

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**Case No. 1:26-cv-20294-KMM**

**RAMON PERALTA-DORMES, et al.,  
Petitioners,**

**v.**

**TODD LYONS, et al.,  
Respondents.**

---

**PETITIONER ROSARIO ROBLERO-VELASQUEZ'S REPLY TO RESPONDENTS'  
OMNIBUS RETURN**

Petitioner Rosario Roblero-Velasquez, by and through undersigned counsel, respectfully submits this Reply to Respondents' Omnibus Return.

**I. Preliminary Statement**

This reply is filed promptly after undersigned counsel's review of Respondents' consolidated filing and the procedural posture of this multi-petitioner action. Because the Court consolidated three separate habeas petitions presenting distinct factual and legal issues and directed a single consolidated government response, Petitioner reasonably understood that briefing would proceed in a coordinated manner. To the extent the Court considers this submission outside the default reply window, Petitioner respectfully requests that it be accepted in the interest of full merits consideration. No prejudice results to Respondents, the case remains pending without decision, and federal courts consistently prefer resolution of habeas petitions on complete briefing rather than procedural default.

## **II. The Government's §1252 Jurisdiction Argument Misstates the Scope of Habeas Review**

Rosario notes at the outset that, unlike its arguments directed at other petitioners in the consolidated response, the Government does not invoke 8 U.S.C. § 1252 as a jurisdictional bar to this Court's review of his habeas claims. The omission is telling. The Government expressly raised § 1252(g), § 1252(b)(9), and § 1252(a)(5) against other petitioners, yet did not assert those provisions as a defense to jurisdiction over Rosario's petition. Having declined to rely on those provisions as to Rosario, Respondents does not contend those provisions bar jurisdiction here and § 1252 does not deprive this Court of jurisdiction over his detention challenge. *See Jennings v. Rodriguez*, 583 U.S. 281, 292 (2018) (holding § 1252(b)(9) does not bar challenges to detention authority); *Demore v. Kim*, 538 U.S. 510, 517 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

Nevertheless, to avoid any suggestion of waiver or forfeiture and to ensure a complete record, Rosario briefly addresses § 1252. Those provisions do not bar jurisdiction over this case because Rosario does not challenge the decision to commence removal proceedings or seek review of any removal order. The Supreme Court rejected precisely that theory in *Jennings* when it held that § 1252(b)(9) does not bar challenges to "the decision to detain [a noncitizen] in the first place or to seek removal." 583 U.S. at 294.

Instead, Rosario challenges only the statutory authority for his present detention. Courts have consistently recognized that § 1252's channeling provisions do not strip district courts of habeas jurisdiction over claims contesting the legality of custody itself, as opposed to challenges to removal proceedings. This distinction is dispositive. A claim that the Government is detaining a noncitizen under the wrong statutory provision is a paradigmatic habeas claim and falls outside § 1252's jurisdictional limitations.

Nor would § 1252(b)(9) apply even if invoked. That provision channels review of claims “arising from” removal proceedings, but it does not sweep so broadly as to cover independent challenges to detention authority. The Supreme Court has explained that § 1252(b)(9) is not a universal bar and does not preclude jurisdiction where the petitioner is not contesting the Government’s decision to detain in the first instance but rather the legal basis for that detention. Rosario’s petition fits squarely within that category.

Likewise, § 1252(g) does not apply because Rosario does not seek to restrain the Government’s discretionary decisions to commence proceedings, adjudicate cases, or execute removal orders. He challenges only whether DHS has statutory authority to hold him without a bond hearing. That claim does not arise from a discretionary removal decision; it arises from the Constitution and the detention statutes.

Finally, § 1252(a)(5) is inapposite because Rosario does not seek judicial review of a removal order. He seeks review only of his present confinement. The exclusive-review provision therefore has no relevance.

In short, even if the Government had invoked § 1252 against Rosario—which it did not—those provisions would not divest this Court of jurisdiction.

### **III. The Government’s Reliance on § 1225(b) Is Predicated on Authority That Has Been Vacated**

After Respondents filed their opposition, the district court issued an intervening decision directly addressing the authority on which Respondents rely. The Government’s entire merits argument rests on its claim that Rosario is an “applicant for admission” subject to mandatory detention under § 1225(b)(2)(A).

That position depends on *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which the Government cites as controlling authority for the proposition that individuals present without admission must be detained under § 1225(b) for the duration of proceedings.

But that precedent has now been vacated by a federal court. *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Order vacating *Matter of Yajure-Hurtado* (C.D. Cal. Feb. 18, 2026) (vacating *Matter of Yajure-Hurtado* under the APA and ordering classwide notice).

The Government may contend that recent Supreme Court precedent limiting nationwide injunctions or class-wide relief undermines the significance of the district court's vacatur of *Matter of Yajure-Hurtado*. That argument fails because it conflates two distinct doctrines: the scope of remedies and the legal effect of vacatur. Even if a district court's remedial authority is geographically limited, a judicial order vacating an agency decision eliminates that decision's precedential force. Courts have long held that once a decision is vacated it has no legal effect and cannot be relied upon as binding authority. *See, e.g., Nat'l Mining Ass'n v. U.S. Army Corps of Engineers*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) ("[w]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed."). Justice Blackmun made a similar observation in *Lujan v. National Wildlife Federation*, 497 U.S. 871, 913 (1990), writing in dissent but apparently expressing the view of all nine Justices on this question.

Recent Supreme Court decisions restricting universal injunctions address only the permissible breadth of equitable relief; they do not resurrect vacated precedent or authorize the Government to rely on a decision that no longer exists as law. *Trump v. Hawaii*, 585 U.S. 667, 713 (2018); *Gill v. Whitford*, 585 U.S. 48, 73 (2018). The question here is not whether relief in another case binds this Court nationwide, but whether Respondents may justify detention based on an

agency precedent that has been judicially vacated. They may not. Once vacated, an agency decision cannot serve as a valid legal basis for detention anywhere. Accordingly, regardless of the geographic scope of the order in *Maldonado-Bautista, Yajure-Hurtado* no longer provides lawful authority for Rosario's continued detention.

The Government's analysis therefore rests on authority that no longer exists.

Without *Yajure-Hurtado*, the Government is left with only pre-2025 nonprecedential or distinguishable authority. By contrast, district courts within this Circuit have repeatedly held that individuals in Rosario's posture are detained under § 1226(a), not § 1225(b), and are entitled to individualized bond hearings; see *See, e.g., Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at \*3, 8 (S.D. Fla. Oct. 15, 2025) ("§ 1226(a), not § 1225(b)(2), governs Petitioner's detention"); *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41 (S.D. Fla. Oct. 10, 2025) ("§ 1226 governs Petitioner's detention"); *Hernandez Alvarez v. Acting Warden Roger Morris, et al.*, Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that "detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen "applicant[s] for admission" to the United States.); *Cerro Perez v. Parra, et al.*, Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that "prudential exhaustion requirements are excused for futility" and finding that "section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A)"); The Government itself concedes that multiple Southern District of Florida judges have reached precisely that conclusion; (See ECF No. 18, N.6)

Thus, the current weight of authority favors Rosario—not the Government.

#### **IV. The Government's Argument That § 1225 Applies to Interior Arrests Is Legally Unsound**

The Government contends that any noncitizen present without admission is automatically an “applicant for admission” subject to § 1225(b).

But that interpretation improperly collapses statutory distinctions Congress deliberately created. Section 1225 governs inspection and admission procedures; § 1226 governs detention of persons already present in the United States pending removal proceedings. *Jennings*, 583 U.S. at 303. The Government’s reading would effectively render § 1226 meaningless for anyone who entered without inspection—a result courts must avoid when interpreting statutes.

Moreover, the Government’s grammatical argument about the present participle “seeking” admission ignores the statutory context: the phrase refers to persons currently seeking admission at the border or port of entry, not individuals arrested inside the country after years of presence.

#### **V. Mandatory Detention Without an Individualized Hearing Violates Due Process**

The Government asserts that mandatory detention under § 1225(b) is constitutionally permissible.

But that statement assumes the predicate statutory classification is correct. Due process requires that detention be reasonably related to its statutory purpose and based on a valid legal authority. If Rosario is properly classified under § 1226(a), then mandatory detention is unlawful and an individualized custody determination is constitutionally required. *Zadvydas supra*, 533 U.S. at 690.

#### **VI. The Government Bears the Burden to Justify Continued Detention**

Once Rosario established that he is being deprived of his physical liberty, the burden shifted to the Government to demonstrate that his detention is authorized by the correct statutory provision and consistent with the Constitution. *Id.*; *See also Hamdi v. Rumsfeld*, 542 U.S. 507, 534 (2004);

*Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *Addington v. Texas*, 441 U.S. 418, 425 (1979); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)

Respondents have not met that burden. Instead, they rely primarily on an interpretation of the detention statutes that depends on authority that has since been vacated, on reasoning that has been rejected by multiple courts within this District, and on jurisdictional theories they did not even assert against Rosario.

Such arguments are insufficient as a matter of law to justify ongoing civil detention. Because the Government has failed to establish that Rosario is lawfully detained under the governing statute, his continued confinement cannot stand. The Court should therefore grant the petition and order appropriate relief.

#### **IX. Conclusion**

Petitioner is detained within this Court's jurisdiction, challenges only the legality of his detention, and seeks relief traditionally available through habeas corpus. The statutory jurisdiction-stripping provisions cited by Respondents do not apply to such claims. Moreover, substantial authority—including decisions within this District—confirms that detention in these circumstances is governed by § 1226 and requires an individualized custody determination. Because Respondents have not demonstrated lawful authority for Petitioner's continued detention without such process, the writ should issue.

Respectfully submitted,

Dated: February 24, 2026

/s/Bonnie Smerdon  
Bonnie Smerdon  
Florida Bar #123933  
LUCE LAW PLLC  
22966 Overseas Highway  
Cudjoe Key, FL 33042

(954) 624-2622 T  
(954) 416-6602 F  
bsmerdon@lucelawpllc.com

*Lead Attorney for Petitioner Rosario Roblero-Velasquez*

### **CERTIFICATE OF SERVICE**

I certify that on February 24, 2026, I filed the foregoing PETITIONER ROSARIO ROBLERO-VELASQUEZ'S REPLY TO RESPONDENTS' OMNIBUS RETURN using the Court's CM/ECF system, which will serve all counsel of record who are registered CM/ECF users.

/s/Bonnie Smerdon  
Bonnie Smerdon  
Florida Bar #123933  
LUCE LAW PLLC  
22966 Overseas Highway  
Cudjoe Key, FL 33042  
(954) 624-2622 T  
(954) 416-6602 F  
bsmerdon@lucelawpllc.com

*Lead Attorney for Petitioner Rosario Roblero-Velasquez*