UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAEDEN CONDAPPA, Petitioner, v. FIELD OFFICE DIRECTOR, Respondent.	Case No. 3:26-cv-933 Judge David A. Ruiz Magistrate Judge Carmen E. Henderson

PETITIONER'S REPLY TO RESPONDENT'S RETURN OF WRIT

INTRODUCTION

Petitioner, Mr. Jaeden Condappa, has been unlawfully detained by Respondent, and separated from his U.S.-citizen wife, since February 24, 2026, despite the fact that last year he filed an application for adjustment of status based on his marriage, which remains pending with USCIS. (Petition, Dkt. 1, PageID 5; Return of Writ (ROW), Dkt. 8, PageID 71). As authority for Mr. Condappa's detention, Respondent points to 8 U.S.C. § 1187(c)(2)(e), and the Board of Immigration Appeals (BIA) precedential decision, *Matter of A-W-*, 25 I&N Dec. 45, 47, 2009 WL 8628885, at *3 (BIA 2009), which has been rejected by federal district courts in at least ten separate cases, as discussed in detail in Mr. Condappa's Petition. (ROW, Dkt. 8, PageID 73; Petition, Dkt. 1, PageID 24–29). Indeed, in the Return of Writ, Respondent does not cite a single case other than *Matter of A-W-* for the proposition that 8 U.S.C. § 1187 governs herein. *Matter of A-W-* is incorrect as a matter of statutory interpretation, and, post-*Loper Bright*, is owed no deference. This court should follow the reasoning of numerous other district courts in so holding, and should grant Mr. Condappa's immediate release or, in the alternative, order a bond hearing under 8 U.S.C. § 1226(a).

And even if the Court rejects the consensus among federal district courts that *Matter of A-W-* is an incorrect interpretation of the INA, his continued mandatory detention under 8 U.S.C. § 1187 violates Mr. Condappa's due process rights.

If Mr. Condappa is unable to secure release from unlawful detention and is deported to the United Kingdom before USCIS adjudicates his pending application for adjustment of status (Form I-485), he will be subject to a ten-year bar on returning to the U.S., thus separating him from his U.S.-citizen wife. *See* 8 U.S.C. § 1182(a)(9)(A)(ii). If, on the other hand, Mr. Condappa is released and remains in the U.S., USCIS has jurisdiction to adjudicate his pending Form I-485, application for permanent residency, which is prima facie approvable due to his marriage to a U.S. citizen. *See* 8 CFR § 245.2(a)(1) ("USCIS has jurisdiction to adjudicate an application for adjustment of status filed by any alien, unless the immigration judge has jurisdiction to adjudicate the application under 8 CFR § 1245.2(a)(1)."). This Court should grant the writ and order Mr. Condappa released so that his application for adjustment can be adjudicated.

ARGUMENT

I. Respondents Are Wrong About the Statute of Detention; Mr. Condappa Is Detained Pursuant to 8 U.S.C. § 1226, Not 8 U.S.C. § 1187(c)(2).

The Visa Waiver Program (VWP) statute, 8 U.S.C. § 1187, contains no mention of detention; therefore, it provides no statutory basis for detention of VWP entrants and the general detention statute providing for detention of noncitizens in the interior, 8 U.S.C. § 1226, applies to Mr. Condappa. Numerous federal district courts have so held, and Respondent cites no federal district court authority holding to the contrary. In addition to the district court cases cited and discussed in Petitioner's Memorandum of Law in Support of the Petition for a Writ of Habeas Corpus (Memorandum in Support, Dkt. 1-2, PageID 24–29), Petitioner has located four additional cases in which district courts ordered bond hearings under 8 U. S. C. § 1226(a) for petitioners in

the same circumstances as the petitioner here. *See Nardella Mago* v. *Rogers*, No. 2:26-cv-00278-SPC-NPM, 2026 WL 532485 (M.D. Fla. Feb. 25, 2026); *AMM* v. *Thompson*, No. SA-25-cv-01210-FB, 2025 WL 3296315 (W.D. Tex. Nov. 26, 2025); *Quispe* v. *Chestnut*, No. 1:25-cv-2002-CSK, 2026 WL 654577 (E.D. Cal. Mar. 9, 2026); *Molina* v. *Soto*, No. 25cv16880 (EP), 2025 WL 3281820 (D. N.J. Nov. 25, 2025).

Indeed, even in *Bacuku v. Aviles*, No. 15-2543, 2016 WL 818894, at *6 (D.N.J. Mar. 2, 2016), which Respondent purports to cite for the proposition that immigration judges lack authority to conduct bond redetermination hearings for VWP overstayers, the court specifically declined to address whether Section 1226 or Section 1187 governed the petitioner's detention, choosing to avoid the issue by finding that the petitioner's prolonged detention violated his due process rights, and ordering his release. *Id.* ("The Court has carefully considered the arguments of the parties and finds that it need not decide whether Petitioner's detention without bond is specifically authorized by the Visa Waiver Statute, 8 U.S.C. § 1187, or the general detention statute, 8 U.S.C. § 1226.").

II. Mr. Condappa's Removal Order Is Not Administratively Final Despite Respondents Claims to the Contrary, and Despite Being Called a Final Administrative Removal Order; Therefore, He Is Not Detained Under Section 1231.

Although at the outset of the Return of Writ Respondent contends Mr. Condappa is detained under 8 U.S.C. § 1187, he later argues that Mr. Condappa is also subject to mandatory detention under 8 U.S.C. § 1231(a)(2) because ICE issued and served a Final Administrative Removal Order (FARO) against him on May 11, 2026, the day Respondent filed its Return of Writ. (ROW, Dkt. 8, PageID 74). In the alternative, Respondent argues that if Mr. Condappa is not detained under § 1231 now, "he will be soon." *(Id.* at 6, PageID 75). However, Petitioner is not

detained under § 1231 and will not be unless and until his asylum application is denied and he exhausts his appeals with the BIA, at which point he would be subject to a final order of removal.

Respondent fails to mention that a removal order does not become "administratively final" in asylum-only proceedings until a judge denies an asylum application and, if appealed, the BIA denies the appeal. *See* Part II – OCIJ Immigration Court Policy Manual, 6.4(g)(4) (Dkt. 8-7, PageID 100). Yes, Mr. Condappa was issued a removal order based on the finding that he is removable as a VWP violator, and yes, such order is even titled a "Final Administrative Removal Order" (FARO); however, because Mr. Condappa is still entitled to the immigration court's adjudication of his asylum application, including an appeal to the BIA if his application is denied, the removal order cannot be executed, and therefore is not an "administratively final" order of removal yet. *Cf. Polizio v. Jenifer*, 217 F. Supp.2d 811, 813 (E.D. Mich. 2002) (denying writ to a VWP overstay petitioner who had withdrawn his asylum application, thus rendering his removal order final, and *then* filed a petition for habeas corpus). Here, Mr. Condappa is entitled to review of his asylum application, where, if he prevails, he cannot be removed from the United States. A removal order for a VWP violation cannot become final until administrative review of the asylum claim is completed, and a person whose asylum-only proceedings remain pending is thus not detained under § 1231.

Case law resoundingly reinforces that Mr. Condappa's FARO is not yet an administrative final removal order. In finding 8 U.S.C. § 1225 detention constitutional, the Supreme Court reasoned that such detention has an end date, because detention under the statute is only authorized until there is a decision on an asylum claim, meaning until removal proceedings have concluded. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). Like under 8 U.S.C. § 1225, a decision on an asylum application is still pending, therefore detention cannot be under 8 U.S.C. § 1231(a)(2),

which would be the detention authority if an "administratively final" decision on the asylum application had been made.

Additionally, the noncitizens in *Nardella Mago v. Rogers*, *AMM v. Thompson*, *Quispe* v. *Chestnut*, and *Molina* v. *Soto*, were all either issued FAROs, Notices of Intent to Issue a FARO, yet none were found to be detained pursuant to 8 U.S.C. § 1231, and therefore all were ordered to be afforded a bond hearing under Section 1226. *See Nardella Mago*, 2026 WL 532485, at *2; AMM, 2025 WL 3296315 at * 2; *Quispe*, 2026 WL 654577 at *3; *Molina*, 2025 WL 3281820, at *3.

In *Malets v. Horton*, No. 4:20-cv-01041, 2021 WL 11548891, at *7 (N.D. Ala. Sept. 15, 2021), to which Respondent cited (ROW, Dkt. 8, PageID 77), the respondent and petitioner both objected to the Magistrate's report which granted the habeas petition, but the court found that it did not need to determine the statutory basis of detention. In response to the petition for habeas corpus, the government claimed that Malet, as a VWP violator, was detained pursuant to 8 U.S.C. § 1187(c)(2)(E). But in its objection to the Magistrate's report, the government then claimed that detention was pursuant to 8 U.S.C. § 1231(a)(6). At the time of the habeas decision, Malet's asylum application had been denied, and his appeal to the BIA had been dismissed, but his petition for review to the Second Circuit Court of Appeals remained pending, as well as the motion for a stay of removal, and pursuant to the Second Circuit's forbearance agreement, removal had been halted. Upon taking up the objections, the District Judge explicitly found that Malet was detained pursuant to 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1231(a)(6) because his removal had been suspended by the forbearance stay, therefore the removal period under 8 U.S.C. § 1231(a)(6) had not yet begun.

In the Return of Writ, Respondent cites several cases that do not support their argument that an individual in Mr. Condappa's position is subject to mandatory detention under 8 U.S.C. § 1231. First, Respondent cites to *Nicusor-Remus v. Sessions*, 902 F.3d 895, 898 (9th Cir. 2018). (ROW, Dkt. 8, PageID 75). This case is inapposite to Mr. Condappa's because there, in a case that arose from a petition for review to the circuit court, not a habeaas petition, the petitioner had previously been removed, thus executing his previous removal order issued under the VWP, and the Ninth Circuit thus determined there was no final removal order over which it had jurisdiction to consider the petition for review from the BIA. *Id.* at 899.

And in *Shehu v. Attorney Gen. of U.S.*, 482 F.3d 652, 656 (3d Cir. 2007), the Third Circuit found that a BIA dismissal of a noncitizen's appeal of the denial of an asylum application in asylum-only proceedings constituted a final order of removal. This supports Mr. Condappa's argument that it is the denial of an asylum application (along with a subsequent denial of the appeal by the BIA), that makes a removal order final, not the piece of paper issued by ICE on May 11, 2026. *See also Salomao v. Garland*, No. 20-1856, 2022 WL 1301773 (4th Cir. May 2, 2022) (finding the court had jurisdiction because the denial of relief in asylum-only proceedings is the functional equivalent of a removal order, and collecting cases showing that five (5) other Circuit courts have reached the same holding), and *O'Connor v. Dir., U.S. Citizenship & Immigr. Servs.*, No. 25-CV-00947, 2025 WL 3855000 (W.D. Tex. Dec. 3, 2025), report and recommendation adopted sub nom. *O'Connor v. Warden, Karen's Cnty. Immigr. Processing Ctr.*, No. 25-CV-947, 2025 WL 3852955 (W.D. Tex. Dec. 30, 2025) (finding no right to habeas corpus because the noncitizen's VWP FARO was final upon the immigration judge's order that the noncitizen's application was abandoned by failing to file the application by the date set by the court), which all confirm that the VWP FARO constitutes a final order of removal only once an asylum application

has been denied, and the asylum-only proceedings have concluded). *See also Perkovic v. INS*, 33 F.3d 615, 618 (6th Cir. 1994) (explaining that "orders of deportation" include "any denial of discretionary relief during a deportation proceeding, where such relief, if granted, would foreclose deportation," such as, "[d]enials of applications for withholding of deportation or for asylum."). Thus, just because a FARO has been issued does not mean that Mr. Condappa is now detained pursuant to 8 U.S.C. § 1231.

Respondent here makes the same mistake that the respondents in *Nicusor-Remus* made. *Nicusor-Remus* 902 F.3d 895 (holding that the noncitizen's argument that "...the denial of his asylum application in the asylum-only proceedings is a final removal order...conflates the 'removal order' (i.e., DHS's determination that a VWP entrant is removable) with the action that makes the removal order 'final' (i.e., the IJ's denial of the VWP entrant's only forms of relief)."). *Id.* Respondent's argument in its Return of Writ is the same. Because the FARO is still not "administratively final" until a decision has been made on Mr. Condappa's asylum application, and then any administrative agency review of such decision has been completed, 8 U.S.C. § 1231 does authorize Mr. Condappa's detention.

III. The Account of Petitioner's Arrest and ICE's Rationale for Detaining Petitioner Are Inconsistent and Not Supported by Evidence

Although Petitioner contends that his habeas can and should be granted on the basis of a straightforward statutory analysis of 8 U.S.C. § 1226 and 8 U.S.C. § 1187 as articulated in the memorandum of law in support of the petition and in Sections I and II, *supra*, of this reply, there are a number of procedural irregularities and inconsistencies that the Return of Writ and its exhibits reveal which suggest troubling due process violations.

First, in the Return of Writ, Respondent alleges that Petitioner is "wanted" or "under investigation" in the United Kingdom for a litany of charges, yet it introduces no evidence beyond a declaration from a Cleveland deportation officer who only basis of purported knowledge of Petitioner's case is that he has "reviewed ICE's official records" therein. (Decl. of Ryan Serevitch, Dkt. 8-1, ¶ 3, PageID 80). Officer Serevitch does not name any of the records he reviewed, instead vaguely referencing "information" from the DHS Homeland Security Investigations (HSI) attaché in London. (*Id.* at ¶¶ 9–10). He does not state that he has even spoken himself to the attaché or what documentation of charges, if any, the attaché has provided. (*Id*). The Return of Writ includes no documentary evidence of any charges pending, nor any records—even partially redacted ones—to suggest the existence of any investigations. The declaration is hearsay and should be discounted by this court. If Respondent does in fact have documentation of any allegations against Mr. Condappa, it has chosen not to submit them either in Mr. Condappa's asylum-only proceedings nor to this Court and therefore cannot plausibly ask the Court to credit their existence. Indeed, one month before he left for the U.S., Mr. Condappa obtained a UK Police Certificate (for the purposes of using it to support his subsequent visa application), and that certificate shows that his only criminal record as of March 20, 2025 in the UK was a reprimand for shoplifting at age 13. Exhibit A, ACRO Police Certificate.

Mr. Serevitch's declaration also contains an additional inconsistency with the record that undermines its credibility and the government's account of Mr. Condappa's arrest. Both the declaration of Deportation Officer Serevitch and the arrest narrative in the Form I-213 (Record of Deportable/Inadmissible Alien) indicate that ICE ERO did not become aware of Mr. Condappa as a VWP overstay until February 23, 2026. (Decl. of Ryan Serevitch, Dkt. 8-1, at ¶ 8, PageID 80; Form I-213, Dkt. 8-2, PageID 83). Yet, the arrest warrant, Form I-200, is dated February 20,

2026—three days before ICE ERO claims to have first become aware of Mr. Condappa's overstay. (Dkt. 8-3, PageID 86). Respondents offer no explanation for how a warrant could have been issued for an individual whom ICE purportedly did not identify until days later. These inconsistencies lend substantial weight to the concern that the arrest warrant may have been backdated, and cast doubt on whether a valid, pre-existing warrant authorized the February 24, 2026 arrest, which, as detailed in the Petition, was executed by telling Mr. Condappa he may have been a witness to a robbery and luring him outside of his home, only for several vehicles to surround him, at which time ICE arrested him. (Petition, Dkt. 1, at ¶ 18, PageID 5).

Moreover, ICE Form 71-058, Notice of Intent To Issue Final Administrative Removal Order, was not properly completed when it was given to Mr. Condappa, as evidenced by the fact that the form that was issued to Mr. Condappa, attached as an exhibit to the Petition, did not contain the signature of David Hawkins, an ICE official, but the version that Respondent attached to the Return of Writ, does contain a signature from Hawkins, also seemingly backdated to February 24, 2026. (Compare Notice of Intent to Issue Final Administrative Removal Order, Dkt. 1-7, PageID 40 to Notice of Intent to Issue Final Administrative Removal Order, Dkt. 8-4, PageID 88).

CONCLUSION

For the foregoing reasons, Mr. Condappa respectfully asks the Court to grant the Petition for Writ of Habeas Corpus and order his immediate release from custody, as the Respondent has continued to unlawfully detain Mr. Condappa for nearly three months rather than allow him to await the adjudication of his Form I-485[1] at his home with his U.S.-citizen wife—a petition that will become moot if he is not released and gets removed to the U.K. instead, thus subjecting him

[1] Mr. Condappa's arrest record, the Form I-213, stated that he had no pending petitions before USCIS at the time of his arrest, which is incorrect, although ICE has conceded that he does have a pending marriage-based petition and application for adjustment of status pending. (Serevitch Decl., Dkt. 8-1, ¶¶ 6–7, PageID 79–80; Receipt Notice for I-130, Dkt. 1-5, PageID 38; Receipt Notice for I-485, Dkt. 1-6, PageID 39).

to a ten-year bar to entering the U.S. *See* 8 U.S.C. § 1182(a)(9)(A)(ii). If the Court does not order immediate release, then, in the alternative, this Court should order the immigration court to conduct a bond hearing with procedural safeguards including (i) the placement of the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk, and (ii) a prohibition against the government from seeking a stay of the immigration judge's custody order either automatically, on an emergency basis, or otherwise without a meaningful opportunity for the petitioner to respond and be heard.

Dated: May 18, 2026.

Respectfully submitted,

/s/ Emily Brown

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2026, I caused a true and correct copy of this **Reply to Respondents' Return of Writ** and all accompanying exhibits to be served by electronic filing upon the following:

- Director, Detroit Field Office,
  U.S. Immigration and Customs Enforcement
  333 Mt. Elliott Street
  Detroit, MI 48207

Date: May 18, 2026.

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