

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FRANCISCO ANTONIO DONAYE-
CONTRERAS,

Petitioner,

v.

KRISTI NOEM, in her Official Capacity,
Secretary of the U.S. Department of Homeland
Security, et al.,

Respondents.

Civil Action No. **1:25-cv-01272**

PETITIONER'S RESPONSE TO MOTION TO
DISMISS

**REPLY TO GOVERNMENT'S MOTION TO DISMISS THE PETITION PURSUANT
TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

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PRELIMINARY STATEMENT

Petitioner, Francisco Antonio Donaye Contreras (“Petitioner” or “Mr. Donaye Contreras”), respectfully submits the instant Reply to Respondent’s Motion to Dismiss to the Petitioner’s Writ for Habeas Corpus (“Petition”).

The Petitioner has resided in the United States over three years before the Department of Homeland Security (“DHS”) placed Petitioner in full removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a, which is mutually exclusive with expedited removal proceedings under 8 U.S.C. § 1225. Indeed, given the fact that Petitioner was present in the United States for over three years before he was taken into custody in 2025, it makes little sense to treat him now as someone who is “arriving”.

Further, 8 U.S.C. § 1225(b)(2)(A) does not apply to the Petitioner, who was detained in the interior of the United States after three years of residence. Therefore, Petitioner’s detention violates both the Immigration Nationality Act (“INA”) and Petitioner’s Fifth Amendment rights and due process of law.


DHS’s attempt to characterize Petitioner as an “applicant for admission” based on the termination of parole is no better. The loss or expiration of parole does not retroactively convert a long-term interior resident into an arriving alien subject to 8 U.S.C. § 1225(b). Parole is a discretionary mechanism that permits physical entry; its termination simply returns the noncitizen to the status of a person present in the United States without admission. It does not reset the statutory detention framework to border-inspection custody.

Once DHS elected to place Petitioner into full removal proceedings under 8 U.S.C. § 1229a, custody authority was governed exclusively by 8 U.S.C. § 1226(a). Section 1225(b) applies to individuals encountered at the border or during the inspection process. Nothing in the

statute authorizes DHS to invoke § 1225(b)(2) years after entry, following an interior arrest, merely because parole has ended.

DHS's position would allow the government to retroactively transform an interior arrest into a border-inspection case whenever parole lapses, collapsing the distinction Congress deliberately drew between §§ 1225 and 1226. That result is inconsistent with the statutory detention framework recognized by courts in this Circuit, which have repeatedly held that § 1225 governs initial inspection, while § 1226 governs detention pending § 240 removal proceedings. See *Sajous v. Decker*, 2018 WL 2357266, at *6–7 (S.D.N.Y. May 23, 2018); *Hernandez v. Decker*, 2018 WL 3579108, at *7–8 (S.D.N.Y. July 25, 2018). Nothing in the statute authorizes DHS to revive § 1225(b) detention authority following an interior arrest and placement into full removal proceedings.

PROCEDURAL HISTORY

Petitioner entered the United States on or about September 15, 2022. Petitioner fled his native country of Venezuela  He was initially paroled into the United States under INA § 212(d)(5). On October 28, 2025, at a regular ICE Check in, he was arrested and detained by ICE. He was subsequently transferred to Batavia Detention Center. DHS issued a Notice to Appear on or about October 28, 2025, pursuant to 8 U.S.C. § 1229a. The NTA alleges that Petitioner is “a [noncitizen] present in the United States who has not been admitted or paroled.” See ECF 1-1, Notice to Appear. DHS further charged Petitioner inadmissible, as being “present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, §§212(a)(6)(A)(i). See *Id.* These charges were sustained by the Immigration Judge.

DHS's filing of the NTA against Petitioner in this case initiated "full" removal

proceedings in Immigration Court pursuant to 8 U.S.C. § 1229a, which vested jurisdiction with the Immigration Judge and constituted "the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3) (emphasis added). As the Board of Immigration Appeals ("BIA") recently stated, "DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), or full removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a." *Matter of Q. Li*, 29 I&N Dec 66, 68 (BIA 2025) (emphasis added).

Full removal proceedings and expedited removal proceedings are mutually exclusive. Moreover, the Government must concede that Petitioner is not in expedited removal proceedings, or ever was.

Petitioner has proceeded with full removal proceedings and appeared at hearings with the Buffalo Immigration Court before an Immigration Judge. Petitioner subsequently filed with the Atlanta Immigration Court a request for custody redetermination, also known as a "bond request", pursuant to 8 C.F.R. § 1003.19(a) (2025) ("Custody and bond determinations made by [DHS]. . . may be reviewed by an Immigration Judge."). The Immigration Court summarily denied the Petitioner's request citing the recent holding in *Matter of Yajure Hurtado*, 29 I&N 216 (BIA 2025). Relying on that decision, the Court determined that Petitioner was subject to mandatory detention under section 235(b)(2)(A) of the Immigration Nationality Act ("INA"), 8 U.S.C. § 1226.

This determination represents a significant departure from the long-standing interpretation recognized for more than two decades, that individuals charged under § 212(a)(6)(A)(i) are not subject to mandatory detention, but rather fall within the discretionary

custody provisions of INA § 236(a). By adopting the reasoning in *Yajure Hurtado*, the Immigration Court effectively eliminated access to custody redetermination hearings for a broad category of noncitizens who have never been deemed subject to mandatory detention under any prior authority. The Immigration Court further improperly conflated the detention framework applicable to “arriving aliens” seeking admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), with the post-entry custody provisions of INA § 236, 8 U.S.C. § 1226, thereby erroneously treating Mr. Lopez, who was apprehended well inside the United States, as if he were an arriving alien subject to mandatory detention rather than discretionary release under § 236(a).

Courts in this District have made clear that when DHS files an NTA and places a noncitizen into full § 240 removal proceedings, it is bound by the § 236(a) custody framework and cannot later rely on § 235(b)(2) to justify mandatory detention. In *Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), adopted, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025), the Waycross Division held that § 1225(b)(2) does not apply to long-term interior arrests and that DHS’s election to initiate § 240 proceedings necessarily invokes § 236(a) as the sole statutory custody authority.

The Government itself acknowledges in its Response in this case that Villa controls the outcome here. See Respondent’s Abbreviated Response at 1–2 (recognizing that “if the Court adheres to its legal reasoning in *Villa*, it will control the result in this case”).

ARGUMENT

I. SECTION 1252(G) DOES NOT HAVE BAR TO HABEAS REVIEW OF DHS’S STATUTORY AUTHORITY TO DETAIN PETITIONER

Respondent's motion rests on an overreading of the INA's jurisdiction-stripping provisions and ignores controlling Supreme Court and Second Circuit precedent recognizing habeas jurisdiction over statutory detention challenges. None of the provisions Respondent invokes, 8 U.S.C. §§ 1252(e)(3), 1252(g), or 1252(b)(9), bars this Court from deciding whether DHS is detaining Petitioner under the correct statute.

A. Section 1252(e)(3) Does Not Apply to Petitioner's Claim

Section 1252(e)(3) limits review in the District of Columbia of facial challenges to the constitutionality or validity of statutes, regulations, or written policies implementing § 1225(b). Petitioner brings no such claim. He does not challenge the constitutionality of § 1225(b), nor does he seek to invalidate a regulation or written policy of general applicability. He challenges DHS's as-applied detention authority, specifically, whether DHS may lawfully detain a long-term interior resident placed into § 240 removal proceedings under § 1225(b)(2) at all.

Courts have consistently distinguished between impermissible facial challenges covered by § 1252(e)(3) and permissible habeas claims contesting the statutory basis for an individual's detention. This case falls squarely in the latter category. Nothing in § 1252(e)(3) divests this Court of jurisdiction to determine whether DHS is invoking the wrong detention statute in an individual habeas case.

B. Section 1252(g) Does Not Bar Review of a Statutory Detention Challenge

Respondent's reliance on § 1252(g) is foreclosed by Supreme Court precedent. Section 1252(g) is "narrow" and applies only to three discrete actions: "the 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). Petitioner challenges none of those actions. He does not contest the commencement of removal proceedings, the adjudication of his

case, or the execution of a removal order. He challenges only whether DHS has statutory authority to detain him under § 1225(b)(2).

The Supreme Court has repeatedly entertained habeas challenges to immigration detention notwithstanding § 1252(g). See *Jennings v. Rodriguez*, 583 U.S. 281, 287–302 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Those cases make clear that challenges to detention authority do not “arise from” the three discrete prosecutorial actions covered by § 1252(g).

The out-of-circuit cases cited by Respondent—*Alvarez* and *Gupta*—are inapposite. Neither involved a habeas claim asserting that DHS detained a § 240 respondent under the wrong detention statute. Rather, those cases concerned discretionary enforcement or selective-enforcement claims, which fall within § 1252(g)’s limited scope. The Second Circuit has never held that § 1252(g) bars review of whether DHS is detaining a noncitizen under a statute that does not apply.

C. Section 1252(b)(9) Does Not Channel This Claim to a Petition for Review

Respondent’s attempt to invoke § 1252(b)(9) is also unfounded. Although § 1252(b)(9) channels review of claims “arising from” removal proceedings, the Supreme Court has made clear that it does not include in all claims that merely relate in some way to removal. *Jennings*, 583 U.S. at 293–95. The provision is a channeling rule, not a claim-barring one, and it does not apply where, as here, the petitioner does not challenge the validity of removal proceedings or a removal order.

Petitioner’s claim concerns the legality of his present civil detention, not the decision to remove him. As the Supreme Court explained in *Jennings*, § 1252(b)(9) does not bar jurisdiction where the claim is independent of the removal process itself. *Id.* at 294–95. Second Circuit

authority agrees that district courts retain jurisdiction where the claim is “unrelated to any removal action or proceeding” in substance, even if removal proceedings are pending. *Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009).

Respondent’s reliance on isolated language from concurring opinions or dicta cannot override the Supreme Court’s clear holding that statutory detention challenges remain cognizable in habeas. Were § 1252(b)(9) read as broadly as Respondent suggests, *Jennings* and *Zadvydas* could not have been decided in district court at all.

D. This Court Retains Habeas Jurisdiction Over Petitioner’s Claim

Petitioner challenges only whether DHS may lawfully detain a long-term interior resident placed into § 240 proceedings under § 1225(b)(2). That question presents the issue of statutory interpretation and falls within the core of habeas jurisdiction long recognized by the Supreme Court. *Jennings*, 583 U.S. at 287; *Zadvydas*, 533 U.S. at 688. Accordingly, none of the jurisdiction-stripping provisions cited by Respondent deprives this Court of authority to adjudicate Petitioner’s § 2241 habeas petition.

II. RESPONDENTS ARE NOT ENTITLED TO DISMISSAL UNDER RULE 12(B)(6)

To survive a motion to dismiss under Rule 12(b)(6), a habeas petition need only plausibly allege entitlement to relief. At this stage, the Court must accept the Petition’s factual allegations as true and draw all reasonable inferences in Petitioner’s favor. Dismissal is inappropriate unless the statute relied upon by Respondents clearly forecloses relief as a matter of law.

A. The Petition Plausibly Alleges That § 1225(b)(2) Does Not Apply

Dismissal is inappropriate here. Respondents contend that Petitioner is subject to

mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The statute does not clearly apply under the circumstances alleged in the Petition. Section 1225 governs inspection and admission. By its terms, § 1225(b)(2) applies where an immigration officer determines that “an alien seeking admission” is not clearly entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A). The Petition plausibly alleges that Petitioner was apprehended in the interior of the United States and placed directly into full removal proceedings under 8 U.S.C. § 1229a, not encountered at the border or during the inspection process.

Congress expressly provided that proceedings under § 1229a “shall be the sole and exclusive procedure” for determining removability once DHS elects that pathway. 8 U.S.C. § 1229a(a)(3). Once DHS initiates § 240 proceedings, custody authority is governed by 8 U.S.C. § 1226, not § 1225. At minimum, the statutory scheme does not clearly authorize DHS to impose mandatory detention under § 1225(b)(2) after electing full removal proceedings.

The Supreme Court has recognized that §§ 1225 and 1226 establish distinct detention frameworks applicable to different categories of noncitizens. *Jennings v. Rodriguez*, 583 U.S. 281, 287–302 (2018). Whether DHS may invoke § 1225(b)(2) under the circumstances alleged presents a statutory question that cannot be resolved against Petitioner at the pleading stage. Accordingly, Respondents are not entitled to dismissal under Rule 12(b)(6).

CONCLUSION

For the foregoing reasons, Respondents’ Motion to Dismiss should be denied. Petitioner has plausibly alleged that Respondents lack statutory authority to detain him under 8 U.S.C. § 1225(b)(2), and this Court has jurisdiction to adjudicate his habeas petition. The Petition should therefore proceed.

Dated: White Plains, New York

December 22, 2025

Respectfully Submitted,

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