

ARGUMENT

I. 8 U.S.C. § 1252(g) and §1252(b)(9) Do Not Bar Review of Petitioner's Claim.

8 U.S.C. § 1252(g) bars jurisdiction “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 v. Rodriguez*, 583 U.S. 281, 294 (2018) (“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 Immigr. Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020). Petitioner is not challenging the discretionary decision to commence removal proceedings; the issue of the present case is whether Petitioner is detained mandatorily under 8 U.S.C. § 1225(b)(2) or discretionarily under 8 U.S.C. § 1226(a). *See Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Hinojosa Garcia v. Noem*, No. 2:25-CV-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *see also Duvallon Boffill v. Field Off. Dir., Miami Field Off., U.S. Immigr. and Customs Enf’t, et al*, No. 25-cv-25179, 2025 WL 3246868 at *3;4 (S.D. Fla. Nov. 20, 2025)

This claim is not barred by 8 U.S.C. §1252(b)(9) either given that Petitioner is not requesting a review of a removal order. *See Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation); *see also Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Hinojosa*

Garcia v. Noem, No. 2:25- CV-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025);
see also Duvallon Boffill v. Field Off. Dir., Miami Field Off., U.S. Immigr. and Customs Enf't, et al., No. 25-cv-25179, 2025 WL 3246868 at *4 (S.D. Fla. Nov. 20, 2025)

II. Petitioner is Being Detained Pursuant to 8 USC § 1226, Which Affords Him the Right to Bond.

There are three relevant statutes to authorize detention. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Third, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

In the present case, Petitioner has not been ordered removed and is not in expedited removal proceedings, as evidenced by the pending §1229a proceedings against him. Furthermore, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute is built around the idea that these individuals are subject to border inspections because they are “seeking admission” to the United States. For that reason, it makes little sense to apply § 1225 to someone who has been living inside the United States for more than 29 years, as Petitioner has, because such an individual is no longer in the posture of an arriving applicant for admission.

Petitioner has been present in the United States for nearly 30 years before his apprehension by ICE, which makes “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).

It has been found by courts throughout the country that Respondents’ interpretation of the INA to expand the scope of 8 USC §1225 detention, “directly contravenes the statute, disregards decades of settled precedent,” and is erroneous. *Hernandez Alvarez v. Morris*, 25-24806 (S.D. Fla. Oct. 27, 2025), ECF 6 at 5; *Cerro Perez v. Parra*, 25-24820 (S.D. Fla. Oct 27, 2025), ECF 9 at 6, *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.”); *see also Puga*, 2025 WL 2938369, at *3–6; *Merino v. Ripa*, No. 25-23845, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); *Lopez v. Hardin*, No. 25-cv830, 2025 WL 2732717, at *2 (M.D. Fla. Sep. 25, 2025); *Guerra v. Joyce*, No. 25-cv-00534, 2025 WL 2986316, at *3 (D. Me. Oct. 23, 2025); *Lomeu v. Soto*, 25-cv-16589, 2025 WL 2981296, at *7–8 (D.N.J. Oct. 23, 2025); *Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at *4 (D.N.J. Oct. 23, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120, 2025 WL 2977650, at *5–6 (D. Colo. Oct. 22, 2025); *Aguilar v. Moniz*, No. 25-cv-12706, 2025 WL 2987656, at *3 (D. Mass. Oct. 22, 2025); *Rivera v. Moniz*, 25-cv-12833, 2025 WL 2977900, at *1–2 (D. Mass. Oct. 22, 2025); *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042, at *7 (D. Md. Oct. 21, 2025);

Miguel v. Noem, 25-11137, 2025 WL 2976480, at *6 (N.D. Ill. Oct. 21, 2025); *Pineda v. Simon*, No. 25-cv-01616, 2025 WL 2980729, at *2 (E.D. Va. Oct. 21, 2025); *Matheus Araujo DA Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163, at *2 (D. Mass. Oct. 21, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610, at *4–6 (N.D. Ill. Oct. 20, 2025); *Polo v. Chestnut*, No. 25-cv01342, 2025 WL 2959346, at *11 (E.D. Cal. Oct. 17, 2025); *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigr. Processing Ctr.*, No. 25-cv-01187, 2025 WL 2959274, at *3 (E.D. Cal. Oct. 17, 2025); *Alvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at *4–6 (W.D. Mich. Oct. 17, 2025); *Zamora v. Noem*, No. 25-12750, 2025 WL 2958879, at *1 (D. Mass. Oct. 17, 2025); *Pacheco Mayen v. Raycraft*, 25-cv-13056, 2025 WL 2978529, at *6–9 (E.D. Mich. Oct. 17, 2025); *Diaz Sandoval v. Raycraft*, No. 25-cv-12987, 2025 WL 2977517, at *6–9 (E.D. Mich. Oct. 17, 2025); *Contreras-Cervantes v. Raycraft*, No. 25-cv-13073, 2025 WL 2952796, at *6–8 (E.D. Mich. Oct. 17, 2025); *Ochoa v. Noem*, No. 25-10865, 2025 WL 2938779, at *4–6 (N.D. Ill. Oct. 16, 2025); *Hernandez v. Crawford*, No. 25-cv-01565, 2025 WL 2940702, at *2 (E.D. Va. Oct. 16, 2025); *Piña v. Stamper*, No. 25-cv-00509, 2025 WL 2939298, at *3 (D. Me. Oct. 16, 2025); *Sequen v. Albarran*, No. 25-cv-06487, 2025 WL 2935630, at *8 (N.D. Cal. Oct. 15, 2025); *Teyim v. Perry*, No. 25-cv-01615, 2025 WL 2950184, at *2–3 (E.D. Va. Oct. 15, 2025); *Singh v. Lyons*, 25-cv-01606, 2025 WL 2932635, at *2–3 (E.D. Va. Oct. 14, 2025); *Alejandro v. Olson*, 25-cv-02027, 2025 WL 2896348, at *7–9 (S.D. Ind. Oct. 11, 2025); *Chavez v. Kaiser*, No. 25-cv-06984, 2025 WL 2909526, at *5 (N.D. Cal. Oct. 9, 2025); *Donis v. Chestnut*, No. 25-01228, 2025 WL 287514, at *11 (E.D. Cal. Oct. 9, 2025); *Eliseo A.A. v. Olson*, No. 25-3381, 2025 WL 2886729, at *2–4 (D. Minn. Oct. 8, 2025); *Covarrubias v. Vergara*, No. 25-cv-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. 25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *S.D.B.B. v. Johnson*, No. 25-cv-882,

2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Gonzalez v. Bostock*, 25-cv-01404, 2025 WL 2841574, at *3–4 (W.D. Wash. Oct. 7, 2025); *Hyppolite v. Noem*, No. 25-4304, 2025 WL 2829511, *12 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-5208, 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025); *Cordero Pelico v. Kaiser*, No. 25-cv-07826, 2025 WL 2822876, at *15 (N.D. Cal. Oct. 3, 2025); *Orellana v. Moniz*, 25-cv-12664, 2025 WL 2809996, at *5 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at *3 (D. Mass. Oct. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *5–6 (D. Minn. Oct. 1, 2025).

CONCLUSION

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and Request for Order to Show Cause, this Court should grant the petition.

Respectfully submitted,

/s/ Kenia Garcia

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Respectfully submitted,

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