

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

BRAYAN FERNEY LOPEZ  
LIZARAZO,

Petitioner,

vs.

WARDEN of Folston ICE  
Processing Center, et al.  
Respondents.

Civil Action No.:  
5:25-cv-105

**RESPONSE TO MOTION TO DISMISS**

**I. INTRODUCTION**

Petitioner Brayan Ferney Lopez Lizarazo, through undersigned counsel, respectfully opposes Respondents' Motion to Dismiss filed on November 19, 2025. Respondents argue that this Court lacks jurisdiction under 8 U.S.C. § 1252(g), that Petitioner failed to exhaust administrative remedies, that the amended petition is a shotgun pleading, and that his unlawful detention claims lack merit. As explained below, in turn, each contention is unfounded. This Court is not barred by 8 U.S.C. § 1252(g) to review Petitioner's due process challenge to his detention, no administrative remedy exists to exhaust, the amended petition is legally sufficient, and Petitioner's detention

violates the Fifth Amendment, the Administrative Procedure Act (APA), and immigration law. Petitioner requests denial of the Motion to Dismiss and issuance of a writ of habeas corpus ordering his immediate release.

## II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, a Colombian national, entered the United States on April 6, 2022, was detained briefly by the Department of Homeland Security (DHS), and was released on his own recognizance under 8 U.S.C. § 1226(a) after two days. Docs. 7-1 at 2-15. He was placed in Removal Proceedings with the issuance of a Notice to Appear charging him as having entered without inspection. Docs. 7-1 at 13-15. He was not classified as an arriving alien. *Id.*

For over three years, he complied with all release conditions, maintained lawful employment, had an Employment Authorization Card, and attended all his Immigration Court hearings, with a pending asylum merits hearing currently set for January 15, 2026.

On September 4, 2025, ICE re-detained him during a large-scale workplace enforcement action at the Hyundai Motor Group Metaplant in Ellabell, Georgia. Docs. 7-1 at 2-4, 41-43. Notices of Revocation of

Release, served on October 22 and 23, 2025, almost two months later, cited discretionary authority without any rationale. Docs. 7-1 at 3, 45, 47. Petitioner has now been detained at Folkston ICE Processing Center for 81 days as of November 24, 2025.

Petitioner filed his habeas petition on September 25, 2025, and an amended petition on November 5, 2025, challenging the legality of his re-detention. Doc. 1. Respondents filed their Answer on October 23, 2025, Doc. 7, and now move to dismiss. Doc. 13.

### III. ARGUMENT

#### **A. This Court Has Jurisdiction Under 28 U.S.C. § 2241 to Review Petitioner's Collateral Detention Challenge**

Respondents' claim that 8 U.S.C. § 1252(g) precludes this Court's jurisdiction overly extends the statute's limited application. Section 1252(g) governs only three specific actions by the Attorney General: the initiation, adjudication, or execution of removal proceedings. Jennings v. Rodriguez, 583 U.S. 281, 296-97 (2018); Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471 (1999) (rejecting a broad reading of § 1252(g)). Petitioner does not contest any of these discreet actions. His removal proceedings, which began in 2022 and include a scheduled merits hearing on January 15, 2026, remain unaffected by his Petition;

he does not seek to stop their adjudication or execution, and has presented no challenge to their initiation. Rather, he challenges ICE's re-detention on September 4, 2025, which occurred without due process, presenting a collateral custody issue outside the scope of § 1252(g).

Respondents cite Gupta v. McGahey, 709 F.3d 1062, 1068 (11th Cir. 2013), a Bivens case, to suggest that detention during removal proceedings falls within § 1252(g)'s ambit. However, Gupta is distinguishable. In that case, the petitioner's arrest led to the institution of his removal proceedings, thereby making his claim a challenge to the initiation of removal proceedings, an action covered by § 1252(g). Here, Petitioner's re-detention occurred three years after his removal proceedings had started, and he does not contest the initiation of those proceedings, rendering Gupta inapplicable. It should be noted that, in Gupta, the petitioner's detention was to prevent the danger he posed to the community, specifically Walt Disney World, while, here, no such justification has been given.

This Court's recent ruling in Aguirre Villa v. Warden Tony Normand, et al., Nos. 5:25-cv-89 et al. (S.D. Ga. Nov. 14, 2025), correctly addresses this issue. There, this Court determined that jurisdiction

persisted despite § 1252(g) because the challenge centered on the underlying basis for his detention, not the removal process itself. The Court then overruled Respondents' jurisdictional objections, concluding that the dispute over the applicable statute (§ 1226(a) versus § 1225(b)) constituted a collateral issue reviewable under § 2241. Likewise, in this instance, Petitioner's challenge targets the unlawfulness of his collateral detention, not the ongoing removal proceedings. Thus, jurisdiction is not barred.

**B. Exhaustion of Administrative Remedies Is Not Required Due to Their Unavailability**

Respondents assert that Petitioner must exhaust administrative remedies prior to seeking habeas relief, a requirement that is inapplicable here, but do not identify any statute or regulation that provides such relief. The principle of exhaustion requires a petitioner to pursue available administrative processes only where an agency possesses the authority to grant the relief sought. Jean v. Nelson, 711 F.2d 1455, 1505-06 (11th Cir. 1983)("[i]t is tautological that the exhaustion doctrine does not preclude the exercise of jurisdiction when there are no further administrative remedies to pursue.").

In this instance, no administrative process exists to remedy Petitioner's claims. The governing regulations, specifically 8 C.F.R. § 236.1(c)(9), fail to provide a mechanism for challenging ICE's revocation of Petitioner's release and the binding precedent of Matter of Yahure Hurtado, 29 I&N Dec. 216 (BIA 2025)(mandatory detention applies to all aliens present without inspection), Matter of Q.Li, 29 I&N Dec. 66 (BIA 2025)(mandatory detention applies to aliens detained while arriving in the United States), and Matter of M-S-, 27 I&N Dec. 509 (BIA 2019)(mandatory detention applies to aliens who could be subject to expedited removal), deprives Petitioner from seeking a bond hearing to remedy his unlawful detention. The Petition does not contest bond conditions or amounts, matters that might be subject to administrative review, but, rather, objects to the total lack of a custody review hearing or justification for Petitioner's detention. Imposing an exhaustion obligation under these circumstances is not only impractical but also legally unjustified, as it would compel Petitioner to pursue a non-existent remedy and would serve no purpose other than to delay justice. Dismissal on this ground is therefore inappropriate and should be denied.

### **C. The Amended Petition Does Not Constitute a Shotgun Pleading**

Respondents next argue that the amended petition should be dismissed as a shotgun pleading because it incorporated the original petition. The Eleventh Circuit notes that the defining characteristic of a shotgun pleading is that it fails to give defendants adequate notice of the claims against them and the grounds upon which each claim rests. Weiland v. Palm Beach Cnty. Sheriff's Office, 792 F.3d 1313, 1323 (11th Cir. 2015). Respondents' well-written and extensively researched Motion to Dismiss show their full understanding of Petitioner's factual and legal allegations and shows that they were given adequate notice of the claims put forth by Petitioner. Thus, the amended petition meets the necessary standards by providing fair notice of the claims and the relief sought, and dismissal on this ground is not warranted.

### **D. Petitioner's Detention Is Unlawful Under the Constitution, APA, and Immigration Regulations**

Respondents finally argue that Petitioner's nearly three-month confinement is lawful, and that habeas relief is unavailable because his current detention allegedly falls under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). They insist no procedural

protections were required and that Petitioner cannot challenge the conduct leading to his re-detention. The Court should reject that position.

In addition, Respondents' premise that habeas relief is unavailable unless Petitioner proves his current custody independently violates 28 U.S.C. § 2241(c)(3) ignores the central point: a detention obtained through unconstitutional means is unlawful detention for purposes of § 2241. Respondents cannot erase the due process violations by labeling the outcome lawful.

As discussed next, there was a complete absence of substantive and procedural due process which renders the initial and the ongoing detention unlawful, regardless of the statutory basis on which Respondents now rely. Respondents' effort to justify the outcome after the fact does nothing to cure that constitutional failure.

The revocation of Petitioner's release violated due process under well-established Supreme Court precedent. The undisputed record shows that Petitioner was seized during a mass-enforcement operation with no justification and no opportunity to respond. There have been no allegations by Respondents that Petitioner violated the terms of his

release, nor any reasoning provided for having taken him into custody, except for their contention that they have unlimited, unreviewable discretion. The more likely scenario is that Respondents were attempting to detain as many individuals as possible, and they did not know that Petitioner was already released on an Order of Recognizance and had an on-going process in Immigration Court. In revoking his release, Respondents violated Petitioner's constitutional right to due process and Petitioner should be ordered released.

First, Respondents violated Petitioner's due process rights by detaining him without a legitimate governmental interest. While the government has a legitimate interest in detaining certain noncitizens during removal proceedings, that detention must be reasonably related to a legitimate government objective, like preventing flight or danger to the community. Jennings, 583 U.S. 281; Zadvydas v. Davis, 533 U.S. 678 (2001). Immigration detention is civil incarceration, not meant to be punitive, and must therefore serve a purpose. *Id.* The purpose must outweigh the "individuals constitutionally protected interest in avoiding physical restraint." Zadvydas, 533 U.S. at 690. Here, Respondent was taken into custody without any justification; his own-recognizance bond,

given to him by Respondents, was revoked without cause. Respondent had shown for the last three years of release that he is neither a flight risk nor a danger to the community. His continued incarceration does nothing to further the government's goals of ensuring he appears for his removal proceedings or that he commits no crimes. It furthers their goals of mass deportation and enforcement quotas, which are not legitimate against Petitioner's substantial interest in being free.

Second, Respondents violated Petitioner's procedural due process rights by detaining him without providing him with an opportunity to contest the decision to revoke his release and without providing him with bond hearing. At a minimum, the government must demonstrate, like in a hearing, that the individual poses a flight risk or danger to the community. Demore v. Kim, 538 U.S. 510 (2003). Detention that lacks procedural safeguards is arbitrary and unconstitutional. See Zadvydas, *supra*. There were no procedural safeguards in place to prevent Respondents from acting arbitrarily and capriciously.

Under the test set forth by Matthews v. Eldridge, 424 U.S. 319 (1976) to balance Petitioner's procedural due process rights against Respondents' interest, Petitioner should be entitled to at least a

demonstration that the revocation of his release and his continued detention are justified before Respondents are permitted to continue depriving him of his liberty. First, the private interest at heart here is the most sacred after life, liberty. Second, there is a high risk that Respondents will erroneously deprive someone from their liberty where there are no safeguards to ensure that such deprivation serves a governmental goal. Finally, the burden on Respondents to justify the revocation of release of an individual previously determined to not be a flight risk or danger to the community is minimal, specially when the burden of housing the individual is so much resource intensive. Thus, Petitioner is entitled to procedural due process and should be ordered released.

Respondents further contend that Petitioner's detention is lawful under 8 U.S.C. § 1225(b)(2)(A), which they argue mandates detention for "applicants for admission" like Petitioner, who entered without inspection. They cite Jennings, 583 U.S. 281, and Matter of Yajure Hurtado, 29 I. & N. Dec. 216, to support that § 1225(b)(2)(A) applies to all aliens present without admission. However, their reasoning is flawed.

Petitioner was initially released on April of 2022 under 8 U.S.C. § 1226(a) on his own recognizance after the issuance of a Notice to Appear charged him with having entered the country without inspection (EWI), not as an arriving alien or an applicant for admission. Respondents' attempt to reclassify him under § 1225(b)(2)(A) after the fact contradicts this initial determination and the plain language of the Immigration and Nationality Act (INA). Aguirre Villa, Nos. 5:25-cv-89. In Aguirre Villa, this Court found that § 1226(a), not § 1225(b), apply to noncitizens who are already in the United States without legal status. *See also* S.D.B.B. v. Terry S. Johnson, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025)(ordering a bond hearing after 13 days without process in a strikingly factually similar case).

Even if Respondent is detained under 8 USC § 1225, which he is not, Respondents argument that no law requires ICE to provide notice or a pre-deprivation hearing fails. Citing Jennings, 583 U.S. at 850-51, Mathews v. Eldridge, 424 U.S. 319 (1976), and S.D.D.B., 2025 WL 2845170 at \*9-10, Respondents seem to suggest that due process does not mandate constitutional protections for noncitizens. They note that Mathews dealt with social security benefits, not immigration law, and

rely on Mathews v. Diaz, 426 U.S. 67 (1976), to argue that immigration rules allow them greater flexibility. But none of these cases stand for the proposition that the Due Process Clause does not apply to non-citizens. Quite the opposite. In Diaz, *supra* at 79, the Supreme Court noted that the “[t]he fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead to the further conclusion that all aliens are entitled to enjoy all the advantages of citizenship (. . . .)” Petitioner is not asking for a benefit only reserved for citizens, like the welfare benefits that were at issue in Diaz, but the basic protections guaranteed to everyone, alien and citizen alike, by the U.S. Constitution.

Petitioner’s re-detention after three years of compliance with the terms of his release, without any changed circumstances, creates a protected liberty interest under the Fifth Amendment. S.D.B.B., *supra*, rejected a pre-detention determination requirement but recognized that extended detention without review breaches due process, a violation evident here after 81 days. The discretion under 8 U.S.C. § 1226(b) to revoke release does not eliminate the need for some process, and 8 C.F.R. § 236.1(c)(9)’s lack of a pre-deprivation hearing mandate does not

excuse ICE from constitutional obligations. The absence of any hearing or notice over such a long period makes the detention unlawful, and Respondents' reliance on discretionary authority cannot override these fundamental rights.

The government's argument can be restated as "because we say he is subject to mandatory detention, we can detain him however we want, with no process, no oversight, and no judicial review." This is untrue. Even when mandatory detention applies clearly, and it does not here, the government must still adhere to the basic constitutional principles of due process and fairness.

#### **E. Petitioner's APA Claim Is Valid and Supports Habeas Relief**

Respondents argue that Petitioner's claim under the Administrative Procedure Act (APA) fails because it belongs within the realm of habeas corpus and, even if considered, his detention is lawfully authorized and not arbitrary or capricious. This position does not withstand scrutiny. Petitioner's APA claim strengthens his case for habeas relief under 28 U.S.C. § 2241, as his detention violates both the APA and his constitutional rights, necessitating the Court's intervention.

Respondents rely on Trump v. J.G.G., 604 U.S. 670, 672 (2025), which also states that the Fifth Amendment entitles aliens to due process of law, to assert that Petitioner's request for release falls within the "core" of habeas corpus, requiring it to be brought solely under that *writ* rather than the APA. While it is true that habeas corpus addresses unlawful detention, this does not preclude an APA claim when it challenges the legality of agency action underpinning that detention. Here, Petitioner's claim under the APA targets ICE's arbitrary revocation of his release on September 4, 2025, which directly contributes to his current unlawful confinement and is a violation of 5 U.S.C. § 706(2)(A). It therefore complements his habeas petition by highlighting ICE's failure to follow required procedures and showing that his detention is in violation of federal law, thereby making it a valid basis for relief rather than a redundant claim.

For the reasons stated above, Petitioner asks this Court to deny Respondents' Motion to Dismiss and order Petitioner released from custody.

Respectfully submitted this 26 day of November, 2025.

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### **Certificate of Service**

I certify that on November 26, 2025, I served the foregoing  
Respondent to Motion to Dismiss via CM/ECF on counsel for  
Respondents.

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