09670, 2026 WL 100761, at *6–13 (S.D.N.Y. Jan. 14, 2026); *Xiaoquan Chen v. Almodovar*, 2025 WL 3484855, at *3–8 (S.D.N.Y. Dec. 4, 2025).

III. This Court's Prior Decisions Control the Statute of Detention

Respondents acknowledge that this Court recently reached a different conclusion in, for example, *Baca Beltrand v. Mattos*, Case No. 2:25-cv-01430-CDS-EJY, ECF No. 54, and *Jacobo Ramirez v. Noem,* Case No. 2:25-cv-02136-RFB-MDC.

For example, in a decision issued on November 14, 2025, the Court concluded that the petitioner's detention was not governed by § 1225, but instead fell under § 1226. *See Baca*

Beltrand v. Mattos, Case No. 2:25-cv-01430-CDS-EJY, ECF No. 54, at 6. The Court explained that it could not accept Respondents' arguments regarding the revised policy of applying 8 U.S.C. § 1225 to aliens who were apprehended inside the United States despite having entered without inspection. *Id.* The Court explained that applying 8 U.S.C. § 1225 to aliens in the circumstances of Baca Beltran would render § 1226 meaningless and superfluous, and the Court thus ordered that Baca Beltrand be treated as a detained alien pursuant to 8 U.S.C. § 1226(a). *Id.*

Here, the material facts relevant to the statutory-authority question are not meaningfully distinguishable from those presented in *Baca Beltrand*. Accordingly, if the Court adheres to its prior ruling, that decision would control the outcome of the statutory-authority issue in this case.

IV. Respondents' Position and Preservation of Issues

While Respondents respectfully maintain their position that detention is authorized under § 1225(b), they acknowledge that the Court's prior ruling would govern if applied here. Respondents therefore rely upon, and incorporate by reference, the legal arguments previously presented in *Baca Beltrand v. Mattos*, and *Jacobo Ramirez v. Noem*, without re-briefing those issues, to conserve judicial and party resources and to facilitate prompt resolution of this matter. Respondents have enclosed with this Response the responses filed in those cases as Exhibits A and B.

Federal Respondents do not consent to issuance of the writ or to the imposition of attorney's fees, and they expressly reserve all rights, including the right to appeal.

V. Under 8 U.S.C. § 1226(a), Petitioner May Challenge Detention Via a Bond Hearing At Which Petitioner Bears the Burden to Justify Release

To the extent the Court determines that 8 U.S.C. § 1226 governs Petitioner's detention, Respondents respectfully submit that the statutory framework provides a mechanism for seeking release in the form of a custody redetermination (bond) hearing before an immigration judge, at which the alien bears the burden of establishing that release is warranted.

Section 1226 "generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal." *Jennings*, 583 U.S. at 288. Section 1226(a) provides that "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions").

When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)). Section 1226(a) thus places the burden on the alien to justify release and does not create any presumption in favor of release during removal proceedings. If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). Even after DHS decides to release an alien, it may "at any time revoke such release, rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors that account for the alien's ties to the United States and evaluate whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon

any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS]."). Where the immigration judge concludes that the alien has not met his burden, continued detention during the pendency of removal proceedings is expressly authorized by statute.

Section 1226(a) does not provide an alien with an absolute right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does the Constitution. *Velasco Lopez*, 978 F.3d at 848. Furthermore, Section 1226(a) grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release an alien during his removal proceedings. *See id.* In the exercise of this broad discretion, and consistent with DHS regulations, the BIA—whose decisions are binding on immigration judges—has placed the burden of proof on the alien, who "must establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. at 38. The BIA's "to the satisfaction" standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros,* 10 I. & N. Dec. 536, 537 (BIA 1964). If, after the bond hearing, the immigration judge concludes that the alien should not be released, or the immigration judge has set a bond amount that the alien believes is too high, the alien may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Here, to the extent the Court determines that at 8 U.S.C. § 1226(a) governs Petitioner's detention, Respondents respectfully submit that the framework described above would control Petitioner's detention. Therefore, Petitioner's continued detention is lawful unless an IJ conducts a bond hearing, and Petitioner shows that he does not pose a danger to the community and that he is likely to appear for future proceedings.

VI. Request for EAJA Fees Should be Denied

Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access to Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United

States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504, and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain fees in this case under 5 U.S.C. § 504 since that provision excludes administrative immigration proceedings. *Ardestani v. Immigration and Naturalization Service,* 502 U.S. 129 (1991). Petitioner's only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that in an action brought by or against the United States, a court must award fees and expenses to a prevailing non-government party "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

Here, Petitioner's request is premature because he is not a prevailing party. Second, even if Petitioner were to prevail in this case, the Federal Respondents' position asserted in this Response, as well as those presented in the responses attached herein as Exhibits A and B, is substantially justified because other courts have found the arguments presented by Respondents to be persuasive and that DHS can lawfully detain, under the mandatory detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated as Petitioner.

A growing number of well-reasoned precedent supports the Federal Respondents' position in this case. The following decisions have found that, when the law is properly interpreted and applied, the law supports the Federal Respondents' positions: *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026); *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025);

Altamiro Ramos v. Lyons, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

For example, the United States District Court for the District of Nebraska and the United States District Court for the Southern District of California have both issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the United States who have not been admitted are "applicants for admission" and are thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2). *See Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228.

Significantly, the United States Court of Appeals for the Fifth Circuit has now endorsed this interpretation. In *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026), the Fifth Circuit held that noncitizens present in the United States without having been admitted or paroled are "applicants for admission" under § 1225(a)(1) and are subject to mandatory detention under § 1225(b)(2)(A). The Fifth Circuit thus confirmed that DHS's interpretation of 8 U.S.C. § 1225 accords with the statute's plain text. The existence of binding appellate authority adopting the same statutory reading further demonstrates that the Federal Respondents' position in this case is, at minimum, substantially justified.

Because other federal judges have found persuasive the positions advanced by the Federal Respondents in this case, the Federal Respondents' position is substantially justified. *See Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse its discretion, in finding that the United States' position was substantially justified for purposes of EAJA, where different judges disagreed about the proper reading of the statute and the case involved an issue of first impression). Petitioner's request for attorney's fees under EAJA thus cannot prevail.

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VII. Hearing

Respondents submit that the Court may resolve this matter on the existing record and without a hearing. If, however, the Court determines that a hearing would be helpful, Federal Respondents will appear and present their position.

VIII. Conclusion

For the foregoing reasons, Federal Respondents respectfully submit this Response to the Petition and request that the Court resolve the Petition consistent with its prior rulings.

Respectfully submitted this 24th day of February 2026.

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