IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

J.N. FENEL AUGUSTE,	)	CASE NO.: 3:26CV00971
	)	
Petitioner,	)	JUDGE BENITA Y. PEARSON
	)	
v.	)	
	)	
ATTORNEY GENERAL, ET AL.,	)	RESPONSE TO PETITION
	)	
Respondents.	)	

Undersigned counsel represents federal respondents (the "government")[1] in this habeas corpus action, in which petitioner JN Fenel Auguste ("Petitioner") challenges his/her detention by U.S. Immigration and Customs Enforcement ("ICE"). On April 24, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. (ECF #1 Pet.) On May 5, 2026, Petitioner filed an amended petition. (ECF # 5 Amended Pet.) On May 13, the Court issued an amended order to the government to show cause why the petition should not be granted, with a response due by May 18, 2026. (ECF #7 Order.)

FACTUAL BACKGROUND

On June 16, 2024, Petitioner entered the United States on June 16, 2024, when he appeared at the Brownsville, Texas port of entry. (ECF #5-8 I-94 PageID #130.) He was paroled into the United States until June 15, 2026. (*Id.*) However, his parole was ended on April 18,

[1] A writ of habeas corpus may only be issued by the person having custody of the detainee. In the ICE habeas context, that person is the Field Office Director for ICE. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Therefore, Warden Voorhies is not a proper respondent. *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796, *8 (N.D. Ohio Nov. 12, 2025).

2025. (Ex. #1 I-94.) On June 16, 2024, ICE issued a Notice to Appear ("NTA") for removal proceedings pursuant to 8 U.S.C. 1229(a). (Ex. #2 2024 NTA.)

On June 2, 2025, Petitioner appeared in immigration court. The government moved to dismiss those proceedings, which Petitioner did not oppose. Petitioner alleges that he did not oppose the dismissal because he lacked counsel and misunderstood the difference between "dismissal" and "closure" of immigration proceedings. (Pet. ¶¶ 18-19 PageID #85.) The IJ granted the dismissal, and Petitioner was detained and placed in expedited removal proceedings. (Ex. #3 IJ Dec.; Ex. #4 EARM Encounter.) Petitioner appealed the dismissal to the Board of Immigration Appeals ("BIA"), and the BIA dismissed the appeal on April 20, 2026. (ECF #5-3 Ex. C PageID #110-114.) Petitioner then filed his initial habeas petition with this Court on April 24, 2026. (ECF #1 Pet.)

On April 21, 2026, Petitioner's expedited removal proceedings were ended when the government issued a new notice to appear ("NTA") (ECF #5-13 2026 NTA PageID #142-145.) This NTA placed Petitioner into regular removal proceedings pursuant to 8 U.S.C. § 1226a. (*Id.*) In these new proceedings, Petitioner is scheduled for a master calendar hearing on May 19, 2026. (Ex #5 Not. of Internet-Based Hearing.)

LAW AND ARGUMENT

The government has carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for ICE's detention of Petitioner under 8 U.S.C. §§ 1225(b)(1) or 1226(a), whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. In addition, Petitioner asserts a claim that the Immigration Judge ("IJ") violated Petitioner's due process rights by dismissing the original proceedings because he did not have counsel and did not understand the effect of the

dismissal to which he agreed. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated response in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter.

I. The government's position is that Petitioner is an arriving alien subject to mandatory detention.

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b)(1). All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . ."). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings).

As an arriving alien, Petitioner is an applicant for admission, and subject to mandatory detention for the duration of his removal proceedings. 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii). 8 C.F.R. § 235.1(f)(1) and § 235.3(c)(1) also apply to Petitioner. In fact, § 235.3(c) applies to Petitioner because he is an, "Arriving alien[] placed in proceedings under section 240 of the Act . . . ." Subsection 235.3(c)(1) provides for mandatory detention, stating, (1) Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to

section 240 of the Act shall be detained in accordance with section 235(b) of the Act. Parole of such alien shall only be considered in accordance with § 212.5(b) of this chapter."

Given that 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention … throughout the completion of applicable proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 301-03 (2018), IJs do not have authority to redetermine the custody status of an alien present without admission.

However, the government acknowledges that this Court recently reached the opposite conclusion in *Hernandez-Cine v. Voorhies, et al.*, No. 4:26-cv-421, and in its earlier decision in *E.V. v. Raycraft*, No. 4:25-cv-2069. The government takes the position that the Sixth Circuit's recent decision in *Lopez-Campos v. Raycraft*, Nos. 25-1965/1969/1978/1982, 2026 WL 1283891 (6th Cir. May 11, 2026), does not compel the same result as those cases.

Lopez-Campos does not control in this case because it does not address detention pursuant to § 1225(b)(1). It does not apply to cases in which aliens, such as Petitioner, were initially encountered at ports of entry or otherwise at "the threshold of initial entry," who were processed under § 1225(b)(1) or (b)(2), were released from custody and then later re-arrested. The Sixth Circuit seemingly indicates that such individuals are properly subject to § 1225(b) detention upon encounter. *See* 2026 WL 1283891, at *11 ("Because no petitioner is alleged to be seeking admission or lawful entry into the United States, § 1225(b)(2)(A)'s mandatory detention scheme does not apply to them.") Respondents are still assessing the impact of the decision and will notify the Court if their understanding of Respondents' position changes.

On the legal issue of which statute governs Petitioner's detention here—whether it is 8 U.S.C. § 1226(a), or 8 U.S.C. § 1225(b)(1)—the government acknowledges that this Court's decisions in *E.V.* and *Hernandez-Cine* would control the result here if the Court adheres to those decisions, since the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention.

II. Petitioner's claims regarding the dismissal of his prior removal proceedings should be rejected.

Petitioner's allegation that the IJ violated Petitioner's due process rights by dismissing the initial immigration proceedings when he was without counsel are without merit. First, this Court lacks jurisdiction to review that claim. After the BIA's dismissal of his appeal, Petitioner's proper remedy would be to appeal to the United States Court of Appeals for the Sixth Circuit. Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review ("PFR") of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("AADC"). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance.) *Id.* Therefore, this Court lacks jurisdiction to review the merits of Petitioner's claims regarding the IJ's dismissal.

Moreover, the dismissed proceedings do not affect Petitioner's current removal proceedings, which began with the April 2026 NTA. In these new proceedings, Petitioner will have the opportunity to present his case for adjustment of status and any other relief to which he

may be entitled. Therefore, Petitioner's claim that the IJ violated his due process rights should be rejected.

CONCLUSION

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, the government submits this abbreviated response setting forth its position that the Petitioner is lawfully detained. Finally, the government believes that this matter can be decided without a hearing. If, however, the Court determines that a hearing would be helpful, the government will attend and present Respondent's position.

Respectfully submitted,

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