UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-62308-WPD

RICARDO JOSE BRICENO TAFFUR,

Petitioner,

vs.

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

Respondents.

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

COMES NOW Petitioner, Ricardo Jose Briceno Taffur, by and through undersigned counsel, files this Reply in response to Respondent's, stating in support thereof as follows:

BACKGROUND

Respondents urge this Court to adopt an unprecedented expansion of 8 U.S.C. § 1225(b)(2)(A), asserting that any noncitizen who ever entered without inspection is forever an "applicant for admission," regardless of residence, time in the country, or procedural posture. (ECF No. 6) This interpretation, applied to an individual arrested three years after entering the interior, contradicts the statutory scheme, decades of administrative practice, and binding Eleventh Circuit precedent.

Respondents understand, and it is undisputed that the INA creates two separate detention tracks, one under § 1225, which applies for inspection-based custody, and a second one under § 1226 for interior arrests during removal proceedings. For nearly 30 years, DHS treated interior arrests as governed by § 1226(a), requiring an individualized custody determination. Respondents now abandon that framework and rely almost exclusively on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a recent BIA decision that conflicts with the text and structure of the INA. A decision that already has multiple circuit decisions in contradiction.

Respondents' interpretation cannot withstand scrutiny. It disregards the INA's carefully constructed statutory structure, relies on selective language from Jennings, and effectively nullifies § 1226(a) by grouping all detention authority into § 1225(b). Their reading would permit perpetual mandatory detention of any noncitizen who once entered without inspection, no matter how long they have lived in the United States--raising profound constitutional concerns under the Fifth Amendment.

Additionally, 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. For these reasons, the Petition must be granted.

ARGUMENT

I. Petitioner's Detention Is Governed by 8 U.S.C. § 1226(a), Not § 1225(b)(2)

The government argues that petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because he entered the United States without inspection and is therefore an applicant for admission. That argument fails to account for the text, structure, and application of the Immigration and Nationality Act (INA), and to binding precedent from the Supreme Court.

A. Brief History of the Immigration and Nationality Act

The Immigration and Nationality Act of 1952 (INA), codified in Chapter 12 of Title 8 of the United States Code, governs all aspects of the immigration law. *See* 8 U.S.C. §§ 1101 *et seq.* As reflected in the text of the statute, the INA involves the interplay between the manifold issues arising from foreign nationals and their decisions to arrive, stay, depart, or be removed from the United States. *See e.g.*, § 1181(c) (cross-referencing the admission of refugees with the admission of immigrants; § 1201(b) (differentiating registration requirements for noncitizens based on classes enumerated in § 1102); § 1301 (conditioning the issuance of visas in accordance with § 1201).

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which "substantially amended" the portions of the INA's judicial review scheme with a "new (and significantly more restrictive) one." *Nken v.*

Holder, 556 U.S. 418, 424 (2009). Along with changes to the availability of judicial review, IRRIRA added § 1225 to the INA, which establishes the expedited removal process of a certain class of noncitizens. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 102, 109 (2020); *see also Biden v. Texas*, 597 U.S. 785, 804 (2022). In contrast, the predecessor to the current language of § 1226 existed in the Original INA. *See* INA of 1952, Pub. L. No. 82-414, 66 Stat. 200. Recently, Congress amended portions of § 1226 through the passage of the Laken Riley Act. Pub. L. No. 119-1, 139 Stat. 3 (2025).

B. Evaluating Inadmissibility of Noncitizens

Congress created two distinct statutory custody tracks, each with mutually exclusive release mechanisms. Track One is § 1225 for applicants for those who are apprehended upon entry or attempt thereof. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).This track applies at the border and to recent entrants, who will be subject to mandatory detention under § 1225(b) and can be released only through § 1182(d)(5)(A) parole. *Id.* at 287-88.

Then, we have track two under § 1226 for interior arrests, which applies to persons arrested inside the United States and can be released through a bond or conditional parole. *Id.* at 288-89. Thus, noncitizens detained under § 1226(a) are entitled to receive bond hearings at the outset of detention. *Id.* at 306.

C. The Plain Language of the Statute Supports Petitioner's Position

Statutory interpretation begins with the "the language of the statute itself." *United States v. Aldrich*, 566 F.3d 976, 978 (11th Cir. 2009). An important canon of statutory

interpretation is that courts shall presume that a statute means what it says and says what it means. *Id.* "[S]tatutes should be construed so that no clause, sentence, or word shall be superfluous, void, or insignificant." *Id.*

Section 1225(b)(2) mandates the detention of applicants for admission "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to admission[.]" 8 U.S.C. § 1225(b)(2). The INA defines "admission" and "admitted" 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). By using the term "seeking admission," Section 1225(b)(2) limits its application to aliens actively attempting to lawfully enter the United States. That interpretation is supported by Section 1225's repeated reference to "arriving aliens"[1] and the existence of Section 1226 – a separate statute that allows for detention and removal of noncitizens already present in the country.

The Supreme Court discussed the differences between Sections 1225 and 1226 in *Jennings*. It explained that Section 1225 "authorizes the Government to detain certain aliens seeking admission into the country[']" while Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings*, 583 U.S. at 289.

[1] "The term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." 8 CFR § 1001.1(q).

It is no accident that noncitizens in the country are treated differently than those seeking entry. As the Supreme Court noted "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely ' on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("But once a [noncitizen] enters the country, the legal circumstances changes, for the Due Process Clause applies to all 'persons' within the United States, including [noncitizens] whether their presence here is lawful, unlawful, temporary, or permanent.").

When considering amendment of the INA in 1996, Congress again acknowledged that noncitizens present in the United States have more due process rights than new arrivals. *See* H.R. Rep. 104-469, p.1, at 163-66 (recognizing "that an alien present in the U.S. has a constitutional liberty interest to remain in the U.S., and that this liberty interest is most significant in the case of a lawful permanent resident alien."). Following the amendment, federal regulations explained, "Despite being applicants for admission, aliens who are present without having been admitted or paroled (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 (Marc. 6, 1997).

Despite this history, DHS announced a change to its policies in a memo to ICE employees dated July 8, 2025. There, DHS notified that its position that applicants for admission "are subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by [8 U.S.C. § 212(d)(5)] parole." *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission*, AILA Doc. No. 25071607 (July 8, 2025); *see also Merino v. Ripa*, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025) (discussing the memo).

DHS's new interpretation flies in the face of the plain language and historical understanding of the INA discussed above. It also nullifies Congress's recent amendment of the INA through the Laken Riley Act, codified at 8 U.S.C. § 1226(c)(1)(E). The amendment mandates detention of noncitizens who meet certain criminal and inadmissibility criteria. If mere inadmissibility already made detention Section 1225, the Laken Riley Act would have no effect.

D. The Government's Interpretation of 8 U.S.C. § 1225(b)(2) would Render § 1226(c) Superfluous

Respondents endorse an interpretation of § 1225 that effectively removes § 1226 from existence. Respondents attempt to downplay the consequences of their position, stating that § 1226 is a mere redundancy. (ECF No. 6 at 5-6). Not so. If the Court were to accept Respondents' position that all noncitizens already in the country were "applicants for admission" and "seeking admission," then there would be no possible set of noncitizens to which § 1226(a) would apply. Much less would it make sense for Congress to have passed the Laken Riley Act to mandate detention of those who, the

government claims, are already covered by § 1225(b)(2). Such a premise would render the enactment of the Laken Riley Act useless and "Congress presumably does not enact useless laws[.]" *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and concurring in the judgment).

Respondent's expansive interpretation of "applicants for admission" who are "seeking admission" would effectively nullify a portion of the INA through the DHS's legislative or interpretative exercise of power. Under the separation of powers, this is unacceptable. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (establishing that "[t]he views of the Executive Branch could inform the judgment of the Judiciary, but [do] not supersede it."); *See also Wayman v. Southard*, 23 U.S. 1, 46 (1825) ("the legislature makes, the executive executes, and the judiciary construes the law.").

E. The Government's Position is Internally Inconsistent

Respondents argue that Petitioner is subject to detention under § 1225(b)(2) is contradictory to their own Notice of Custody Determination issued to Mr. Briceno Taffur on June 27, 2022, where they expressly invoked the authority of § 1226. *See* (ECF No. 1-6). By so doing, Respondents claim to be detaining the Petitioner under the authority of § 1225, yet their own filing invokes the detention authority of § 1226. 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 (reasoning that the statutory scheme does not contemplate switching detention regimes mid-stream simply by issuing a warrant after arrest).

II. This Court Has Jurisdiction Over Petitioner's Detention Challenge

The government argues that three provisions of the Immigration and Nationality Act, 8 U.S.C. §§ 1252(e)(3), 1252(g), and 1252(b)(9), strip this Court of jurisdiction to consider petitioner's habeas claim. Each of those provisions, however, operates in a distinct and limited context. None applies to a habeas corpus challenge brought under 28 U.S.C. § 2241 that contests the legality of a noncitizen's continued detention. Binding precedent from both the Supreme Court and the Eleventh Circuit confirms that such claims remain within the core of the federal courts' habeas jurisdiction.

A. Section 1252(e)(3) Applies Only to Expedited Removal Challenges

Section 1252(e)(3) provides that certain systemic challenges to the validity of expedited removal procedures may be brought only in the U.S. District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). By its terms, this provision is limited to actions "challenging the validity of the system" of expedited removal under § 1225(b)(1), not to detention claims or statutory interpretation disputes arising under § 1225(b)(2) or § 1226(a). *See* § 1252(e)(3)(A).

The Supreme Court has repeatedly emphasized that restrictions on judicial review in the INA must be read narrowly and in light of the Suspension Clause. *See INS v. St. Cyr*, 533 U.S. 289, 298–300 (2001). Where a statute is susceptible to more than one interpretation, courts must construe it to preserve habeas jurisdiction unless Congress has made its intent to eliminate that jurisdiction "clear and unambiguous." *Id.* at 298.

Here, petitioner is not subject to expedited removal. He is in full removal proceedings under 8 U.S.C. § 1229a, and he does not raise a facial or systemic challenge to the expedited removal system. Accordingly, § 1252(e)(3) does not apply.

B. Section 1252(g) Does Not Preclude Habeas Review of Detention

The jurisdictional bar of Section 1252(g) is narrow. "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. American-Arab anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)(emphasis in original); *see also Jennings*, 583 U.S. at 294 ("We did not interpret this language to sweep in any claim that technically can be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves."). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. United States Citizenship and Imigr. Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020).

The Respondents cite to one Eleventh Circuit case to support their argument that section 1252(g) strips the Court of jurisdiction to consider the Petitioner's claims: *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016). There, the plaintiffs filed *Bivens*[2] actions against ICE officials after their release from detention. The Eleventh Circuit found Section 1252(g) barred that action because they challenged methods the defendants used to commence removal proceedings.

[2] *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

The factual and legal scenario presented here is different from *Alvarez*. Mr. Briceno Taffur does not challenge the Respondents' decision to commence removal proceedings against him, the decision to arrest and detain him, or the methods by which he is detained. Rather, the Petitioner challenges the Attorney General's treatment of him as an "alien seeking admission," whose detention is governed by Section 1225(a)(2) rather than Section 1226(a). *C.f. Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ('While [Section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not prescribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

The question in front of this Court is a legal one – whether Petitioner is subject to mandatory detention under Section 1225(b)(2) or discretionary detention under 1226(a). The question is not to second-guess the Respondents' discretionary decision to commence removal proceedings against him.

C. Section 1252(b)(9) Does Not Eliminate Jurisdiction Over Detention Challenges

Section 1252(b)(9), otherwise known as the "sipper clause," provides that judicial review of all questions of law and fact "arising from any action taken or proceeding brought to remove an alien from the United States" shall be available only in judicial review of a final removal order. 8 U.S.C. § 1252(b)(9). This provision is intended to channel claims arising directly from removal proceedings into a single forum upon conclusion of the proceedings. It is not intended to eliminate habeas review of detention.

The Supreme Court and Eleventh Circuit precedent is clear: the zipper clause only applies to claims requesting review of a removal order. *See Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation). Petitioner is "not asking for review of an order of removal;" he is not "challenging the decision to detain [him] in the first place or to seek removal;" and he is not even "challenging any part of the process by which [his] removability will be determined." *Jennings*, 83 U.S. at 294. Petitioner challenges only the government's authority to detain him without a bond hearing under the correct statutory provision. That claim is not subsumed within the scope of § 1252(b)(9).

III. Petitioner Was Not Required to Exhaust Administrative Remedies Before Seeking Habeas Relief

Petitioner 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). In *Yajure Hurtado*, the BIA held that immigration judges have no authority to consider bond requests from noncitizens who entered the United States without inspection "because aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I&N at 220. Thus, requiring Mr. Briceno Taffur to make an administrative bond hearing would be futile because the result is predetermined by *Yajure Hurtado*.

IV. Petitioner Has Standing to Challenge the Agency's Reinterpretation of Detention Authority Under the APA

The government contends that petitioner lacks standing to assert a claim under the Administrative Procedure Act (APA) challenging DHS's and EOIR's classification of all noncitizens who entered without inspection (EWI) as subject to detention under 8 U.S.C. § 1225(b). That argument misstates both the nature of the claim and the controlling legal standards for standing under Article III.

To establish standing, a litigant must demonstrate (1) an "injury in fact" that is "concrete and particularized" and "actual or imminent," (2) a causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Petitioner meets each of these requirements.

a. Petitioner Has Suffered a Concrete and Particularized Injury

Petitioner is presently detained without the possibility of a bond hearing based on DHS's decision to classify him as subject to mandatory detention under § 1225(b), rather than discretionary custody under § 1226(a). That classification precludes Immigration Judge review of his custody status and directly results in the deprivation of his physical liberty. Loss of liberty is a paradigmatic example of an injury in fact under Article III. *Zadvydas*, 533 U.S. at 690.

This injury is not hypothetical, conjectural, or generalized. It is specific to petitioner's current detention and arises directly from the agency's application of a policy or practice that affects his statutory and constitutional rights.

b. The Injury Is Traceable to Final Agency Action

The APA permits judicial review of final agency action where the action is not committed to agency discretion by law and where the plaintiff has suffered a legal wrong or adverse effect within the zone of interests protected by the relevant statute. *See Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 61–62 (2004) (citing 5 U.S.C. §§ 702, 704).

Petitioner challenges DHS's and EOIR's current interpretation, as reflected in decisions like *Yajure Hurtado*, to treat all noncitizens who have not been admitted or paroled, including those arrested in the interior, as applicants for admission under § 1225(b), thereby denying them access to bond hearings. That interpretation represents final agency action because it carries the force of law, is applied uniformly by immigration officials and judges, and has a direct legal effect on noncitizens in removal proceedings. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

The causal link between the agency's reinterpretation and petitioner's injury is direct. But for DHS's application of § 1225(b), petitioner would be eligible for a bond hearing under § 1226(a). That suffices to satisfy the "fairly traceable" element of Article III standing. *Lujan*, 504 U.S. at 560.

c. The Injury Is Redressable by a Favorable Judicial Decision

Petitioner seeks an order declaring that he is detained under § 1226(a) and directing the government to afford him an individualized bond hearing. If granted, such relief would eliminate the legal basis for the denial of a custody determination and would subject petitioner to the procedural protections Congress provided in § 1226(a).

Where, as here, a litigant seeks review of agency action that allegedly misapplies a statutory classification and results in ongoing detention, courts routinely find the redressability requirement satisfied. *See St. Cyr*, 533 U.S. at 308 (recognizing that habeas relief can remedy unlawful detention resulting from agency misinterpretation of law).

d. Petitioner's Claim Falls Squarely Within the Zone of Interests Protected by the INA

Petitioner challenges the agency's statutory interpretation governing immigration detention. He seeks to enforce the INA's structure distinguishing between § 1225(b) and § 1226(a), and to preserve access to bond hearings as authorized by Congress. These interests fall squarely within the zone protected by the statutory scheme.

The Eleventh Circuit has acknowledged that claims challenging an agency's statutory misclassification of detainees implicate interests protected by the INA. *Sinda v. DHS*, 25 F.4th 1234, 1241 (11th Cir. 2022) (recognizing the availability of habeas review where detention occurs under an incorrect statutory framework).

Accordingly, petitioner has standing under Article III and satisfies the prudential standing requirements applicable to APA claims. The government's challenge to standing should be rejected.

CONCLUSION

WHEREFORE, the Plaintiffs, by and through undersigned counsel respectfully request this court to deny Defendants' Motion to Dismiss Amended Complaint for APA Judicial Review and Declaratory Relief, and find that the this Court has subject matter jurisdiction in this matter and that the issue is not moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 17, 2025, I filed the foregoing document with the Clerk of the Court for the U.S. District Court for the Southern District of Florida via the CM/ECF electronic filing system. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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