United States District Court
Western District of Texas
San Antonio Division

Hector Cordero-Pedraza, Petitioner, v. Miguel Vergara, *et al.*, Respondents.	No. SA-26-CV-1153-FB

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal[1] Respondents provide this response to Petitioner's Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order. ECF Nos. 1, 2.

Petitioner in this case files claims regarding the immigration judge's discretionary decision to deny bond based on a finding of flight risk. *See* ECF No. 1 at ¶ 18. Petitioner may not now use this petition as: a vehicle to dispute the immigration judge's discretionary findings. Petitioner has an adequate remedy to redress his claims. Petitioner has filed an appeal with the Board of Immigration Appeals (BIA). *See* Exh. A ([redacted]). And if necessary, Petitioner may seek a petition for review from the Fifth Circuit.

This Court does not have jurisdiction to review the immigration judge's decision or reweigh the evidence and find this Court would have ruled differently. 8 U.S.C. § 1226(e); *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)).

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

This Court should follow reasoning on prior rulings regarding this exact issue and deny this petition without the need for an evidentiary hearing. *See Gonzalez Cambar v. Bondi*, 5:26-CV-210-OLG (W.D. Tex. Dec. February 20, 2026) (ECF No 11) (Holding: "[w]hile petitioner may be frustrated with the result of that hearing, this Court lacks jurisdiction to review the discretionary judgment of the immigration judge.).

I. Procedural History

Petitioner is a citizen and national of Mexico who was admitted to the United States on a visa and subsequently overstayed. Exh. B (NTA). Petitioner was detained by ICE on July 26, 2025. ECF No. 1 at ¶ 6. On September 2, 2025, Petitioner had a custody redetermination hearing and at the conclusion of the hearing, the immigration court made a discretionary determination that Petitioner was a flight risk and bond was denied. *See* Exh. C (IJ Bond Order). Petitioner appealed that decision to the BIA on September 23, 2025. *See* Exh. A. That appeal is pending. On January 20, 2026, an immigration judge denied Petitioner's applications for relief and ordered him removed to Ecuador. *See* Exh. D (IJ Removal Order). Petitioner filed an appeal of that decision to the BIA on February 19, 2026. *See* Exh. E (BIA Filing Receipt – Removal). The appeal remains pending.

II. Argument

A. The Court Lacks Jurisdiction to Review a Discretionary Decision regarding Detention.

We start, as always, with jurisdiction." *Texas v. Biden*, 20 F.4th 928, 947 (5th Cir. 2021), as revised (Dec. 21, 2021), rev'd and remanded, 597 U.S. 785, (2022). Before addressing any other matters before the Court, jurisdiction must first be established.

Petitioner cannot now use habeas proceedings as a vehicle to dispute the immigration judge's discretionary findings. *Saint Fort v. Ashcroft*, 329 F.3d 191, 200 (1st Cir. 2003) (noting that the Supreme Court has "read the jurisdiction-limiting provision in § 1226(e) as applying only to review of the Attorney General's discretionary judgment") (citing *Demore v. Kim*, 538 U.S. 510, 516–517(2003)); *see also Loa–Herrera v. Trominski*, 231 F.3d 984, 991–992 (5th Cir. 2000); 8 U.S.C. § 1226(e).

8 U.S.C. § 1226(e) 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."

The bar to judicial review was discussed and analyzed by the Supreme Court and 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 is not entitled to judicial review of his bond decision before this Court. 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 Has Not Exhausted His Administrative Remedies

"A person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018) (per curiam) (citing *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.*

There are approximately 3.74 million cases pending in immigration court. *See*, https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones (Sept. 4, 2025). Federal district courts are not intended nor equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 U.S.C. § 1226(e) (district courts do not have jurisdiction to review discretionary decisions made by immigration judges regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole). "Challenges to removal proceedings, the government's evidence, and the merits of asylum claims are properly addressed to the immigration court and should be administratively exhausted before presenting in district court. *Hinojosa*, 896 F. 3d at 314; *see Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) (McFarland, J.) (declining to review Petitioner's detention-based claims due to his failure to exhaust administrative remedies); *Tecum Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025) (Calabrese, J.) (holding that Petitioner must first pursue challenge before BIA for exhaustion and that such exhaustion is not futile); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) (McFarland, J.) (holding that Petitioner's failure to exhaust claims with BIA precluded judicial review of habeas claims); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025), *reconsideration denied*, No.

1:25-CV-177-H, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.) (holding that Petitioner does not demonstrate grounds for excusing exhaustion and must first advance his request for relief to BIA).

Petitioner has received a bond determination from an immigration judge that Petitioner contests. As such, he must first seek relief with the immigration court or the BIA, fully exhausting administrative remedies before coming to this Court.

C. Petitioner's Argument Regarding the Placement of Burdens Is Inconsistent with Precedent and Regulations.

The Supreme Court has affirmed the constitutionality of detention pending removal proceedings and has never required the Government to bear the burden of proof. *See, e.g.*, *Demore v Kim*, 538 U.S. 510, 531 (2003); *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also Zadvydas*, 533 U.S. at 701. In fact, the Supreme Court has upheld detention pending removal proceedings based on a *categorical*, rather than individualized, assessment that a valid immigration purpose warranted interim custody. *See Demore*, 538 U.S. at 530; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. Indeed, in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court recently concluded that "[n]othing in § 1226(a)'s text . . . even remotely supports the imposition" of the burden on the government to prove that an alien is a danger or flight risk, much less by clear and convincing evidence *Id.* at 847–48. It is against this backdrop that the Court must assess Petitioner's due process challenge to the procedures that govern bond proceedings under § 1226(a).

Most prominently, in *Demore*, the Supreme Court upheld the constitutionality of 8 U.S.C. § 1226(c), which mandates detention during the pendency of removal proceedings without any individualized bond hearing in cases where an alien was convicted of certain criminal offenses.

538 U.S. at 513–14. The habeas petitioner in *Demore* argued that "his detention under section 1226(c) violated due process because the [legacy] INS had made no determination that he posed either a danger to society or a flight risk." *Id.* at 514. In rejecting this view, the Supreme Court emphasized that "detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process." *Id.* at 523 ("deportation proceedings 'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'") (citation omitted). The Supreme Court also cited the fact that Congress "had before it evidence that permitting discretionary release of aliens pending their removal proceedings would lead to large numbers of deportable criminal aliens skipping their hearings and remaining at large in the United States." *Id.* at 528.

Like § 1226(c), § 1226(a) was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. No. 104-208, 110 Stat. 3009-546 (enacted Sept. 30, 1996). Section 1226(a) amendments to the INA reflect Congress's concern that "[a] chief reason why many deportable aliens are not removed from the United States is the inability of the [legacy] INS to detain such aliens through the course of their deportation proceedings." H.R. Rep. No. 104-469, pt. 1, at 123 (1996). Unlike § 1226(c), however, the § 1226(a) procedures not only allow for individualized bond hearings, but also permit administrative review of bond decisions, as well as an opportunity to request subsequent bond hearings if there is a material change in circumstances. 8 C.F.R. §§ 236.1(d)(3), 1003.19(e), 1236.1(d)(3). Insofar as the Supreme Court in *Demore* upheld detention pending removal proceedings without any of the foregoing procedural protections, it follows *a fortiori* that the individualized and more extensive procedures governing detention under § 1226(a) are well within constitutional limits.

The Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings notwithstanding that the government has never borne the burden to justify that detention by clear and convincing evidence. *Demore*, for example, upheld mandatory detention under 8 U.S.C. § 1226(c); although the Court did not address burden of proof, § 1226(c) expressly puts the burden on the alien even in the only situation in which release is permitted under that provision, when release is for witness-protection purposes. 8 U.S.C. § 1226(c)(2) (providing that the alien may be released if it is "necessary" for witness protection and "the alien satisfies the Attorney General" that he "will not pose a danger to the safety of other persons or of the property and is likely to appear for any scheduled proceeding"). These decisions undermine the proposition that the government faces a heightened burden under § 1226(a)'s individualized, permissive detention scheme.

The petitioner in *Demore* argued that "his detention under section 1226(c) violated due process because the [legacy] INS had made no determination that he posed either a danger to society or a flight risk." *Id.* at 515. In rejecting that argument, the Supreme Court recognized that, in passing IIRIRA in 1996, Congress was confronted with evidence that criminal aliens who were not detained during their removal proceedings often committed more crimes, *see id.* at 518–21, and "that permitting discretionary release of aliens pending their removal proceedings would lead to large numbers of deportable criminal aliens skipping their hearings and remaining at large in the United States," *id.* at 528. Accordingly, the Court concluded that the mere inclusion of certain aliens within the relevant criminal categories was sufficient to establish their flight risk and dangerousness as a categorical matter, thus justifying their detention without any individualized assessment whatsoever. *See id.* at 513 ("Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that such persons be detained for the brief period necessary for their removal proceedings.").

Detention without a bond hearing is constitutionally permissible because it serves the valid statutory purpose of ensuring that certain categories of criminal aliens appear for their removal proceedings and can be removed in the event they become subject to a final removal order, even absent an individualized assessment of an alien's eligibility for release. *See id.* at 527–28. Thus, insofar as the Supreme Court in *Demore* upheld detention pending removal proceedings without any of § 1226(a)'s procedural protections, it follows that the individualized and more extensive procedures governing detention under § 1226(a) are also constitutionally permissible.

Likewise, in *Carlson,* the Supreme Court rejected a due process challenge brought by resident aliens who were detained pending removal proceedings under the predecessor to § 1226(a), and pursuant to a government policy of categorically denying bond to aliens who were members of the Communist Party. 342 U.S. at 535, 538. The Court reasoned that this statute was a constitutional exercise of the Attorney General's broad discretion because it was designed to rationally advance a legitimate government purpose. *Id.* at 540. And in *Flores*, the Supreme Court rejected a due process challenge to a regulation that denied bond under § 1226(a) to alien minors in removal proceedings who could not be released into the custody of a parent, close relative, or guardian. 507 U.S. at 306.

Taken together, these precedents support the conclusions that detention is a constitutional component of the removal process; that it furthers the legitimate statutory purpose of ensuring that aliens appear for their removal proceedings and do not abscond prior to removal; that detention is constitutional even where the alien bears the burden of establishing his eligibility for release on bond; and that detention is constitutionally permissible even where it is based on a categorical assessment of flight risk or dangerousness. All of them weigh against Petitioner's argument that the government bears the burden of justifying continued detention at a § 1226(a) bond hearing.

Petitioner does not cite *Ayobi v. Castro*, 2020 WL 13411861, (W.D. Tex. Feb 25, 2020) to support their argument regarding the placement of burdens; however, Respondents' note it for the Court and highlight that *Ayobi* is inapposite. This Court specifically held "that it is not issuing a sweeping ruling that mandates that the government bear the burden of proving that every § 1226(a) detainee poses either a flight risk or a danger to the community in order to justify detention." *Ayobi v. Castro*, 2020 WL 13411861, at *6 (W.D. Tex. Feb 25, 2026). Instead, the Court's conclusion was Petitioner-specific. *Id.* Petitioner's argument is not supported by Supreme Court precedent or the regulations.

III. Application of Bautista

To the extent Petitioner invokes the December 18, 2025 partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, it is neither binding nor applicable here and presents no basis for granting the petition. First, the *Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction. Second, the *Bautista* declaratory judgement has no preclusive effect outside the Central District of California and is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. That is especially true where the judgment in *Bautista* now stands in direct conflict with the Fifth Circuit's decision on the underlying issue raised in *Baustista*. *Buenrostro-Mendez*, at 498-508.

IV. Motion for Temporary Restraining Order

Petitioner's Motion for Temporary Restraining Order Or, In the Alternative, For a Preliminary Injunction [ECF No. 2] should be denied. Respondents additionally oppose this requested relief as part of their general response in opposition to the petition and show herein that Petitioner is unlikely to succeed on the merits of his claims. As argued *supra*, Petitioner does not overcome the jurisdictional bar to review ICE's initial decision to commence removal proceedings, and any remaining challenges must first be raised to the immigration judge and channeled through to the circuit court. On its face § 1225(b) comports with due process, and Petitioner does not raise a colorable as-applied challenge.

A preliminary injunction is an "extraordinary and drastic remedy." *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is "not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion." *Black Fire Fighters Ass'n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). Importantly, temporary restraining orders are ordinarily aimed at temporarily preserving the status quo. *Foreman v. Dallas Cty.*, 193 F.3d 314, 323 (5th Cir. 1999), *abrogated on other grounds by Davis v. Abbott*, 781 F.3d 207 (5th Cir. 2015). "The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest." *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has "clearly" carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

With respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is in removal proceedings, which entitles the government to detain him, either on a mandatory basis under § 1225(b) or in the exercise of discretion; and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws. Moreover, Petitioner has provided no basis for this Court to determine that his continued detention pending the conclusion of his removal proceedings will cause him irreparable harm. The Court should therefore deny the requests for injunctive relief and dismiss this case in its entirety.

V. Stays and Orders Not to Transfer

The Court in this case entered an order staying removal. ECF No. 3. That order should be vacated. The Fifth Circuit recently stated in an unpublished decision that district courts lack jurisdiction to enter stays of removal. *Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

VI. Conclusion

The Court should deny the petition in its entirety. 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 [§ 1226(e)].

Petitioner may be concerned how § 1226(e) effects the remedying of harms from illegal detention, but the Third Circuit's reasoning regarding another jurisdictional stripping statute, 8 U.S.C. 1252(b)(9), rings true here. "Congress has the power to balance the orderly adjudication of claims with concerns about remedying harms from illegal detention." *Khalil v. President, United States of Am.*, No. 25-2162, 2026 WL 111933, at *10 (3d Cir. Jan. 15, 2026). The balance that Congress struck in § 1226(e), removed jurisdiction from this Court to review these discretionary determinations. Petitioner's argument regarding the improper placement of burdens is also without merit. Supreme Court precedent supports the current regulations and placement of burdens. This petition should be denied.

Respectfully submitted,

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