UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Jesus Alberto Paez Tovar

Petitioner,

v.

Julie Massengill, *Jail Administrator Monroe County Jail*, et al.

Defendants.

Civil No. 26-12812

Honorable Linda V. Parker
Mag. Judge Patricia T. Morris

Petitioner's Reply in Support of His Petition for a Writ of Habeas Corpus

I. Respondents Have Not Identified a Coherent Detention Authority

Respondents argue that Petitioner is detained under 8 U.S.C. § 1226(c), and alternatively under § 1225(b)(1). (Resp. Br. 9, 11.) The Immigration Judge invoked both, denying jurisdiction because Petitioner "is an arriving alien" while adding that he "is subject to mandatory detention pursuant to the Laken Riley Act." (ECF No. 6-11.) Section 1226(c) is a subsection of § 1226. Respondents may plead in the alternative, but the consequence is that after weeks of confinement no decisionmaker has identified and adjudicated one coherent custody framework, and no neutral decisionmaker has adjudicated whether detaining Petitioner is necessary.

The agency's contemporaneous documents deepen the inconsistency. The Form I-200 executed July 24, 2026 is addressed to officers "authorized pursuant to

sections 236 and 287" and rests on "the execution of a charging document to initiate removal proceedings." (ECF No. 6-9.) The Form I-286 served the same day recites that the custody determination was made under "section 236 of the Immigration and Nationality Act and part 236 of title 8," and advised Petitioner of his right to Immigration Judge review, which he requested that day. (Pet. Ex. L.) Petitioner does not contend that these documents by themselves establish § 1226(a) custody. Matter of Q. Li, 29 I&N Dec. 66, 69 n.4 (BIA 2025), forecloses treating a warrant issued after § 235(b) custody has already resumed as a conversion to § 236(a). But the Board also explained that a § 236 warrant is prospective and "leading to the alien's arrest." Id. Here DHS generated an I-200 invoking sections 236 and 287, and an I-286 expressly invoking section 236, on the date of the July arrest. Respondents have not established that the I-200 was post-hoc paperwork issued after § 235(b) custody had already resumed.

Respondents also never explain why § 1225(b)(1) is the operative subsection. Section 1225(b)(1) governs expedited removal. Petitioner was never in expedited removal: the credible-fear and § 235(b)(1)-vacatur boxes on his Notice to Appear are unmarked, and Respondents' own 2024 Form I-213 states he was "served with an I-862 (Notice to Appear) and was paroled into the United States pending 240 Removal Hearing." (ECF No. 6-1 at 2; Pet. Ex. A.) Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019), on which Respondents rely, concerns noncitizens transferred to §

240 proceedings after establishing credible fear in expedited removal. That is not this record. Q. Li itself locates a directly placed § 240 case in § 1225(b)(2)(A), not § 1225(b)(1): because that respondent "was placed directly in full removal proceedings rather than expedited removal," the Board held § 1225(b)(2)(A) governed. 29 I&N Dec. at 70. Respondents therefore have not explained the subsection on which their alternative theory depends. And if § 1225(b)(2)(A) is the relevant provision, Lopez-Campos v. Raycraft, 175 F.4th 713, 723 (6th Cir. 2026), supplies the governing construction of "seeking admission." Respondents' own Form I-213 describes the July encounter as "a wrong turn, not intending to travel to CA." (ECF No. 6-5 at 2.) Whether that encounter made Petitioner a person then "seeking admission," rather than a long-released resident inadvertently routed to the crossing, is the actual statutory question; Respondents do not answer it.

II. Section 1226(c)(1)(E) Did Not Reach Petitioner When DHS Detained Him

Respondents read § 1226(c)(1)(E) to mean that any past arrest or charge, however resolved, permanently bars release. (Resp. Br. 11.) The provision reaches a noncitizen who "is charged with" or "is arrested for" a qualifying offense, and the court that sustained detention under it held the triggering event must exist when DHS takes the noncitizen into custody. Lopez Cruz v. Jamison, No. 2:26-cv-02278-KSM (E.D. Pa. May 7, 2026). Lopez Cruz's charges were pending on the day ICE arrested

him, and their later withdrawal did not matter; the court distinguished cases granting relief where charges had been resolved before the immigration arrest, including Rueda Torres v. Francis, No. 25cv8408, 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025). Respondents cite neither decision.

Petitioner's charge was stricken with leave to reinstate on September 17, 2025, when the complaining witness failed to appear and Petitioner demanded trial. (Pet. Ex. E.) Under Illinois law an order striking with leave to reinstate does not itself terminate the proceeding; where a trial demand remains operative and the State takes no intervening action, termination occurs when the 160-day period of 725 ILCS 5/103-5(b) expires, after which the State may not reinstate. Ferguson v. City of Chicago, 213 Ill. 2d 94, 820 N.E.2d 455 (2004). On the record Respondents themselves submitted, which identifies no reinstatement, that period expired in late February 2026, approximately five months before DHS took Petitioner into custody.

Respondents' own records say as much. The 2026 Form I-213 recites that under Illinois law the prosecution had to follow through "or it is dismissed," and states: "As of now it appears to have been dismissed." (ECF No. 6-5 at 2.) The closeout addendum to the same form asks whether Petitioner has "ever been arrested, convicted or engaged in prior criminal activity" and answers "NO." (Id. at 3.) Jennings v. Rodriguez, 583 U.S. 281 (2018), does not resolve this. Jennings held that

§ 1226(c) contains no implicit time limit for those within it; it did not decide whether a person whose sole accusation terminated months before his arrest falls within it.

III. Categorical Detention on an Unadjudicated Accusation Violates Due Process as Applied

If § 1226(c)(1)(E) reaches Petitioner, the question is whether the Government may confine him with no individualized custody determination at all on the strength of a sub-$300 misdemeanor accusation no tribunal adjudicated. In Bakiev v. Jamison, No. 2:26-cv-03149-MKC (E.D. Pa. July 10, 2026), a paroled asylum seeker charged under § 1182(a)(7) was detained under both § 1226(c)(1)(E) and § 1225(b)(2)(A) on pending theft charges involving an alleged loss exceeding $30,000. Applying Mathews v. Eldridge, 424 U.S. 319 (1976), the court held that detention based on an unproven accusation of theft, without a prompt opportunity for an individualized bond determination, offends due process, and reasoned that Demore does not control because its holding rested on criminal culpability already established through the criminal process. Accord Nosirov v. Rife, No. 26cv1534, 2026 WL 916602 (E.D. Pa. Apr. 1, 2026). Petitioner's predicate is weaker: not a pending charge, but one that, on the record Respondents have presented, terminated months before his arrest. Demore v. Kim, 538 U.S. 510 (2003), sustained brief detention of a noncitizen who conceded deportability based on convictions; it does

not hold that an unproven, terminated accusation substitutes for adjudicated culpability.

IV. Thuraissigiam Does Not Foreclose This Detention Due Process Claim

Respondents contend that the process due is "coextensive with the administrative immigration procedures provided by Congress." (Resp. Br. 16, citing Thuraissigiam, 591 U.S. 103 (2020).) Thuraissigiam rejected Suspension Clause and due process challenges to expedited removal review in the threshold-entry context, and reaffirmed the entry fiction as to constitutional rights regarding admission. 591 U.S. at 138-40. Petitioner seeks neither admission nor further review of an admissibility determination. He invokes habeas in its traditional form, to challenge physical confinement and the termination of an established community liberty without a neutral merits custody determination. The Government inspected him, released him, and permitted him to live here for twenty-eight months, during which he married a United States citizen, received employment authorization valid through 2030, filed for asylum, and was enrolled by ICE in its own CART supervision program.

The Due Process Clause protects all persons in the United States, "whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001). Termination of established conditional liberty requires notice of the grounds and a meaningful opportunity to be heard before a

neutral decisionmaker. Morrissey v. Brewer, 408 U.S. 471, 482 (1972). Petitioner received a Form I-286 stating that he would be detained without bond. He has never received a disclosed individualized rationale for why his detention is necessary, and no neutral adjudicator has made a merits custody determination.

V. Exhaustion Does Not Bar Relief

No statute conditions § 2241 relief on exhaustion here, and prudential exhaustion turns on whether it would yield a better record, reduce disputes, and whether it would be futile. Shearson v. Holder, 725 F.3d 588, 593-95 (6th Cir. 2013). Petitioner presented the custody question to the Immigration Judge on a thirteen-tab record, briefed danger and flight risk under Matter of Guerra, offered a $1,500 bond with a United States citizen obligor, ISAP enrollment, and a residence restriction, and expressly asked for alternative findings on each Guerra factor if jurisdiction were denied. (Pet. Ex. H.) He also requested parole from ICE. (Pet. Ex. I.) The Immigration Judge denied for lack of jurisdiction and made no Guerra findings. (ECF No. 6-11.)

Petitioner does not contend that no administrative review exists. The Board reviews the antecedent legal classification de novo. But Judge Jebson made no findings on danger, flight risk, ability to pay, or conditions of release for the Board to review, and the Board ordinarily does not engage in factfinding on appeal. 8 C.F.R. § 1003.1(d)(3)(i), (iv). If the Board affirms the jurisdictional ruling, no

individualized merits custody determination occurs. If it reverses, further proceedings would be required before the custody merits could be reached. Petitioner remains confined throughout. And Q. Li makes the principal classification question largely predetermined at the agency level. Respondents' own description of the August 25 proceeding illustrates the gap: they state that Petitioner "submitted evidence and argument" and that the court "issued an oral decision to deny petitioner's request for release on bond" (Resp. Br. 4-5), while the order they attached holds that the court "lacks jurisdiction to hear respondent's bond." (ECF No. 6-11.) No custody merits were adjudicated.

VI. The Parole and Absconding Arguments Do Not Answer the Petition

Respondents devote their fifth section to showing that parole was not improperly revoked because it expired in March 2026. (Resp. Br. 14-16.) The Petition pleads the same thing: the claims "do not depend on his parole having remained in force on July 23, 2026." (Pet. ¶ 25.) The violation lies in terminating the community liberty Petitioner actually exercised, without notice of its factual basis or neutral review.

An unsuccessful attempt to locate Petitioner in December 2025 does not establish that he absconded, violated a reporting obligation, or failed to appear. Respondents' own I-213 records his CART enrollment, his July 29, 2025 check-in, his next check-in scheduled for July 29, 2026, and his awareness of and intent to

attend it. (ECF No. 6-5 at 3.) He was detained before that appointment. The same document describes the encounter as "a wrong turn, not intending to travel to CA." (Id. at 2.) Finally, Respondents' request to dismiss additional supervisory respondents is collateral to the merits. At minimum, the custodian recognized by Roman v. Ashcroft, 340 F.3d 314 (6th Cir. 2003), as exercising immigration custody within this District is properly before the Court, and dismissal of any additional respondent would not affect the Court's ability to adjudicate the writ.

Conclusion

Petitioner respectfully requests that the Court grant the writ and order his release, or in the alternative order Respondents to provide an individualized custody hearing before a neutral decisionmaker within seven days, at which Respondents bear the burden of proving by clear and convincing evidence that continued detention is justified, with release to follow if no such hearing is held.

Dated: September 1, 2026

Respectfully submitted,

/s/ Christopher M. Casazza
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Certificate of Service

I certify that on September 1, 2026, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification to all counsel of record.

/s/ Christopher M. Casazza
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