UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

LUCIANO ZANELLA CASTILLO,

Petitioner,

v. Case No. 1:25-CV-25296

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; E. K. CARLTON, Warden of Miami Federal Detention Center,

Respondents.
_____/

PETITIONER'S REPLY TO RESPONDENTS' RETURN

COMES NOW, the Petitioner, LUCIANO ZANELLA CASTILLO, by and through undersigned counsel, and respectfully submits this

Reply to Respondents' Return, and in support thereof shows the following:

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, exhaustion is not required because the Immigration Judge expressly stated he had no jurisdiction to consider custody. Third, Jennings v. Rodriguez makes clear that habeas jurisdiction exists to review the legal authority for detention.

As such, 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 issued a Form I-200 arrest warrant, which is used exclusively for section 1226(a) custody.

Respondents submitted a Form I-200 Warrant for Arrest of Alien as Exhibit C. (Doc 4-3).

A Form I-200 is the hallmark of 1226(a) arrest and detention. Section 1225(b) detentions are warrantless because they occur at the border or at the moment of apprehension in an expedited removal process. DHS does not issue I-200 warrants for 1225(b)(2)(A) detainees.

The issuance and execution of an I-200 conclusively demonstrates that DHS processed Petitioner as a regular interior enforcement arrest under 1226(a).

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

Respondents produced, *inter alia*:

1. Form I-213
2. Officer Declaration
3. I-200
4. Detention History
5. NTA
6. 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.

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

Exhibit E is a standard Notice to Appear charging Petitioner under section 212(a) grounds and placing him into section 240 removal proceedings, not expedited removal. (Doc 4-5).

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.

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

Respondents submitted the Notice of Hearing (Exhibit F), confirming the case was docketed before an IJ under standard removal procedures. (Doc 4-6).

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.

E. 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. DHS issued an I-200, which is incompatible with 1225(b) detention.
3. The NTA clearly places Petitioner in section 240 proceedings.
4. 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. Exhaustion Is Not Required Because the Immigration Judge Expressly Disclaimed Jurisdiction and the BIA Is Bound by Precedent That Would Require the Same Outcome

Exhibit H contains the IJ's order:

"The Court lacks jurisdiction to consider custody."

(Doc 4-8).

This statement forecloses the Government's exhaustion argument for two independent and reinforcing reasons:

> (1) the IJ refused to adjudicate custody for lack of authority, leaving no administrative avenue to exhaust, **and**
>
> (2) even if an appeal were filed, the BIA is already bound by its own precedent *(Matter of Yajure Hurtado*) to affirm the exact same jurisdictional bar, rendering exhaustion legally futile.

A. The IJ's refusal to exercise jurisdiction leaves no decision for the BIA to review.

The BIA's appellate authority extends only to actual decisions made by the Immigration Judge. Here, the IJ issued *no custody determination*; instead, he formally declined jurisdiction. An appeal of a non-decision is not cognizable.

Under long-standing exhaustion principles, a petitioner is not required to appeal a determination that the agency itself refuses to make.

B. The BIA is already bound by Matter of Yajure Hurtado and would be compelled to affirm the IJ's lack-of-jurisdiction finding.

Even if Petitioner attempted to appeal, the BIA has already addressed this precise question in *Matter of Yajure Hurtado,* holding

that Immigration Judges lack jurisdiction to conduct custody hearings for individuals DHS classifies as detained under section 1225(b)(2)(A).

Because BIA precedent is binding on Immigration Judges and on the BIA itself, the BIA could not rule differently in Petitioner's case. The agency would be compelled to affirm the IJ's jurisdictional denial as a matter of law, not discretion.

Thus:

1. The IJ cannot hear the bond request
2. The BIA cannot reverse the IJ under its own precedent
3. The administrative process cannot provide a remedy

This is the definition of futility.

C. The statutory scheme provides no administrative process to challenge DHS's misclassification of detention authority.

Neither the IJ nor the BIA has authority to decide whether DHS correctly invoked section 1225(b)(2)(A) or whether the evidence shows DHS actually processed Petitioner under section 1226(a). That legal issue lies **outside** the jurisdiction of the immigration courts. Only a federal habeas court can determine whether DHS is detaining a noncitizen under the correct statutory provision.

Thus, exhaustion is not required because the type of challenge raised here cannot be resolved through the administrative hierarchy at all.

D. Supreme Court precedent confirms exhaustion is excused when the agency lacks authority to grant relief.

In McCarthy v. Madigan, 503 U.S. 140 (1992), the Supreme Court held that exhaustion is unnecessary when:

1. the agency lacks the authority to provide the requested relief;
2. the administrative procedure cannot address the issue; or
3. exhaustion would be futile.

All three conditions apply:

1. The IJ lacked authority under his interpretation of the statute.
2. The BIA is bound by precedent to affirm that lack of authority.
3. Neither the IJ nor the BIA can adjudicate whether DHS used the correct detention statute.

E. The Government's exhaustion argument fails because the administrative process is incapable of resolving the legal question presented.

Petitioner does not seek discretionary bond; he challenges **the legal basis** of his detention. Immigration Judges and the BIA do not have authority to determine whether DHS misclassified a detention statute or to reinterpret the scope of section 1225(b)(2)(A). Because

the administrative system cannot resolve the claim, exhaustion is excused.

III. Jennings v. Rodriguez Confirms This Court Has Habeas Jurisdiction.

Respondents rely on 1252(b)(9) and 1252(g). These arguments have been repeatedly rejected in detention cases, including in Aguilar Merino.

Jennings holds that:

1. **Section 1252(b)(9) does not apply to detention challenges** that are independent of the removal process.
2. Federal courts retain habeas jurisdiction over constitutional and statutory challenges to immigration detention.
3. Detention under sections 1225 or 1226 is reviewable because it concerns "the statutory framework that permits detention," not the removal case.

Petitioner challenges the statutory basis for his detention, and the categorical denial of a custody hearing. He does not challenge: (1) removability, (2) the NTA, (3) the merits of removal, or (4) any discretionary DHS decision related to removal.

Jennings controls and confers jurisdiction.

IV. Conclusion

Respondents' own evidence demonstrates that Petitioner is detained under section 1226(a), not section 1225(b)(2)(A). DHS never

issued a Form I-860, never initiated expedited removal, and placed Petitioner in regular INA 240 proceedings using an I-200 warrant and a standard NTA. The Immigration Judge then refused to adjudicate custody, leaving no administrative remedy to exhaust. 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 issue a Writ of Habeas Corpus in the above-styled cause.

DATED this 18th day of November, 2025.

By: */s/ Joel Alexis Caminero*

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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 November 18, 2025.

/s/ Joel Alexis Caminero
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