IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JUAN DAVID HERNANDEZ GIRON, Petitioner, vs. **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security (DHS), *et al.*, Respondents.	Case No. 2:25-cv-1201-SPC-NPM

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

COMES NOW Petitioner, Juan David Hernandez Giron, by and through undersigned counsel, files this Reply in response to Respondent's, stating in support thereof as follows:

INTRODUCTION

Petitioner's habeas challenge raises a pure question of law concerning the statutory authority for his ongoing civil detention. The government's threshold contention that this Court lacks jurisdiction misapprehends both the nature of the claim and the governing habeas 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 challenge to unlawful detention, rather than a request for review of removal, jurisdiction properly lies in this Court. Constitutional concerns arise only if Respondents' interpretation would insulate detention from judicial review altogether.

ARGUMENT

1. **Jurisdiction exists because determining whether § 1225 or § 1226 lawfully governs Petitioner's custody is itself the jurisdictional inquiry**.

Respondents' jurisdictional arguments mischaracterize Petitioner's claim. Petitioner does not seek review of the "implementation, invocation, application, and/or policies regarding § 1225" ECF No. 6 at 5; Petitioner seeks relief from unlawful civil detention. Federal courts retain habeas jurisdiction to determine whether the Government possesses statutory authority to detain a person pending removal. *Zadvydas v. Davis*, 533 U.S. 678, 687-688 (2001) ("The primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear cases to which an alien is claiming that he or she is being held in custody in violation of the United States Constitution or laws of the United States"). Jurisdiction-stripping provisions aimed at review of removal orders do not bar courts from determining whether detention itself is lawful.

The Eleventh Circuit's decision in *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), on which the government relies, is inapposite. Gupta involved a direct challenge to ICE's actions "to commence removal proceedings," *Id.* at 1065, whereas here, the government has already commenced removal, and Petitioner contests the legality of his detention while those proceedings are pending. The fact that removal proceedings were ultimately initiated is not enough to divest this Court of jurisdiction. *See Matom v. ICE/United States Immigr. & Customs Enf't*, No. 2:25-cv-648-JES-NPM, 2025 U.S. Dist. LEXIS 172961, at *5 (M.D. Fla. Sep. 5, 2025).

Whether 8 U.S.C. § 1225 or § 1226 governs Petitioner's custody is therefore not a merits issue to be avoided but the threshold jurisdictional inquiry the Court must resolve. Respondents' suggestion that the Court may decline to analyze the detention statutes because it allegedly lacks jurisdiction improperly reverses the habeas framework, under which courts must assess statutory detention authority to determine whether custody is lawful. ECF No. 6 at 4.

Similarly, § 1252(b)(9), often called the "zipper clause," channels review of issues arising directly from removal proceedings into a petition for review of a final order of removal. But it "does not present a bar where the claim is independent of challenges to the order of removal itself." *Jennings*, 583 U.S. at 295. Respondent's resorting to the zipper clause in this case is in direct contradiction to established Eleventh Circuit precedent. *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). Here, Petitioner does not challenge the lawfulness of the

commencement of removal proceedings or the review of a removal order, but rather the legality of detention without access to a bond hearing. That claim is wholly collateral to the merits of removal and therefore not subject to § 1252(b)(9).

The Government also argues that because DHS invoked § 1225(b)(1), Congress stripped this Court of jurisdiction under § 1252(a)(2)(A) and limited habeas review to the narrow questions listed in § 1252(e). That argument mischaracterizes both the statute and Petitioner's claim. Sections 1252(a)(2)(A), 1252(e), and 1252(g) bar review of specific removal-related determinations, such as "any lawful admission, grant of asylum, or any other statutory ground for the Court's review." ECF No. 6 at 5. Petitioner challenges none of those actions. He challenges only the legality of his continued detention without a bond hearing and whether DHS had statutory authority to place him in expedited removal in the first instance.

Although § 1252(e)(2) limits review of certain factual determinations once expedited removal is lawfully invoked, it does not insulate from judicial review the antecedent question of whether DHS exceeded the class of individuals Congress authorized to be placed in expedited removal at all. Because detention is a separate executive act that must independently comply with statutory and constitutional limits, the existence of removal proceedings does not deprive this Court of habeas jurisdiction to review the lawfulness of custody.

Petitioner does not challenge whether he was ordered removed under § 1225(b)(1); he challenges whether DHS could lawfully apply § 1225(b)(1) to him in the first place, given Congress's express two-year statutory limit. That question of statutory

applicability is logically prior to, and independent of, the limited habeas inquiries listed in § 1252(e). Respondents' contention that this Court lacks jurisdiction merely because ICE disagrees with Petitioner's interpretation misunderstands the judicial role. Courts exist precisely to resolve disputes over the meaning and application of statutes, and agency disagreement cannot by itself foreclose judicial review. ECF No. 6 at 6-7.

Respondents rely on 8 U.S.C. §§ 1252(a)(2)(A) and 1252(e) to argue that this Court lacks jurisdiction because DHS invoked expedited removal under § 1225(b)(1). That argument assumes the very point in dispute. Section 1252(e) presupposes the lawful invocation of § 1225(b)(1); it does not insulate from review the antecedent question of whether DHS had statutory authority to place Petitioner in expedited removal at all. Petitioner raises an independent challenge to unlawful detention, not a request to review inadmissibility, asylum eligibility, or the merits of a removal order. He challenges only his continued civil detention under a statute that, by its terms, no longer applies to him. Courts have repeatedly recognized that such custody challenges fall within the core of habeas corpus and are not barred by jurisdiction-stripping provisions aimed at review of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

2. **Section 1225(b)(1) Does Not Apply to Petitioner**.

Statutory interpretation begins with plain meaning. Section 1225(b)(1) limits expedited removal to individuals who cannot demonstrate two years of continuous physical presence. Where that condition is not met, the statute does not apply. The plain text forecloses Respondents' position.

Respondents assert authority to detain Petitioner while awaiting removal without addressing the statute's temporal limits. Respondents go further by saying Petitioner needs to satisfy "the immigration officer's subjective belief that he was present for at least two years." ECF No. 6 at 6-7. Petitioner's presence is established by Respondents' own documents, including the recorded date of entry, asylum filing records, and the undisputed timing of the expedited removal order issued more than two years later. Where presence is demonstrated by official records, it is not a matter of a subjective belief of the officer but of objective fact.

Congress answered that question directly: expedited removal under § 1225(b)(1) applies only to individuals who cannot demonstrate two years of continuous physical presence. Here, more than two years elapsed between Petitioner's entry and the issuance of the expedited removal order. ECF No. 1-3 at 1; 1-4 at 1. Respondents' characterization that § 1225(b)(1) and § 1225(b)(2) "read plainly… mandate detention of applicants for admission until certain proceedings have concluded," *Jennings*, 583 U.S. at 297, does not make it statutory correct for a Petitioner to wait an unlimited amount of time for such proceedings to conclude. The statutory limitation turns on the passage of two years, not an indeterminate period, and where that limit is exceeded, continued detention under § 1225(b)(1) is unauthorized. Detention cannot be indefinite or open-ended where Congress imposed an explicit boundary.

Respondents also assert that when ICE chose to release Petitioner under an Order of Release on Recognizance and the "eventual" revocation of that order resulted in ICE "returning [Hernandez Giron] to his previous status under § 1225 pending expedited

removal." *Valera-Marin v. Lyons*, No. 2:25-cv-00914-KG-GBW, 2025 WL 3687978, at 3* (D.N.M. Dec. 19, 2025)(ECF No. 6 at 17). That assertion raises a critical issue that Respondents fail to answer in their response, the issue of where does the statute authorize retroactive reclassification into mandatory detention after the statutory prerequisites have lapsed. The INA is clear and contains no provision permitting DHS to revive § 1225(b)(1) authority years later. Absent such authority, continued detention is ultra vires.

3. **The Proper Habeas Remedy Is Release Or A Bond Hearing**.

Having established that jurisdiction exists, the Court must determine the appropriate habeas relief. Granting relief in this case requires no review of removal merits and no adjudication reserved to the immigration courts. The Court need only determine whether Respondents possess statutory authority to detain Petitioner under § 1225(b)(1). Where detention rests on a statute that does not apply, the traditional habeas remedies are released or an individualized bond hearing. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008). Courts routinely order such relief—either release or a bond hearing by a date certain—when continued detention exceeds statutory bounds. *See, e.g., Miranda Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (Ordering ICE to bring petitioner for a bond hearing or release by a specific date). Because Petitioner challenges only unlawful detention, release, or at minimum a prompt bond hearing before a neutral adjudicator, is precisely the relief habeas corpus authorizes.

Respondents mischaracterize the relief sought. Petitioner does not ask this Court to undo a removal order, grant lawful status, or admit him into the United States. He

seeks relief from unlawful detention—either release or a bond hearing. That narrow request falls squarely within traditional habeas relief and does not require the Court to adjudicate removal or immigration status.

4. **Exhaustion and Due Process Do Not Bar Relief.**

Respondents blend the certification of detention authority with its lawfulness. That DHS has labeled Petitioner's detention as arising under § 1225(b)(1) does not resolve whether that statute applies. Habeas corpus exists precisely to test whether the Government's asserted basis for custody is lawful. Here, Respondents' own exhibits establish that Petitioner had resided continuously in the United States for more than two years at the time the expedited removal order was issued. ECF No. 1-3 at 1; 1-4 at 1. Where the statutory prerequisites for § 1225(b)(1) are not met, continued detention under that provision is unlawful regardless of how ICE characterizes it. ECF No. 6 at 17.

Exhaustion is not required where administrative remedies are unavailable, inadequate, or incapable of providing relief. Where the agency position forecloses relief, no adequate administrative remedy exists and exhaustion is excused. *See McCarthy v. Madigan*, 503 U.S. at 146–49. And in § 2241, exhaustion is prudential, not jurisdictional. *Santiago-Lugo v. Warden*, 785 F.3d at 475–76. Here, Petitioner raises a pure legal challenge to the statutory basis for his detention while custody is ongoing. No administrative process can cure detention under an inapplicable statute. Habeas review is therefore appropriate without exhaustion.

Respondents acknowledged that noncitizens possess a liberty interest in freedom from physical restraint when they asserted that "to be clear, aliens have a liberty interest to be free of unreasonable civil detention." ECF No. 6 at 18. That concession is dispositive. Where a liberty interest exists, detention must be authorized by statute and comport with due process. Detention under an inapplicable statute fails both requirements. Respondents contend that, at most, due process requires notice and an opportunity to be heard; Petitioner agrees. That opportunity is provided through release or an individualized bond hearing. Respondents' assertion that Petitioner received adequate process before an immigration judge mischaracterizes the record. That proceeding concerned asylum and removal under § 1229a, not the legality of mandatory detention under § 1225(b)(1). An asylum hearing does not substitute for process addressing the statutory basis for custody, and where no bond hearing is afforded, continued detention violates due process.

CONCLUSION

For these reasons, the Court retains jurisdiction under 28 U.S.C. § 2241, and because Petitioner's ongoing detention without a bond hearing violates both statutory and constitutional limits, the writ of habeas corpus should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on January 6, 2026, I filed the foregoing document with the Clerk of the Court for the U.S. District Court for the Middle 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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