UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:26-cv-20329-JB

GABRIEL JOSE CARRENO-MENDEZ,

Petitioner,

v.

KRISTI NOEM , DHS SECRETARY, *et al.*,

Respondents.

______________________________________/

REPLY IN DEFENSE OF WRIT OF HABEAS CORPUS

Petitioner, by and through undersigned counsel hereby files a reply to Respondents, *et al.* Return to Petition for Writ of Habeas Corpus [ECF No 12] and in support of states the following:

Argument

Respondent Kristi Noem, *et al*, (Respondents), mischaracterizes the Petition and Relief of Habeas Corpus. Respondents began by stating that the Petition is defective since it does not seek release from detention. This however is not accurate.

Habeas relief under 28 U.S.C. 2241 is allowed where a petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." The core issue is the lawfulness of **custody**, not the relief requested. Where detention is a result from an **ultra vires exercise of statutory authority,** a federal court may order relief necessary to cure that unconstitutional act, including halting any removal

proceeding that lack statutory authorization. See Zadvydas v. Davis, 533 U.S. 678, 688 (2001).

In the present case, our Petitioner challenges the legality of detentions and expedited removal under 1225(b)(1) because DHS lacked statutory authority to initiate expedited removal at all on December 30, 2025. This claim falls under the scope of habeas corpus.

I. <u>Defendants that must be dismissed</u>

Respondent is correct that the only proper Respondent in this Habeas Corpus Petition is the immediate custodian at the time Petitioner's Habeas petition was filed. That is the ICE Field Office Director for the Miami Field Office, Mr. Garret J. Ripa. In *Rumsfeld v. Padilla*, 542 U.S. 426 at 441 the Court citing *Endo*,323 U.S. 283, said:

"Thus, Endo stands for the important but limited proposition that when the government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release."

Petitioner respectfully requests that all Respondents other than Mr. Garret J. Ripa be dismissed from the petition while preserving the petition with Mr. Ripa as respondent.

II. The Court does not lack subject matter jurisdiction

A. Congress has precluded review of judicial review of expedited removal procedures; Congress did not preclude review of the threshold question of whether Petitioner is statutorily eligible for Expedited Removal at all.

Respondent reads U.S.C § 1252 too broadly. Respondent claims that any issue "arising" out of its' use of expedited removal is off- limits to the jurisdiction of this Court. But Respondent's use of the word "arising" is so broad as to encompass any claim regarding an expedited removal, making even statutory interpretation non-reviewable. Supreme Court precedent argues against this approach. In *Jennings v Rodriguez*, 583 U.S. 294 (2018), the court was faced with similar jurisdictional arguments and reasoned;

> ***"in past cases, when confronted with capacious phrases like "arising from, " we have eschewed " 'uncritical literalism' " *294 leading to results that " 'no sensible person could have intended.'*** ***Jennings v. Rodriguez, 583 U.S. 281, 293–94, 138 S. Ct. 830, 840, 200 L. Ed. 2d 122 (2018)***

The Court concluded in *Jennings* that when reviewing similar provisions in the INA (concerning detention), that sections 1225 and 1252(b)(9) did not preclude review. Justice Alito stated "This provision does not deprive us of jurisdiction. We are required in this case to decide "questions of law".

Petitioner here asks only, that this Court too, decide a question of law; that U.S.C. § 1225(b)(1)(A)(iii)(II) excludes him from the other expedited removal provisions included in §1225(b)(1)

§ 1225(b)(1)(A)(iii)(II) states:
An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

Here:

1. Petitioner entered the United States on June 27, 2022. *See* Respondent's Exhibit A, Doc 12-1 *Record of Deportable/Inadmissible alien.*
2. Petitioner was Paroled on August 26,2022. See Respondent's Exhibit B, Parole Document , Doc 12-2.
3. Petitioner was served a *Notice and Order of Expedited Removal* and ***Determination of Inadmissibility*** on Dec 30, 2025, which was more than three years after being released into the country. *See* Respondent's Exhibit D, Doc 12-4.

Petitioner is therefore *Prima Facie* excluded from expedited removal having satisfied all three elements of § 1225(b)(1)(A)(iii)(II) required to exclude him from expedited removal.

Respondents mistakenly claim that that the operative "date of the determination of inadmissibility" occurred on June 27, 2022, when Petitioner first encountered Customs and Border patrol and was paroled. Because of this claim they reason that Petitioner failed to meet the element of living in the US for two years prior to the "date of Determination of Inadmissibility".

Respondents produce no Form I-860, (Notice of Order and Expedited Removal and Determination of Inadmissibility) dating from the time of the June 27 encounter in their Return Brief. However, even assuming that June 27, 2022, is the first of two "dates of determination of inadmissibility", DHS clearly made a new "Date of determination of inadmissibility" when ICE: 1) apprehended Petitioner in Miami at a scheduled check-in required by his release under (ATD) Alternative To Detention procedures, 2) issued a new Form I-860 (Notice and Order of Expedited removal and Determination of Inadmissibility", and 3) ordered Petitioner's Expedited removal.

Prior to his Dec 2025 apprehension, DHS released Petitioner into the country for over three years, allowing three years of physical presence. ICE supervised Petitioner through regular check-ins required by ATD procedures. DHS allowed Petitioner to file a Form I-589 Application for Asylum and for Withholding of Removal and even granted him work authorization. Allowing DHS to rely on the

initial determination of inadmissibility this late and overriding the two year bar would effectively render § 1225(b)(1)(A)(iii)(II) useless.

Respondent refers to *Thuraissigiam v US Dept of Homeland Security, 591 U.S. 103* to argue that this court has no jurisdiction under Section 1252(a)(2), but that case involved non-citizen who had recently entered, was detained 25 yards from the border, was not issued a parole document, did not have a lengthy presence in the United States and was subject to expedited removal. There was no statutory violation in that case for the court to consider. Extending Thuraissigiam to this case would expand the decision far beyond its facts and reasoning

If this Court is not free to review DHS's flagrant disregard of § 1225(b)(1)(A)(iii)(II) DHS can railroad Petitioner into expedited removal despite clear congressional intent to the contrary.

That would be the kind of result of which Justice Alito said " 'no sensible person could have intended.' *Jennings at* 293-94.

III. Section §1252(e) can only limit review of §1225 within the lawful parameters of section §1225 itself.

Petitioner's eligibility for expedited removal is a predicate decision made according to statute. The statutory review under the § 1225(b)(1)(A)(iii)(II) two-year bar does not interfere with the discretionary powers of DHS to make

decisions about expedited removal within the legal boundaries of the statutory framework of Section §1225. DHS is free to expedite the removal of whoever it pleases, without second guessing from the judicial branch so long as there is no statutory bar to removal. Petitioner merely asks the Court to enforce the clear statutory bar to expedited removal where Petitioner meets the criterion of § 1225(b)(1)(A)(iii)(II).

IV. Section 1252(g) is Inapplicable

Respondents' argument of 1252(g) is inaccurate. This provision allows for protection of prosecutorial discretion **within lawful boundaries of section §1225**; it does not allow the Executive to initiate proceeding Congress has prohibited.

Again, Petitioner does not challenge DHS options between removal provisions. Petitioner challenges DHS's **lack of statutory authority** to utilize expedited removal at all after more than two years of continuous physical presence.

V. Respondents Fail to Address Statutory Fear-Based Protections

Respondents repeat credible-fear framework but never state whether Petitioner expressed fear upon detainment by ICE, if Petitioner was referred to an asylum officer for a credible fear interview, or if the mandatory statutory process was properly followed.

1225(b)(1)(A)(ii) states that once fear is expressed, a referral is mandatory, not optional and removal must **pause pending completion of the process**. Even if expedited removal proceedings were allowed (which is not per statute), DHS's failure to process fear claims violates the statute and renders continued detention and removal unlawful.

In Petitioner's case DHS was given clear notice of Petitioner's fear of being removed to his home country. Petitioner filed a Form I-589 application for asylum , Withholding of removal and Convention Against Torture protection within the statutory 1 year filing window of time. Yet Petitioner has not been referred for a credible fear interview and has not been referred to immigration court to decide his asylum. Worse yet, DHS has inexplicably dismissed Petitioners asylum application within the recent timeframe following the filing of Petitioner's habeas petition.

V. Conclusion

This matter involves the determination of whether Congress allows DHS to invoke expedited removal **at all** under these circumstances, BECAUSE:

- The determination occurred in 2025.
- Petitioner has more than two years of continuous physical presence,
- DHS exceeded its statutory authority,

- And Mandatory fear-based protections have not been demonstrated or shown to have honored

As such, this Court should find DHS in violation of statutory obligations by apprehending him for expedited removal, and to order Petitioner's release back to ADT reporting status so that he can pursue his fear-based remedies to deportation, order the reopening of his recently closed asylum application that was closed during the pendency of this habeas corpus proceeding and grant any other relief this Court deems just and proper.

Dated this 29th day of January 2026.

Respectfully Submitted,

/s/ Frank Bane

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