UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANDRES DIAZ LOPEZ,

Petitioner,

v. Case No. 3:25-cv-01215

Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami, Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Ronnie WOODALL, Warden of Baker Correctional Institution,

Respondents.
_____/

PETITIONER'S REPLY TO RESPONDENTS' RETURN

Petitioner, ANDRES DIAZ LOPEZ , by and through undersigned counsel, respectfully submits this Reply to Respondents' Return. Respondents' opposition fails for three independent reasons. First, the Government's own exhibits confirm that Petitioner is detained under section 1226(a) and not under section 1225(b)(2)(A). Second,

because as the Government's Response acknowledges, courts across the nation have determined that similarly situated detainees to Petitioner have been determined to be detained under section 1226(a) and not under section 1225(b)(2). Finally, *Jennings v. Rodriguez* makes clear that habeas jurisdiction exists to review the legal authority for detention.

The petition should be granted.

I. The Government's Exhibits prove DHS processed Petitioner under Section 1226(a), not Section 1225(b)(2)(A).

Respondents' position rests entirely on the assertion that Petitioner is a mandatory detainee under section 1225(b)(2)(A). This assertion cannot be reconciled with the evidence Respondents themselves submitted.

A. DHS never commenced expedited removal proceedings. No Form I-860 exists and none was submitted.

Respondents produced, *inter alia*: 1) NTA, 2) IJ Order, and 3) NOH. But the Government did **not** produce a Form I-860 Notice and Order of Expedited Removal, the required document to initiate section 1225(b)(1) expedited removal. DHS did not submit one because none exists. The absence of an I-860 is dispositive. Without

it, DHS cannot claim Petitioner was ever subject to expedited removal or any other form of 1225 processing.

B. DHS filed a regular Notice to Appear placing Petitioner in INA 240 proceedings. This contradicts DHS's 1225(b)(2)(A) theory.

Exhibit A is a standard Notice to Appear charging Petitioner under section 212(a) grounds and placing him into section 240 removal proceedings, not expedited removal. (DE 7-1).

Critically:

1. The NTA does not check any box indicating expedited removal.
2. The NTA classifies Petitioner as "an alien present in the United States who has not been admitted or paroled", which is the statutory definition used for regular section 240 removal, not section 1225(b)(2).
3. The NTA contains no reference to section 235(b), to "arriving alien" status, or to "mandatory detention."

This confirms that DHS itself placed Petitioner in ordinary INA 240 removal proceedings, not the 1225(b)(2)(A) track.

C. The Notice of Hearing confirms regular IJ jurisdiction, which DHS now tries to contradict.

Respondents submitted the Notice of Hearing (Exhibit C), confirming the case was docketed before an IJ under standard removal procedures. (DE 7-3).

Only after Petitioner filed for custody did the IJ state he had no jurisdiction, despite DHS's own actions demonstrating the case was filed under section 240. (DE 7-2).

D. Petitioner's case is even stronger than Aguilar Merino.

In *Aguilar Merino v. Field Office Director, ERO Miami*, Case No. 1:25-cv-23845 (S.D. Fla. Oct. 15, 2025), Judge Martinez granted habeas relief where DHS made the same arguments and submitted the same types of exhibits.

Petitioner's case is stronger because:

1. There is no I-860 at all, confirming no expedited removal ever occurred.
2. The NTA clearly places Petitioner in section 240 proceedings.
3. DHS's own NOH demonstrates they recognized IJ jurisdiction until the custody request.

If *Aguilar* warranted release, this case warrants release even more compellingly.

II. Judicial review of Petitioner's claims is not barred by 8 U.S.C. § 1252.

Respondents first attempt "the 'throw spaghetti at the wall and see what sticks' approach," Garcia v. Noem, No. 2:25-cv-00879-SPC, 2025 WL 3041895, at *2 (M.D. Fla. Oct. 31, 2025), arguing the Court

has been stripped of jurisdiction over Petitioner's claims by 8 U.S.C. §§ 1252(g), and (b)(9). (DE 7 at 5–7). Each argument fails.

Respondents' position rests almost entirely on the assertion that Petitioner is a mandatory detainee under section 1225(b)(2). However, as Respondent's clearly are aware, Court's have routinely dismissed its position as untenable. (DE 7 at 14).

Respondents' invocation of §§ 1252(g) and (b)(9) is also misplaced. Section 1252(g) strips courts' jurisdiction over "any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien[.]" "The provision applies only to the three discrete actions the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("***A.A.D.C.***") (quoting § 1252(g)). Section "1252(g) is not to be construed broadly as a 'zipper' clause applying to the full universe of deportation-related claims, but instead as applying narrowly to only the three 'discrete' governmental actions enumerated in that subsection." *Wallace v. Sec'y, United States Dep't of Homeland Sec.*, 616 F. App'x 958, 960 (11th Cir. 2015) (citing

A.A.D.C., 525 U.S. at 472–73). "And although many other decisions or actions may be part of the deportation process, only claims that arise from one of the covered actions are excluded from [a court's] review. . . ." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (internal citations and quotations omitted).

Similarly, § 1252(b)(9) limits "[j]udicial review of all questions . . ., including interpretation and application of constitutional and statutory provisions, arising from any action take or proceeding brought to remove a[non-citizen] from the United States under th[at] subchapter." Like its "neighboring provision," § 1252(g), this language must be construed narrowly, not to "sweep in any claim that can technically be said to 'arise from'" a removal proceeding. *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)

"Here, Petitioner is not challenging Respondents' decision to execute a removal order, nor is Petitioner challenging Respondents' decision to commence or adjudicate his removal proceedings. Instead, Petitioner challenges his ongoing detention, which is not a claim barred by § 1252(g)." *Merino v. Ripa*, No. 25-cv-23845, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025). Likewise, when a

petitioner argues that they are entitled to a bond determination under § 1226, they are "not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar." *Jennings*, 583 U.S.at 294–95; *see also Arnott*, --F. Supp. 3d--, 2025 WL 3229132, at *2 (when claiming petitioner is detained subject to § 1226 rather than § 1225, "[p]etitioner is not challenging any of the[] decisions or actions" carved out in § 1252(g) and (b)(9), "so [those] provisions do not deprive the [c]ourt of jurisdiction"); *Barros*, 2025 WL 3154059, at *3 (same); *Boffill*, 2025 WL 3246868, at *3–4 (same); *Orozco-Martinez v. Lynch*, No. 1:25-cv-1353, 2025 WL 3223786, at *2–3 (W.D. Mich. Nov. 19, 2025) (same); *J.A.M. v. Streeval*, No. 4:25-cv-342, 2025 WL 3050094, at *2 (M.D. Ga. Nov. 1, 2025) (same). Therefore, this Court has subject matter jurisdiction over Petitioner's claims.

III. The Government applied the incorrect statutory framework to Petitioner's initial bond determination.

Respondent's claim hinges on the argument that although had been present in the United States for years upon his apprehension

by ICE, he is still an "applicant for admission" and is being detained pursuant to 8 U.S.C. § 1225(b)(2)(A). (DE 7 at 8-9). However, Petitioner maintains that because he was present in the United States for years prior to being arrested by ICE, "his detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond," *Puga*, 2025 WL 2938369, at *3, not § 1225(b)(2), applicable to noncitizen "applicant[s] for admission" to the United States. § 1225(b)(2)(A).

Countless federal courts nationwide, including this one, have addressed this issue. Nearly every court has arrived at the same answer: Petitioner is correct. The IJ and Respondents' interpretation of the INA "directly contravenes the statute, disregards decades of settled precedent," and is erroneous. *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-cv-24292 (S.D. Fla. Oct. 10, 2025), ECF 41 at 10; *see also Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sep. 9, 2025) ("Finally, the BIA's decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.").

"Because the [IJ's] decision to apply § 1225 and [deny] bond" without conducting a dangerousness and risk of flight determination "rested on an incorrect statutory interpretation," Petitioner is entitled to relief. *Gil-Paulino*, 25-cv-24292 (S.D. Fla. Oct. 10, 2025), ECF 41 at 12.

Conclusion

Respondents' own exhibits, and argument, demonstrates that Petitioner is detained under section 1226(a), not section 1225(b)(2)(A). (DE 7 at 14). The Immigration Judge, operating under the incorrect statutory scheme, refused to adjudicate custody, leaving Petitioner subject to mandatory detention, without being provided an individualized bond hearing pursuant to the Due Process Clause. (DE 7-2). Habeas review is appropriate and necessary under *Jennings*.

The petition should be granted and Petitioner should be released or provided a constitutionally adequate custody hearing before a neutral adjudicator.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant Petitioner's Petition for Writ of Habeas Corpus and Grant any other and further relief that this Court deems just and proper.

DATED this 6th day of January, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on January 6, 2026.

/s/Joel Alexis Caminero
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Attorney for Petitioner