UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ZAHRA SULTANY,

Petitioner,

v. Case No. 0:25-CV-62586

Garrett RIPA, *et al.*,

Respondents.
_____/

PETITIONER'S REPLY TO RESPONDENTS' RETURN

COMES NOW, the Petitioner, ZAHRA SULTANY, by and through undersigned counsel, and respectfully submits this Reply to Respondents' Return, and in support thereof shows the following:

Respondents' opposition fails for the same reasons why it has failed in countless other cases across this country, and while an apparent masterclass in lexicon morphology, the Government's position is untenable. First, the Government's own exhibits evince that Petitioner is detained pursuant to section 1226(a) rather than section 1225(b)(2)(A). Second, the Government's reliance on *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020), is completely inapposite and mischaracterizes the *en banc* decision of the Ninth Circuit and the Congressional intent behind the IIRIRA as having any bearing on a noncitizen's detainment during removal proceedings. Third, the Government's argument that Petitioner has failed to exhaust her administrative remedies is unavailing. Finally, it's interpretation of *Jennings* is contrary to numerous decisions of district courts across this nation.

As such, the Petition should be granted.

I. The Government's Exhibits Prove DHS Processed Petitioner Under Section 1226(a), Not Section 1225(b)(2)(A).

Respondents' position rests entirely on the assertion that Petitioner is a mandatory detainee under section 1225(b)(2)(A). This assertion cannot be reconciled with the evidence Respondents themselves submitted.

A. DHS issued a Form I-200 arrest warrant, which is used exclusively for section 1226(a) custody.

Respondents submitted a Form I-200 Warrant for Arrest of Alien as Exhibit C and Exhibit G. (Doc 6-3, Doc 6-7).

A Form I-200 is the hallmark of 1226(a) arrest and detention. Section 1225(b) detentions are warrantless because they occur at the border or at the moment of apprehension in an expedited removal process. DHS does not issue I-200 warrants for 1225(b)(2)(A) detainees.

The issuance and execution of an I-200 conclusively demonstrates that DHS processed Petitioner as a regular interior enforcement arrest under 1226(a).

B. DHS never commenced expedited removal proceedings. No Form I-860 exists and none was submitted.

Respondents produced, *inter alia*:

1. Form I-213
2. Officer Declaration
3. I-200
4. Detention History
5. NTA
6. NOH

But the Government did **not** produce a Form I-860 Notice and Order of Expedited Removal, the required document to initiate section 1225(b)(1) expedited removal. DHS did not submit one because none exists.

The absence of an I-860 is dispositive. Without it, DHS cannot claim Petitioner was ever subject to expedited removal or any other form of 1225 processing.

C. DHS filed a regular Notice to Appear placing Petitioner in INA 240 proceedings. This contradicts DHS's 1225(b)(2)(A) theory.

Exhibit E is a standard Notice to Appear charging Petitioner under section 212(a) grounds and placing her into section 240 removal proceedings, not expedited removal. (Doc 6-5).

Critically:

1. The NTA does not check any box indicating expedited removal.
2. The NTA classifies Petitioner as "an alien present in the United States who has not been admitted or paroled", which is the statutory definition used for regular section 240 removal, not section 1225(b)(2).
3. The NTA contains no reference to section 235(b), to "arriving alien" status, or to "mandatory detention."

This confirms that DHS itself placed Petitioner in ordinary INA 240 removal proceedings, not the 1225(b)(2)(A) track.

D. The Notice of Custody Determination confirms regular IJ jurisdiction, which DHS now tries to contradict.

Respondents submitted the I-286, Notice of Custody Determination (Exhibit H), confirming the case was docketed before an IJ under standard removal procedures. (Doc 6-8).

Only after Petitioner filed her Petition of Writ of Habeas Corpus, did ICE/ERO cancel the Form I-286, asserting that "Petitioner is detained pursuant to section 235(b)(2)(A) of the INA" (Exhibit F), despite DHS's own actions demonstrating the case was filed under section 240. (Doc. 6-6).

E. Petitioner's case is even stronger than Aguilar Merino.

In *Aguilar Merino v. Field Office Director, ERO Miami*, Case No. 1:25-cv-23845 (S.D. Fla. Oct. 15, 2025), Judge Martinez granted habeas relief where DHS made the same arguments and submitted the same types of exhibits.

Petitioner's case is stronger because:

1. There is no I-860 at all, confirming no expedited removal ever occurred.
2. DHS issued an I-200, which is incompatible with 1225(b) detention.
3. The NTA clearly places Petitioner in section 240 proceedings.
4. DHS's own NOCD demonstrates they recognized IJ jurisdiction until the current Petition was filed.

If Aguilar warranted release, this case warrants release even more compellingly.

II. The Government's Reliance On *Torres* Is Inapposite And Eschews The Decision Of The Ninth Circuit *En Banc* Opinion

In the Government's Return, they quote *Torres* for the proposition that its decision "ensures that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). However, the Government appears to overlook the fact that although the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which adjusted noncitizen removal proceedings broadly, did add Section 1225(a)(1) to ensure "all immigrants who have not been lawfully admitted ... are placed on equal footing in removal proceedings[,]" *Torres*, 976 F.3d at 928, the congressional intent underlying the IIRIRA and the Court's decision in *Torres* does not bear on noncitizens' detention pending the outcome of removal proceedings—the question at issue here. *See Romero*, — F.Supp.3d at ——, 2025 WL 2403827, at *12.

The correct distinction when assessing detention pending removal lies between those located in the United States and those located outside the United States. *Id.* This is because "once an alien enters 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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001); *see Romero*, — F.Supp.3d at ——, 2025 WL 2403827, at *12. Thus,

although the Government portrays it's position as that which Congress intended, it overlooks the constitutional directive mandated by *Zadvydas*.

III. Exhaustion Is Not Required Because an Immigration Judge is Bound By BIA Precedent That Would Require the Same Outcome

The BIA has already addressed this precise question in *Matter of Yajure Hurtado*, holding that Immigration Judges lacks jurisdiction to conduct custody hearings for individuals DHS classifies as detained under section 1225(b)(2)(A).

Because BIA precedent is binding on Immigration Judges and on the BIA itself, the BIA could not rule differently in Petitioner's case. The agency would be compelled to affirm an IJ's jurisdictional denial as a matter of law, not discretion.

Thus:

1. The IJ cannot hear the bond request
2. The BIA cannot reverse the IJ under its own precedent
3. The administrative process cannot provide a remedy

This is the definition of futility.

A. The statutory scheme provides no administrative process to challenge DHS's misclassification of detention authority.

Neither the IJ nor the BIA has authority to decide whether DHS correctly invoked section 1225(b)(2)(A) or whether the evidence shows DHS actually processed Petitioner under section 1226(a). That legal issue lies **outside** the jurisdiction of the immigration courts. Only a federal habeas court can determine whether DHS is detaining a noncitizen under the correct statutory provision.

Thus, exhaustion is not required because the type of challenge raised here cannot be resolved through the administrative hierarchy at all.

B. Supreme Court precedent confirms exhaustion is excused when the agency lacks authority to grant relief.

In McCarthy v. Madigan, 503 U.S. 140 (1992), the Supreme Court held that exhaustion is unnecessary when:

1. the agency lacks the authority to provide the requested relief;
2. the administrative procedure cannot address the issue; or
3. exhaustion would be futile.

All three conditions apply:

1. The IJ lacks authority under the Government's interpretation of the statute.
2. The BIA is bound by precedent to affirm that lack of authority.
3. Neither the IJ nor the BIA can adjudicate whether DHS used the correct detention statute.

C. The Government's exhaustion argument fails because the administrative process is incapable of resolving the legal question presented.

Petitioner does not seek discretionary bond; she challenges **the legal basis** of her detention. Immigration Judges and the BIA do not have authority to determine whether DHS misclassified a detention statute or to reinterpret the scope of section 1225(b)(2)(A). Because the administrative system cannot resolve the claim, exhaustion is excused.

IV. Jennings v. Rodriguez Confirms This Court Has Habeas Jurisdiction.

Respondents rely on 1225(b)(2)(A) to assert that the detention is required for an an alien who is an "applicant for admission" and is therefore "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission. These arguments have been repeatedly rejected in detention cases, including in Aguilar Merino.

A a noncitizen who is "seeking admission" to the United States can be differentiated from a noncitizen who is already present in the United States. An "applicant for admission" references presence; "seeking admission" refers to the present-tense action of seeking to be admitted. *Romero*, — F.Supp.3d at ——, 2025 WL 2403827, at *10 ("[G]iving separate meaning to the phrase

'seeking admission' ... sensibly understands [§ 1225(b)(2)(A)] to contain separate requirements for presence ('applicant for admission') and present-tense action ('seeking admission')" (internal citations omitted)). The Supreme Court in *Jennings* solidified this understanding: "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under [§ 1226]" (emphasis added). 583 U.S. at 289, 138 S.Ct. 830. Thus, distinguishing between detention of those entering the United States, and those already present in the United States.

Petitioner challenges the statutory basis for her detention, and the categorical denial of a custody hearing. She does not challenge: (1) removability, (2) the NTA, (3) the merits of removal, or (4) any discretionary DHS decision related to removal.

Jennings controls and confers jurisdiction.

IV. Conclusion

Respondents' own evidence demonstrates that Petitioner is detained under section 1226(a), not section 1225(b)(2)(A). DHS never issued a Form I-860, never initiated expedited removal, and placed Petitioner in regular INA 240 proceedings using an I-200 warrant and a standard NTA. The Immigration Judge, under *Hurtado*, lacks jurisdiction to adjudicate custody, leaving no administrative remedy to exhaust. Habeas review is appropriate and necessary under Jennings.

The petition should be granted and Petitioner should be released or provided a constitutionally adequate custody hearing before a neutral adjudicator.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court issue a Writ of Habeas Corpus in the above-styled cause.

DATED this 2nd day of January, 2026.

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on January 2, 2026.

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