

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

Josias de Jesus Rivas Mejicano,

Petitioner,

Case No. 2:26-cv-089-KCD-DNF

v.

Field Office Dir., ICE, et al.,

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO THE PETITION FOR
WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner respectfully submits this Reply to Respondents' Response to the Court's Order to Show Cause. Respondents' position rests on an interpretation of 8 U.S.C. § 1225 that eliminates the structural distinction between §§ 1225 and 1226 recognized by this Court. That interpretation is inconsistent with the statutory scheme and, in any event, permits detention without constitutionally adequate process. Petitioner's detention is governed by § 1226(a), and he is entitled to a bond hearing. Alternatively, continued detention without individualized review violates the Due Process Clause.

II. THIS COURT HAS JURISDICTION

Respondents preserve arguments under 8 U.S.C. §§ 1252(g) and 1252(b)(9), but this Court has already rejected those contentions in materially indistinguishable cases. In *Lopez v. Hardin*, this Court held that a habeas petition challenging the statutory basis of detention does not implicate § 1252's jurisdiction-stripping provisions because it does not seek review of a removal order or

the commencement of removal proceedings. *Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Oct. 29, 2025). Such a claim falls within the core of habeas review. See *Jennings v. Rodriguez*, 583 U.S. 281, 292–93 (2018).

Petitioner challenges only the authority to detain him without a bond hearing. This Court has exercised jurisdiction over the same category of claims in *Lopez* and *Inocencio v. Warden of Florida Soft Side South*, No. 2:25-cv-1208-KCD-DNF (M.D. Fla. Feb. 3, 2026).

Nor is exhaustion required where the agency lacks authority to grant the requested relief. See *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Immigration judges are bound by *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), and therefore cannot provide bond review if DHS classifies detention under § 1225. Jurisdiction is therefore proper.

III. SECTION 1226 IS THE DEFAULT DETENTION AUTHORITY FOR INTERIOR ARRESTS DURING REMOVAL PROCEEDINGS

This Court has already articulated the governing statutory framework. In *Lopez v. Hardin*, the Court explained that § 1225 “applies primarily to aliens seeking entry into the United States,” whereas § 1226 “applies to aliens already present in the United States.” *Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Oct. 29, 2025). The Court rejected an interpretation of § 1225 that would render § 1226 superfluous, invoking the settled principle that courts must give effect to each provision of a statute. See *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

This Court has previously concluded that individuals apprehended at the border remain subject to § 1225 notwithstanding subsequent release into the United States. See, e.g., *Garcia v. U.S. Att’y Gen.*, No. 2:25-cv-1053-KCD-DNF, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025); *Parra v. Sec’y, Dep’t of Homeland Sec.*, No. 2:25-cv-1116-KCD-DNF, 2026 WL 21243 (M.D. Fla. Jan. 5, 2026). Petitioner respectfully preserves his statutory position for appellate review but acknowledges that those decisions addressed materially similar border-apprehension scenarios.

Unlike the petitioners in *Garcia* and *Parra*, Petitioner was not released pursuant to parole under 8 U.S.C. § 1182(d)(5). DHS instead issued a custody determination under § 236 and affirmatively exercised discretionary detention authority under § 1226(a). That intervening statutory election distinguishes this case from those in which release occurred solely under the parole framework applicable to arriving aliens.

The Court reaffirmed the structural distinction between §§ 1225 and 1226 in *Inocencio v. Warden of Florida Soft Side South*, holding that detention of a noncitizen who had been present in the United States for years fell within § 1226. *Inocencio v. Warden of Fla. Soft Side S.*, No. 2:25-cv-1208-KCD-DNF (M.D. Fla. Feb. 3, 2026). Petitioner acknowledges that *Inocencio* did not involve a border-apprehension scenario identical to *Garcia* or *Parra*. He submits, however, that the intervening exercise of § 1226 authority and subsequent years of interior residence present a structural question warranting careful consideration.

That framework accords with *Jennings*, which recognized that detention under § 1226(a) includes bond hearings at the outset of detention. *Jennings*, 583 U.S. at 306. Petitioner's present detention arises from an interior arrest during ongoing removal proceedings after years of residence following discretionary release under § 1226. Section 1226(a) governs detention "pending a decision on whether the alien is to be removed from the United States."

IV. THE GOVERNMENT'S RETROACTIVE-CLASSIFICATION THEORY COLLAPSES THE STATUTORY STRUCTURE

Respondents contend that because Petitioner was originally apprehended at entry, § 1225 permanently governs all future detention. While this Court has previously rejected similar arguments in cases involving border apprehension followed by release, Petitioner respectfully submits that the intervening exercise of § 1226 authority and years of interior residence present a structural concern not fully addressed in those decisions.

DHS initially detained Petitioner, issued a custody determination under § 236, and released him pursuant to § 1226(a). DHS did not designate him an arriving alien. It did not release him on parole under 8 U.S.C. § 1182(d)(5)(A). Instead, it invoked discretionary detention authority and released him into the interior.

Congress expressly created a snap-back rule for parolees, providing that a parolee “shall forthwith return or be returned to the custody from which he was paroled” upon termination of parole. 8 U.S.C. § 1182(d)(5)(A). Congress did not create a comparable snap-back mechanism for discretionary release under § 1226(a). Where Congress includes language in one section of a statute but omits it in another, courts presume the omission was intentional. *Russello v. United States*, 464 U.S. 16, 23 (1983).

If § 1225 permanently governs detention regardless of DHS’s intervening exercise of § 1226 authority, the statutory distinction between the two provisions becomes difficult to reconcile in cases involving long-term interior residence. That reading erodes the structural distinction this Court preserved in *Lopez* and renders § 1226 largely redundant. See *TRW Inc.*, 534 U.S. at 31.

Petitioner’s present custody arises from an interior arrest pending removal proceedings after discretionary release. Under the statutory structure recognized by this Court, such detention is governed by § 1226(a).

V. EVEN IF § 1225 APPLIES, CONTINUED DETENTION WITHOUT INDIVIDUALIZED REVIEW VIOLATES DUE PROCESS

Even if § 1225 applies as a statutory matter, this Court has recognized that constitutional limits may arise if detention becomes prolonged. Petitioner acknowledges that his detention is of relatively short duration but respectfully submits that the unique posture of re-detention following years of liberty warrants careful constitutional consideration.

Procedural due process claims are evaluated under *Mathews v. Eldridge*, 424 U.S. 319 (1976), which balances (1) the private interest affected, (2) the risk of erroneous deprivation and the value of additional safeguards, and (3) the government's interest.

Freedom from physical restraint lies at the core of the liberty protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner was released under § 1226 and lived in the United States for years in compliance with supervision. His liberty was settled and ongoing. Re-detention after years of freedom implicates a substantial private interest that exceeds the interests at stake in initial inspection detention at the border.

Under Respondents' position, detention is categorical and unreviewable. Immigration judges lack authority to consider bond. ICE's custody determination is unilateral. No neutral adjudicator evaluates present flight risk or danger.

The risk of erroneous deprivation is heightened where the Government previously exercised discretion and determined that release was appropriate. An individualized bond hearing would substantially reduce the risk of error by permitting a neutral adjudicator to evaluate present circumstances. See *Mathews*, 424 U.S. at 335.

The Government has an interest in ensuring appearance and protecting the community. But those interests were previously addressed through discretionary release and supervision. Providing a bond hearing imposes minimal administrative burden; such hearings already occur under § 1226(a). See *Jennings*, 583 U.S. at 306.

At present, Petitioner's detention is of limited duration. However, under *Mathews*, the substantial liberty interest created by years of residence following discretionary release, combined with the absence of any neutral custody review, underscores that continued categorical detention may, if prolonged, raise serious constitutional concerns.

VI. CONCLUSION

For the reasons set forth above, Petitioner's detention is governed by 8 U.S.C. § 1226(a). Under that provision, he is entitled to an individualized bond hearing before an immigration judge as a matter of statutory right. This Court has already recognized that § 1226 applies to individuals already present in the United States pending removal proceedings. Respondents' interpretation would erode the statutory distinction between §§ 1225 and 1226 and render § 1226 largely superfluous.

Even if the Court concludes that § 1225 applies as a statutory matter, the Due Process Clause independently requires constitutionally adequate custody review. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the substantial liberty interest created by years of residence following discretionary release, combined with the absence of neutral custody review, counsels in favor of close constitutional scrutiny should detention continue.

Accordingly, Petitioner respectfully requests that the Court grant the Petition and order Respondents to provide a bond hearing before an immigration judge within seven days.

DATED this 16th of February 2026.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Instrument was sent via ECF on February 16, 2026, to all counsel of record.

/s/Themistoklis Aliferis
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