UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

HECTOR GUTIERREZ ORTIZ [redacted] *Petitioner*	Case No. 3:25-cv-01386-MMH-MCR
v.	**REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**
KRISTI NOEM, *et al.*, *Respondents.*	

INTRODUCTION

For decades it has been universally understood that individuals like Mr. Gutierrez who have entered the United States, even unlawfully, are entitled to seek release on bond absent past criminal convictions that would subject them to mandatory detention. Yet on July 8, 2025, the government abruptly reversed the statutory interpretation it embraced for decades, choosing to interpret the Immigration and Nationality Act (INA) to mandate the detention of anyone who entered without inspection pending their removal, regardless of how long they have resided in this country. The Department of Homeland Security (DHS) took this position when it apprehended Mr. Gutierrez on October 27, 2025, more than ten years after he arrived in the United States. Since that

time, he has been held in custody without any opportunity to challenge his detention before a neutral arbiter.

ARGUMENT

I. Jurisdiction and Exhaustion

At the threshold, the Court should reject Respondents' jurisdictional and exhaustion arguments and conclude that it does have jurisdiction in this case. Indeed, this Court has already considered and rejected Respondents' jurisdictional arguments in several cases, concluding that neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) preclude the Court from considering the issues raised in this petition. *Bautista v. Noem*, 2025 WL 3227482, *1 (M.D. Fla. Nov. 19, 2025); *Carcamo v. Noem*, 2025 WL 3119263, *1-2 (M.D. Fla. Nov. 7, 2025); *Garcia v. Noem*, 2025 WL 3041895, *1-2 (M.D. Fla. Oct. 31, 2025); *Lopez v. Hardin*, 2025 WL 3022245, *2 (M.D. Fla. Oct. 29, 2025). The Court has likewise concluded that any exhaustion requirement should be excused. *Carcamo*, 2025 WL 3119263, *3; *Garcia*, 2025 WL 3041895, at *3.

First, 8 U.S.C. § 1252(g) does not strip jurisdiction here. Section 1252(g) bars courts from hearing "any cause or claim by or on behalf of any alien 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). Consistent with the plain statutory language, the Supreme Court has adopted a "narrow reading" of 1252(g), holding that "the provision applies only to three discrete

actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination*, 525 U.S. 471, 482, 487 (1999) (emphasis in original). Mr. Gutierrez does not challenge or claim that the Government does not have the right to place him in removal proceedings. He does not claim that Respondents may not adjudicate his case. And he has no removal order to execute. Mr. Gutierrez merely challenges the Government's authority to detain him without the ability to seek release on bond pending those removal proceedings. *See Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (holding that § 1252(g) does not bar claims that challenge "detention while the administrative process lasts."); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Furthermore, Respondents incorrectly rely upon *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013) and *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016), two factually distinct cases that do not otherwise expand § 1252(g)'s narrow scope to apply to preclude review of detention for anyone who is being placed in removal proceedings. *See Carcamo*, 2025 WL 3119263, *2 (distinguishing both *Gupta* and *Alvarez* in similar context); *Garcia*, 2025 WL 3041895, at *2 (same).

Second, Respondents' blanket assertion that § 1252(b)(9) bars this Court's review is meritless. Section 1252(b)(9) works in conjunction with 8 U.S.C. § 1252(a)(5) to channel review of "questions of law and fact . . . arising

from any action taken or proceeding brought to remove an alien from the United States" through a petition for review of a final order of removal filed with an appropriate court of appeals. 8 U.S.C. §§ 1252(a)(5), (b)(9); *see Aguilar v. U.S. Immigr. & Customs Enforcement*, 510 F.3d 1, 11 (1st Cir. 2007) (describing § 1252(b)(9) as "a judicial channeling provision, not a claim-barring one"). However, Mr. Gutierrez does not argue that he may not be detained, he argues simply that he cannot be detained without the bond hearing that due process and the INA require. As the Supreme Court recognized in *Jennings v. Rodriguez*, § 1252(b)(9) does not bar such claims. 583 U.S. 281, 292-94 (2018).

Finally, as argued in the petition, exhaustion is not required and should be excused. ECF No. 1 ¶¶ 17-19. Because Congress has not "specifically mandate[d]" exhaustion for habeas petitions such as this, exhaustion is not required. *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992); *Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'"). And exhaustion should not be required as a prudential matter, as the Board of Immigration Appeals has issued a precedential decision directing all Appellate Immigration Judge and Immigration Judges to find no jurisdiction in cases like this one. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); 8 C.F.R. § 103.10(b) (obligating all Immigration Judges to apply published Board precedent). Thus, an

administrative challenge is futile and should be excused.

II. Mr. Gutierrez is Subject to Detention Under 8 U.S.C. § 1226(a), not § 1225(b)(2).

Regarding the merits of the petition, this Court should order Mr. Gutierrez's release outright. *See* ECF No. 11 (Resp't Opp.) at 7 (arguing that the Court can only order release). But if it declines to do so, it should order a bond hearing under 8 U.S.C. § 1226(a), the proper statute of detention. District Courts across the country, including this one, have almost universally concluded that noncitizens like Mr. Gutierrez who have entered the United States without inspection and have continued residing in the United States for years after entry are subject to detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2) as Respondents assert. *See, e.g.*, *Bautista v. Noem*, 2025 WL 3227482 (M.D. Fla. Nov. 19, 2025); *Carcamo v. Noem*, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Garcia v. Noem*, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *Lopez v. Hardin*, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Duvallon Boffil v. FOD*, 2025 WL 3246868 (S.D. Fla. Nov. 20, 2025); *Aguilar Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Alvarez Puga v. Ass't Field Office Dir.*, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025); *see also Lopez Benitez v. Francis*, No. 25-cv-5937, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Martinez v. Hyde*, No. 25-cv-11613, -- F. Supp. 3d --, 2025 WL 2084238 (D. Mass. July 24, 2025). To the best of

undersigned counsel's knowledge, no court in this circuit has issued a decision contrary to the more-than-300 decisions concluding that detention of individuals similar to Mr. Gutierrez is proper under 8 U.S.C. § 1226(a), not § 1225(b)(2).[1] *Cf. Duenas Garcia v. ICE*, 2025 WL 3241681 (M.D. Fla. Nov. 20, 2025) (ordering additional briefing to determine whether the petitioner had been apprehended at the border).

The plain text of the INA and Supreme Court precedent should compel this Court to reach the same conclusion in this case. As numerous courts have held, Section 1225 governs the detention and procedures available to individuals encountered at a port of entry or who are in the process of "arriving in the United States," 8 U.S.C. § 1225(b)(1)(A)(i), while § 1226 "'sets forth the default rule' for detaining and removing aliens 'already present in the United States." *Hasan v. Crawford*, 2025 WL 2682255, at *6 (E.D. Va. Sept. 19, 2025)

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[1] The Court should also grant the petition in light of the declaratory judgment entered in a nationwide class action in the Central District of California on the issue. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). Should Respondents argue that this class action does not bind the parties, at least one judge in this district has found" no prudential reason to dismiss or stay this case in the meantime because [Petitioner] will seemingly need to return to this jurisdiction to obtain the habeas relief sought." *Castillo-Castro v. Sec'y Dept. of Homeland Security*, No. 2:25-cv-1045-KCD-DNF (M.D. Fl. Dec. 10, 2025).

(quoting *Jennings*, 538 U.S. at 303); *see Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at *5 (D. Colo. Oct. 17, 2025) (stating that the "plain text, overall structure, and uniform case law interpreting" § 1225 and § 1226 "compels the conclusion that § 1225's provision for mandatory detention of noncitizens 'seeking admission' does not apply to someone like Mr. Gutierrez, who has been residing in the United States for more than two years") (cleaned up) (collecting citations).[2]

Respondents ask the Court to deviate from *Jennings* and the overwhelming weight of authority and conclude that 8 U.S.C. § 1225(b)(2) mandates the detention of *all* applicants for admission as defined at 8 U.S.C. § 1225(a)(1), notwithstanding the plain text limiting its scope to "applicant[s] for admission" who are "seeking admission" and who an inspecting immigration officer determined to be not clearly and beyond a doubt entitled to be admitted. *See Mendoza Gutierrez*, 2025 WL 2962908, at *6 (recognizing that § 1252(b)(2)(A) is "a catchall provision" that applies to noncitizens seeking admission who are not otherwise covered by § 1252(b)(1), but concluding that such "catch-all" status "does not mean that § 1225(b)(2) applies to all other noncitizens in the United States who have not been admitted."); *see also Lopez*

[2] Respondents assert that *Jennings* applies to applicant for admission, not just arriving aliens. Opp. 11. But Respondents fail to grapple with the text of *Jennings* clearly distinguishing people seeking to enter the U.S. from those who have been in the U.S. for some time.

Benitez, 2025 WL 2371588. "[T]he differences between § 1225 and § 1226 do not indicate the former should prevail over the latter—rather, they indicate that Congress intended for different classes of noncitizens to be subject to each provision, *i.e.*, mandatory versus discretionary detention." *Vasquez v. Feeley*, No. 25-cv-1542-RFB-EJY, 2025 WL 2676082, at *14 (D. Nev. Sept. 17, 2025). Indeed, the statutory provisions are not irreconcilable such that one must prevail over the other; rather they are mutually exclusive such that a noncitizen must be subject to either one or the other. *See id.*; *see also Quispe v. Crawford*, 2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025); *Hasan*, 2025 WL 2682255, at *8. Respondents' argument that this Court should decline to interpret the language in *Jennings* under its plain terms falls flat. ECF No. 11 at 10. The Court should avoid Respondents' implied invitation to second-guess the Supreme Court's understanding of the INA, where the Supreme Court's understanding has been the practice of the government for the past 30 years. *See Martinez v. Trump*, No. CV 25-1445, 2025 WL 3124847, at *2 (W.D. La. Oct. 22, 2025) ("[T]he Court is not going to say—effectively—that there is no difference between the two [statutes], when the Supreme Court has said that there is.")

Respondents further argue that because Mr. Gutierrez has never had a lawful admission, he falls within the language of Section 1225(b)(2). ECF No. 11 at 14-15. But as the District of Colorado recently held, "[t]his argument is a

nonstarter." *Mendoza Gutierrez*, 2025 WL 2962908, at *6 (concluding that "an applicant for admission" is not synonymous with "seeking admission"). Critically, § 1225(b)(2)(A) contains three "criteria": (1) that the noncitizen is an "applicant for admission"; (2) that the noncitizen is actively "seeking admission"; and (3) that the "examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'" *Lopez Benitez*, 2025 WL 2371588, at *6 (quoting *Martinez*, 2025 WL 2084238, and 8 U.S.C. § 1225(b)(2)(A)). Respondents attempt to overcome the statutory requirements of section 1225(b)(2)(B) by arguing that because Mr. Gutierrez is in the United States unlawfully, then he must be seeking admission for a lawful status. But if this interpretation were correct, then "applicant for admission" would be the same as "seeking admission," and the statute would violate the rule against surplusage. *See id.*; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). Respondents do not materially engage with this distinction or argument and have thus waived any challenge to it. *See generally* ECF No. 11; *see also Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) (recognizing that "the onus is upon the parties to formulate arguments").

Notwithstanding such waiver, in considering the two phrases, an "applicant for admission" who is "seeking admission," Section 1225(b)(2)(A)

clearly applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4); *Quispe*, 2025 WL 2783799, at *5; *Zumba v. Bondi*, No. 25-cv-14626-KSH, 2025 WL 2753496, at *7-8 (D.N.J. Sept. 26, 2025). To read the statute as applying to all applicants for admission regardless of when and how the noncitizen was encountered both ignores the titles and headings of the sections, *see Zumba*, 2025 WL0 2753496, *8. Section 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Section 1226 is titled "Apprehension and detention of aliens." *See Zumba*, 2025 WL 2753496, *8 ("§ 1225 repeatedly cabin[s] its application to "Inspections," which, as petitioner convincingly argues, occurs as ports of entry, their functional equivalent, or near the border.").

> "The added word of 'arriving' supports the notion that the statute governs 'arriving' noncitizens, not those present already. This is further reinforced by the text of the statute itself, which is focused on inspections for noncitizens when they arrive via 'crewman' or as 'stowaways.' 8 U.S.C. § 1225(b)(2)(B)(i)-(iii). This limited, and more specific methods of entry suggest that Section of 1225(b)(2) is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States. This reinforces the interpretation that Section 1225(b)(2) is more limited in scope than the United States asserts."

Edahi v. Lewis, No. 4:25-CV-129-RGJ, 2025 WL 3301053, at *7 (W.D. Ky. Nov. 26, 2025) (internal citations omitted). And as numerous courts have concluded, individuals like Mr. Gutierrez who have resided continuously in the United States for years cannot reasonably be described as "seeking admission." *See id.*;

Quispe, 2025 WL 2783799, at *5; *Lopez Benitez*, 2025 WL 2371588, at *5 (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission").

Respondents' interpretation also would nullify recent amendments to the INA in the Laken Riley Act, now codified within 8 U.S.C. § 1226(c). *See Hasan*, 2025 WL 2682255, at *8. Among other things, the Laken Riley Act mandates detention for noncitizens who are subject to certain inadmissibility grounds *and* meet certain criminal criteria. 8 U.S.C. § 1226(c)(1)(E). Such a statute would be entirely redundant if a noncitizen's inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *See id.*; *Pizzaro Reyes v. Raycraft*, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025); *Lopez Benitez*, 2025 WL 2371588, at *3. And the Court should reject Respondents' only response to this point is that "redundancies . . . are common in statutory drafting," ECF No. 11 at 15 (marks omitted) because courts should "not lightly assume Congress adopts two separate clauses in the same law to perform the same work." *Edahi*, 2025 WL 3301053, at *7 (quoting *United States v. Taylor*, 596 U.S. 845, 857 (2022)).

Furthermore, with respect to the statutory interpretation, the Court should reject Respondents' arguments that Congress intended § 1225(b)(2)(A) to apply broadly to everyone in the United States who has not been admitted. ECF No. 11 at 10. Critically, the Illegal Immigration Reform and Immigrant

Responsibility Act of 1996 ("IIRIRA") was a massive immigration reform effort changing the way immigration cases are considered and processed as a whole. *See Vartelas v. Holder*, 566 U.S. 257, 261-62 (2012) (discussing some of the changes made by IIRIRA). As outlined in the petition, the legislative history relating to expedited removal and detention does not demonstrate that Congress intended for expedited removal to apply to *everyone* who did not enter the United States with a visa, irrespective of when they were encountered by immigration officials. *See* ECF No. 1 ¶ 34. Rather, Congress intended for "arriving alien" to be limited to individuals in the process of arriving in the United States or whom had very recently arrived. *Id.*

Without engaging with the sheer scope of authority ruling against Respondents in these cases throughout the country, Respondents reference only two decisions from district courts outside this district. The first decision *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), did not simply "thoroughly address[] the issue and agree[] with ICE's reasoning." ECF No. 11 at 13. Rather, the Court in that case concluded that "mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits" and factual errors about Vargas Lopez's circumstances "prevent[ed] Vargas Lopez from meeting his burden to show he is entitled to habeas relief." 2025 WL 2780351, *1-2. And the cited case from the Southern District of California is a decision denying injunctive relief, not a

final ruling on the petition itself. *See Chavez v. Noem*, -- F. Supp. 3d, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). Furthermore, Judge Bencivengo in the Southern District of California has since suggested that she may have changed her views on these questions. *See Cruz Vega v. Larose*, 2025 WL 3247778 (S.D. Cal. Nov. 20, 2025) (granting a preliminary injunction because the petitioner demonstrated serious questions going to the merits of the case). Moreover, Respondents' cited decisions do not analyze all the statutory and constitutional arguments presented in this petition. Thus, both cases are distinguishable and Respondents provide no reason as to why this Court should follow them and not the wealth of case law within this circuit reaching the contrary conclusion.

III. Mr. Gutierrez's Detention Violate His Constitutional Rights

Finally, the Court should conclude that Mr. Gutierrez's detention violates his constitutional rights, as pled in Counts Two and Three. Respondents do not even address these counts, and thus have waived any challenge. *See generally* ECF No. 11; *see also Resolution Trust Corp.*, 43 F.3d at 599. Even if the Court declines to grant the petition based on Respondents' default, the Court should rule that Respondents have violated Mr. Gutierrez's constitutional rights.

Critically, the Supreme Court has stressed that once noncitizens "enter the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their

presence here is lawful, unlawful, temporary or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Mr. Gutierrez has a liberty interest in being free from arbitrary detention. In order for Congress to detain an individual, even during removal proceedings, the infringement on liberty must be narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993). Respondents have failed to argue, much less show how Section 1225(b)(2) as applied to Mr. Gutierrez, an individual who has lived in the United States for a decade, has no criminal record, and is a caring parent to three, young United States Citizen children, meets this burden.

Mr. Gutierrez has also met the procedural due process standard under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). First, the government is undeniably restricting his liberty and freedom from custody. Second, a bond hearing is the applicable safeguard to protect against erroneous deprivation of Mr. Gutierrez's liberty interest. Finally, the government has articulated no claim that Mr. Gutierrez is either a flight risk or a danger to the community warranting his continued detention. Thus, its interest is minimal at best. Accordingly, the Court must conclude that the government's claim that Mr. Gutierrez is subject to mandatory detention violates both his substantive and procedural due process rights. *Zadvydas*, 553 U.S. at 693.

CONCLUSION

For the foregoing reasons, the Court should determine that Mr. Gutierrez is detained under 8 U.S.C. § 1226(a) and order his release, or in the alternative, order a bond hearing under 8 U.S.C. § 1226(a). The Court should also order that Mr. Gutierrez cannot be re-detained unless he commits a criminal violation or does not attend any of his immigration court hearings.

Dated: December 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2025, I filed the foregoing Reply with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all parties.

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