UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WELITON LOPES COSTA,
Petitioner,

v.

GARRETT J. RIPA, in his official capacity as Acting Field Office Director, U.S. Immigration and Customs Enforcement, Miami Field Office; et al.,
Respondents.
_____/

Case No.: 3:25-cv-1384-JEP-MCR

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Weliton Lopes Costa respectfully replies to the Government's Response to his Petition for writ of habeas corpus. The Government's jurisdictional arguments fail because habeas corpus jurisdiction exists to review constitutional challenges to prolonged immigration detention, and Petitioner's detention has become unlawful due to its indefinite duration and lack of adequate procedural safeguards. This Court should deny the Government's request to dismiss and grant Petitioner's writ of habeas corpus.

PRELIMINARY STATEMENT

The question before this Court is straightforward: Is Petitioner—a noncitizen who has resided in the United States for nearly four years—subject to mandatory detention under 8 U.S.C. § 1225(b)(2), or discretionary detention under 8 U.S.C. § 1226(a)? The answer, compelled by statutory text, structure, Supreme Court precedent, and the overwhelming weight of recent federal court decisions, is § 1226(a).

The government asks this Court to adopt a novel interpretation announced by BIA in September 2025—one that upends nearly thirty years of settled practice, renders § 1226 superfluous, and contradicts the Supreme Court's analysis in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). This Court should decline the invitation.

I. THIS COURT HAS JURISDICTION OVER PETITIONER'S HABEAS CLAIMS

The government raises three jurisdictional arguments: (1) 8 U.S.C. § 1252(g) strips jurisdiction; (2) the "zipper clause" at § 1252(b)(9) bars review; and (3) Petitioner failed to exhaust administrative remedies. These arguments must fail.

A. Section 1252(g) Does Not Bar This Action

The government contends that § 1252(g) divests this Court of jurisdiction because Petitioner's claims "arise from" ICE's decision to commence removal proceedings. Resp. at 6-8. This argument fundamentally misapprehends both the statute and Petitioner's challenge.

Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). The Supreme Court has repeatedly emphasized that this provision is narrow. It "applies only to three discrete actions":

the decision to "commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The provision does not "sweep in any claim that can technically be said to arise from the three listed actions." *Jennings*, 583 U.S. at 294. Instead, it "refer[s] to just those three specific actions themselves." *Id.*

Petitioner does not challenge any of those three discrete actions. He does not contest the decision to commence removal proceedings against him, the adjudication of his case, or the execution of any removal order, which in this case doesn't exist yet. He challenges *which statutory framework governs his detention*—a pure question of statutory interpretation that is collateral to, and independent of, the removal process itself.

This Court on two occasions has already rejected identical arguments. In *Garcia v. Noem*, it held that "[t]he factual and legal scenario presented in this case differs from *Gupta* and *Alvarez*" because the petitioner "challenges the Attorney General's treatment of him as an 'alien seeking admission,'" rather than "the decision to arrest and detain him, or the methods by which he is detained." No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895, at *4 (M.D. Fla. Oct. 31, 2025). The Court relied on *Madu v. U.S. Atty. Gen.*, where the Eleventh Circuit held that while § 1252(g) "bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions." 470 F.3d 1362, 1368 (11th Cir. 2006).

Similarly, in *Hernandez Lopez v. Hardin*, the Court reasoned that "[t]he core of this case is not about detention. It's about how the Attorney General has misclassified [Petitioner] as an 'applicant for admission' under § 1225 instead of a deportable alien under § 1226." No.

2:25-cv-830-KCD-NPM, 2025 WL 3022245, at *6 (M.D. Fla. Oct. 29, 2025). The court found jurisdiction exists because "[c]hallenging how an alien is classified between §§ 1225 and 1226 . . . is best understood as independent of, and collateral to, the removal process." *Id.* at *7.

The government's reliance on *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), is misplaced. *Gupta* involved a Bivens damages action—not a habeas petition—brought by an arriving alien who was detained at a port of entry under expedited removal proceedings. The petitioner challenged the *methods* ICE used to detain him. Here, Petitioner brings a habeas corpus petition—a remedy with constitutional foundation—challenging not any method or exercise of discretion, but the fundamental legal question of which statutory framework applies to long-term residents who entered without inspection. The distinction is dispositive.

Finally, constitutional avoidance counsels against the government's reading. Interpreting § 1252(g) to bar all detention-related challenges "would raise serious constitutional concerns. Absent the right to judicial review through a habeas petition, the government could detain noncitizens indefinitely without needing to provide a justification to anyone." *Hernandez Lopez*, 2025 WL 3022245, at *8 (citing *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001)).

B. The Zipper Clause Does Not Apply to this case

The government's zipper clause argument fares no better. Section 1252(b)(9) provides that judicial review of questions "arising from any action taken or proceeding brought to remove an alien" shall be available "only in judicial review of a final order." 8 U.S.C. § 1252(b)(9).

The Eleventh Circuit has held that "the zipper clause only affects cases that involve[] review of an order of removal." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). Petitioner has no removal order. He cannot challenge what does not exist.

As Judge Dudley succinctly put it: "Lopez is not challenging a removal order. Indeed, he doesn't have one. So 'the Government's reliance on § 1252(b)(9) is misplaced.'" *Hernandez Lopez*, 2025 WL 3022245, at *8. Judge Steele was equally direct in *Garcia*: "By invoking the zipper clause, the respondents apparently adopt the 'throw spaghetti at the wall and see what sticks' approach." 2025 WL 3041895, at *5.

C. Exhaustion Is Excused Because It Would Be Futile

The government argues Petitioner failed to exhaust administrative remedies by not requesting a bond hearing before an Immigration Judge. Resp. at 10. This argument ignores the practical reality created by *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

In *Yajure-Hurtado*, the Board of Immigration Appeals held that Immigration Judges "have no authority to consider bond requests" from noncitizens who entered without inspection because such individuals are "applicants for admission" who "must be detained for the duration of their removal proceedings." 29 I&N Dec. at 220.

Under settled law, "[p]laintiffs need not exhaust administrative remedies if 'the administrative body is shown to be biased or has otherwise predetermined the issue before it.'" *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see also Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Requiring Petitioner to request a bond hearing when the BIA has categorically stripped Immigration Judges of jurisdiction to grant one would be an exercise in futility.

District courts across the country have reached this conclusion. *See, e.g.*, *Contreras-Lomeli v. Raycraft*, No. 2:25-cv-12826, 2025 WL 2976739, at *3 (E.D. Mich. Oct. 21, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610, at *4 (N.D. Ill. Oct. 20, 2025);

Puga v. Assistant Field Office Director, No. 25-24535-CIV, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025). This Court should follow suit.

II. PETITIONER'S DETENTION IS GOVERNED BY § 1226, NOT § 1225

On the merits, the government argues that Petitioner is an "applicant for admission" subject to mandatory detention under § 1225(b)(2) because he "has not been admitted." Resp. at 11-16. This argument, while superficially textualist, contradicts statutory structure, Supreme Court precedent, and nearly three decades of consistent agency practice.

A. Statutory Text and Structure Compel Application of § 1226

The Supreme Court has squarely addressed the relationship between § 1225 and § 1226. In *Jennings*, the Court explained that § 1225 "applies primarily to aliens seeking entry into the United States," 583 U.S. at 297, while § 1226 "applies to aliens already present in the United States." *Id.* at 303. The Court identified § 1226(a) as the "default rule for those aliens" already present, which "permits—but [does] not requir[e]—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.*

This dichotomy is reinforced by § 1225's title: "Inspection by immigration officers; expedited removal of inadmissible *arriving aliens*; referral for hearing." 8 U.S.C. § 1225 (emphasis added). The word "arriving" indicates the statute governs incoming noncitizens at ports of entry—not individuals who crossed the border years ago and have been living in the interior.

The statutory structure confirms this reading. Section 1225 focuses on "crewman" and "stowaways"—specific methods of arrival. 8 U.S.C. § 1225(b)(2). The implementing regulation

defines "arriving alien" as "an applicant for admission coming or attempting to come into the United States *at a port-of-entry*." 8 C.F.R. § 1001.1(q) (emphasis added). Petitioner is not arriving at any port. He has been present in the United States since February 2022.

Critically, the government's interpretation would render § 1226 superfluous. If § 1225 governs all noncitizens present in the country who have not been "admitted" in the technical sense, then § 1226 would have virtually no application. This violates the "cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

B. The Government's "Term of Art" Argument Proves That the Petitioner's Claim is correct

The government contends that "admission" is a "term of art" defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer," 8 U.S.C. § 1101(a)(13)(A), and therefore anyone not technically "admitted" must be an "applicant for admission." Resp. at 14-15.

This argument, while facially appealing, undercuts the Government's own conclusion and the rationale behind the existence of these sections. Under the government's logic, a lawful permanent resident who briefly departed and returned without going through inspection would become an "applicant for admission" subject to mandatory detention. A trafficking victim who entered unlawfully but has been cooperating with law enforcement for years would be treated identically to someone apprehended at the border yesterday. The statutory scheme cannot reasonably be read to compel such absurd results.

The government's textualist argument also ignores the equally significant term "seeking admission." Section 1225(b)(2) applies to aliens "*seeking admission*" who are "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The phrase "seeking admission" limits the provision's application to those *actively attempting to enter lawfully*—not those who entered years ago and have been living in the interior. As Judge Steele explained in *Garcia*, "[b]y using the term 'seeking admission,' Section 1225(b)(2) limits its application to aliens actively attempting to lawfully enter the United States." 2025 WL 3041895, at *8.

C. The Laken Riley Act Confirms Petitioner's Reading

The government argues that the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), "bolsters" its position. Resp. at 15. The opposite is true.

The Laken Riley Act added 8 U.S.C. § 1226(c)(1)(E), which mandates detention of noncitizens who entered without inspection and have committed certain crimes. If, as the government contends, all noncitizens who entered without inspection were *already* subject to mandatory detention under § 1225(b)(2), the Laken Riley Act would be entirely superfluous. Congress does not legislate in vain.

The *Garcia Court* concluded : "If mere inadmissibility already made detention of a resident noncitizen mandatory under Section 1225, the Laken Riley Act would have no effect." 2025 WL 3041895, at *11. The Act's enactment confirms that Congress understood § 1226—not § 1225—to govern detention of EWIs present in the interior.

D. Historical Practice Supports Petitioner

For nearly thirty years, BIA, DHS and its predecessor consistently treated individuals who entered without inspection as bond-eligible under § 1226. The 1997 Federal Register notice implementing the current statutory scheme explicitly stated: "Illegal border crossers (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

BIA's September 2025 decision on *Matter of Yajure Hurtado* upended this settled practice—not because of any statutory change, but because of a decision to reinterpret existing law. Such novel interpretations are entitled to no deference after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron* deference. This Court must exercise independent judgment on statutory meaning. *Id.* at 385.

The government acknowledges in its Response that "longstanding practice may have differed" but argues this is "not dispositive." Resp. at 15. Yet consistent agency practice over decades is powerful evidence of statutory meaning. When an agency interprets a statute one way for nearly thirty years, that interpretation reflects the understanding of those charged with implementing the law and those who organized their conduct in reliance upon it.

E. The Weight of Federal Authority Rejects the Government's Position

Since BIA announced its new understanding in September 2025, federal courts across the country have overwhelmingly rejected it. The *Garcia* opinion catalogues dozens of decisions reaching this conclusion, including from the District of Massachusetts, Eastern District of Michigan, Central and Southern Districts of California, District of Colorado, Northern and Southern Districts of Illinois, Western District of Kentucky, District of Maine, District of

Maryland, District of Minnesota, District of Nebraska, District of Nevada, District of New Jersey, Southern District of New York, Western District of Texas, and this District. *See Garcia*, 2025 WL 3041895, at *11 n.5 (collecting cases).

The government can cite only two district court decisions supporting its position: *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), and *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). Resp. at 12-13. Against this, the government confronts a wall of contrary authority that has only grown since its Response was filed. This Court should join the overwhelming consensus.

III. THE GOVERNMENT'S INTERPRETATION IMPERMISSIBLY RESTRICTS ACCESS TO CONGRESSIONALLY AUTHORIZED RELIEF

The government emphasizes that Petitioner is in "full removal proceedings" under § 1229a rather than expedited removal. Resp. at 11-12. This framing obscures a critical point: mandatory detention under § 1225(b)(2) effectively eliminates Petitioner's ability to pursue the relief Congress has made available to him.

Petitioner has pending applications with USCIS, including a T-visa application (I-914) filed on July 31, 2025, and a family-based visa application based on the marriage with a US Citizen . T nonimmigrant status is designed to protect trafficking victims and facilitate their cooperation with law enforcement. *See* 8 U.S.C. § 1101(a)(15)(T). Preparing both applications requires gathering extensive evidence, obtaining supporting declarations, and potentially coordinating with legal authorities—tasks that are extraordinarily difficult, if not impossible, from detention.

The government's position creates an untenable conundrum: Petitioner is detained because he has not been "admitted," but his detention prevents him from pursuing the very forms of relief that could lead to lawful status. This cannot be what Congress intended when it created § 1226's discretionary detention framework, which allows Immigration Judges to release individuals who pose no flight risk or danger so they can meaningfully pursue available relief.

This urgency is now pressing. On January 16, 2026, Immigration Judge Espinal issued a scheduling order setting Petitioner's individual merits hearing for **February 24, 2026**, with all applications due by February 17, 2026, and all documentary evidence due by that same date. If Petitioner remains detained, his ability to gather evidence, coordinate with witnesses, obtain necessary documentation from Brazil, and meaningfully participate in his own defense will be severely compromised. Moreover, his pending T-visa application and his family-based application —which have already received a prima facie determination from USCIS—cannot be fully adjudicated while he remains in ICE custody due to regulatory barriers. The Court should not allow a flawed BIA interpretation, now rejected by over thirty federal district courts, to strip Petitioner of his statutory right to a bond hearing mere weeks before his merits hearing.

CONCLUSION

The Government's request for dismissal should be denied because this Court has jurisdiction to review constitutional challenges to prolonged immigration detention under the habeas corpus

statute. Petitioner's detention for over 84 days without adequate procedural safeguards violates due process and exceeds the scope of lawful authority under § 1225(b)(2). The Court should grant Petitioner's writ of habeas corpus and order his immediate release from detention.

Dated: January 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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