IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.25-cv-00922-SPC-NPM

LUIS A. VASQUEZ CARCAMO,

Petitioner,

vs.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security (DHS), *et al.*,

Respondents.

PETITIONER'S REPLY IN SUPPORT OF PETITIONER'S EMERGENCY PETITION FOR WRIT OF OF HABEAS CORPUS

COMES NOW Petitioner, Luis A. Vasquez Carcamo, by and through undersigned counsel, files this Reply in Support of Petitioner's Emergency Petition for Writ of Habeas Corpus respondents on the emergency petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 stating in support thereof as follows:

INTRODUCTION

Petitioner's habeas challenge raises a pure question of law concerning the statutory authority for his ongoing detention and the constitutionality of that detention in the absence of a bond hearing. The government's threshold contention that this Court lacks jurisdiction misapprehends both the nature of the claim and the governing

framework. Far from collaterally attacking removal proceedings, Petitioner seeks judicial review of whether § 1225 or § 1226 lawfully governs his custody—an inquiry that itself defines the Court's jurisdiction and lies at the core of habeas review under 28 U.S.C. § 2241. Because this case presents an independent and collateral challenge to unlawful detention rather than a review of removal, jurisdiction properly lies in this Court.

ARGUMENT

a. Jurisdiction exists because determining whether § 1225 or § 1226 governs is itself the jurisdictional inquiry.

The government's argument that §§ 1252(g) and 1252(b)(9) strip this Court of jurisdiction mischaracterizes the nature of Petitioner's claim. Petitioner does not challenge ICE's decision to "commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). Instead, Petitioner challenges the legality and statutory basis of his ongoing detention without a bond hearing, a claim wholly collateral to the removal process.

The Supreme Court has made clear that § 1252(g) applies narrowly to the three discrete actions it lists. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999) Petitioner's claim does not arise from the initiation or prosecution of removal proceedings but from the continued deprivation of liberty without a hearing—a question of statutory and constitutional authority. This case therefore falls squarely outside § 1252(g)'s scope. The Supreme Court would agree as it has "not

interpret[ed] this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves." *Jenningsv. Rodriguez*, 583 U.S.281, 294 (2018) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83(1999)).

The Eleventh Circuit's decision in *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), on which the government relies, is inapposite. Gupta involved a direct challenge to ICE's actions "to commence removal proceedings," *Id.* at 1065, whereas here, the government has already commenced removal, and Petitioner contests the legality of his detention while those proceedings are pending. The fact that removal proceedings were ultimately initiated is not enough to divest this Court of jurisdiction. *See Matom v. ICE / United States Immigr. & Customs Enf't*, No. 2:25-cv-648-JES-NPM, 2025 U.S. Dist. LEXIS 172961, at *5 (M.D. Fla. Sep. 5, 2025).

Similarly, § 1252(b)(9), often called the "zipper clause," channels review of issues arising directly from removal proceedings into a petition for review of a final order of removal. But it "does not present a bar where the claim is independent of challenges to the order of removal itself." *Jennings*, 583 U.S. at 295. Respondent's resorting to the zipper clause in this case is in direct contradiction to established Eleventh Circuit precedent. *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation). Here, Petitioner does not challenge the lawfulness of the commencement of removal proceedings or the review of a removal

order, but rather the legality of detention without access to a bond hearing. That claim is wholly collateral to the merits of removal and therefore not subject to § 1252(b)(9).

b. Exhaustion is excused because the agency denies that any bond process exists under its § 1225(b) classification.

Exhaustion is not a bar. Respondents say Petitioner failed to seek an IJ bond hearing. But Respondents simultaneously insist § 1225(b) applies, contradicting themselves, under which the IJ lacks jurisdiction to conduct a bond hearing and the regulation bars one. When the agency has predetermined that no bond jurisdiction exists, exhaustion is unavailable or futile. *See McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (prudential exhaustion excused where remedies are inadequate or futile); *Santiago-Lugo v. Warden*, 785 F.3d 467, 475–76 (11th Cir. 2015) (exhaustion in § 2241 is non-jurisdictional).

Respondents argue Petitioner did not "seek a bond hearing," yet they simultaneously insist § 1225(b) applies, under which bond is unavailable and IJs lack jurisdiction. See 8 C.F.R. § 1003.19(h)(2)(i)(B) (IJ has no authority to redetermine custody of arriving aliens). Where the agency position forecloses relief, no adequate administrative remedy exists and exhaustion is excused. *McCarthy*, 503 U.S. at 146–49. And in § 2241, exhaustion is prudential, not jurisdictional. *Santiago-Lugo*, 785 F.3d at 475–76.

Even if the Court required some administrative step, Petitioner's request here is for a determination of the correct detention statute, meaning it is a pure legal

question. Courts consistently resolve such "which statute applies" disputes without requiring a pointless request through an unavailable bond process.

c. Section 1226 governs interior arrests like Petitioner's

On the merits, 1226 governs. Petitioner was arrested in the interior more than four years after entry and placed in § 1229a proceedings. For nearly three decades the government's own laws and practice recognized that such individuals are detained, if at all, under 1226(a) with bond eligibility. See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("present without admission will be eligible for bond and bond redetermination"). The Attorney General's recent case, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), cannot rewrite Congress's mutually exclusive detention scheme, and it is not entitled to deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (holding that the APA that "agency interpretations of statutes—like agency interpretations of the Constitution—are not entitled to deference" and it "remains the responsibility of the court to decide whether the law means what the agency says") (internal citations omitted).

Even if § 1225 applied, due process requires an individualized hearing. Prolonged civil detention without a bond hearing offends the 5th Amendment's guarantee of liberty unless narrowly tailored to flight risk or danger. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *United States v. Salerno*, 481 U.S. 739, 755 (1987). At a minimum, the constitution warrants ordering a prompt bond hearing with the government bearing

the clear-and-convincing burden. *See, e.g., Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring).

Respondents' problem is their reading is excessive and explains "seeking admission" out of § 1225(b)(2)(A), placing the statute into "any non-admitted person anywhere, anytime," which violates the rule against surplusage and undoes Congress's stage-specific scheme. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

Additionally, the government's position is internally inconsistent. On the one hand, Respondent's own Notice of Custody Determination issued to Mr. Carcamo on October 7, 2025, expressly invoked the authority of § 1226 (INA § 236). [D.E. 5-1, p. 5]. By doing so, Respondents state in their reply that Mr. Carcamo is detained under the authority of § 1225, yet their own filing invoke the detention authority provided by § 1226. Yet, despite detaining him under § 1226, the government now asserts that he is detained under § 1225(b)(2)(A) and therefore ineligible for a bond hearing. This position cannot be reconciled with the statutory framework. The INA does not permit the agency to mix statutory regimes or to deny bond eligibility by misclassifying the very statute under which it has chosen to proceed. *See Jennings*, 583 U.S. at 302 (stating that it would make little sense to allow detention without a warrant under § 235(b) and then force issuance of a warrant under § 236(a) strongly supports the view that the statute's structure does *not* contemplate switching detention regimes mid-stream simply by issuing a warrant after start).

CONCLUSION

For these reasons, the Court retains jurisdiction under 28 U.S.C. § 2241, and because Petitioner's ongoing detention without a bond hearing violates both statutory and constitutional limits, the writ of habeas corpus should be granted.

Respectfully submitted,

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