UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Roberto Beltran Benitez,	X	
Petitioner,	X	
	X	
v.	X	Case No.:
	X	3:26-cv-122-JEP-PDB
Pamela Jo Bondi, U.S. Attorney General,	X	
U.S. Department of Justice,	X	
Markwayne Mullin[1], Secretary,	X	
U.S. Department of Homeland Security;	X	
Garrett Ripa, Field Office Director,	X	
U.S. Immigration and Customs Enforcement,	X	
Miami, Florida,	X	
Respondents.	X	
______________________________________	/	

TRAVERSE TO RESPONDENTS' RESPONSE TO PETITION

INTRODUCTION

On or about February 25, 2026, Respondents filed a Response to Petition for Writ of Habeas Corpus ("Response"). ECF Doc. 8. As is discussed in more detail below, Petitioner submits that the arguments made by Respondents further clarify why judicial intervention is appropriate with respect to the legal questions presented in the Petition. Without such intervention, Petitioner will continue to remain indefinitely detained in violation of his Fifth Amendment rights to procedural and substantive Due Process.

[1] Markwayne Mullin is substituted for Kristi Noem as the Secretary, U.S. Department of Homeland Security, in accordance with Fed. R. Civ. P. 25(d).

DISCUSSION

I. This Court's Prior Ruling in Diaz Lopez v. Director, Office of Enforcement and Removal Operations, *et al.*, Case No. 3:25-cv-1313-JEP-SJH (M.D. Fla. Jan. 26, 2026)

As indicated in its Response, the "Federal Respondents believe that questions of law in this case substantially overlap with this Court's decision in Diaz Lopez v. Director of Enforcement and Removal Operations *et al.*, Case No. 3:25-cv-1313-JEP-SJH, 2026 WL 261938 (M.D. Fla. Jan. 26, 2026)." Response at 5. Petitioner would agree.

In Diaz Lopez, this Court provided its overview of §1225's statutory structure and §1226's statutory structure. The Court concluded that §1225 discusses three distinct groups of aliens: (1) those who present themselves at a designated port-of-entry where an immigration official determines that the alien is inadmissible to the United States in violation of 8 U.S.C. §1182(a)(6)(C)(i) (for engaging in actionable immigration fraud) or in violation of §1182(a)(7)(A)(i)(I) (for failing to be in possession of a valid travel document) (§1225(b)(1)(A)(i)); (2) those who the Attorney General has designated as subject to the provisions at §1225(b)(1)(A)(i) through §1225(b)(1)(A)(iii); and (3) those "applicants for admission" who do not fall within the other two categories (§1225(b)(2)(A)) Diaz Lopez, *supra*, at *3-5.

The Court concluded that an alien who falls within the purview of any of these three groups is subject to mandatory detention. The Court concluded that the only functional difference amongst individuals falling within these three groups is that those aliens described by §1225(b)(2)(A) are entitled to full removal proceedings. In so stating, the Court recognized that aliens described in the first two groups can only be placed in full removal proceedings once establishing a "credible fear" of persecution. Id. at *5.

The Court's review of §1226 reflects that this provision discusses two distinct groups of aliens: (1) those subject to a ground of deportation who have not been convicted of an offense disqualifying the alien for release on bond (§1226(a)); and (2) those subject to a ground of deportation who have been convicted of an offense disqualifying the alien for release on bond (§1226(c)). Id. at 8.

At its core, Diaz Lopez stands for the proposition that any alien who the government alleges as subject to a ground of inadmissibility described at 8 U.S.C. §1182(a) is subject to mandatory detention. Furthermore, only aliens who are subject to a ground of deportability described at 8 U.S.C. §1227 are potentially eligible for release on bond. Such alien remains subject to mandatory detention if alleged to be subject to deportation in violation of §1227(a), but convicted of a disqualifying offense as described at §1226(c).

II. Recent Decisions Issued by Circuit Courts of Appeal

Two Circuit Court of Appeal have now addressed the questions presented in this habeas petition through published opinions. The Fifth Circuit published its decision in Buenrostro Mendez v. Bondi, U.S. Att'y Gen., *et al.*, -- F.4th -- (5th Cir. Feb. 6, 2026). In a 2-1 decision, the panel concluded that the alien-petitioners were detained in accordance with 8 U.S.C. §1225, rather than in accordance with 8 U.S.C.

§1226. Petitioner notes that this panel decision did not address any Constitutional claims relating to whether or not the alien-petitioners are subject to indefinite detention in violation of the Fifth Amendment to the U.S. Constitution.

The Eighth Circuit published its opinion in Herrera Avila v. Bondi, U.S. Att'y Gen., *et al.*, -- F.4th -- (8th Cir. Mar. 25, 2026). In a 2-1 decision, the panel sided with the government's argument that aliens who entered the United States without admission continue to be "applicants for admission" who are subject to mandatory detention.

III. The Court's Decision in Diaz Lopez, and the Decisions Issued by the Fifth and Eighth Circuit Do Not Reflect the Longstanding Structure and Context of the Immigration and Nationality Act

A. Exclusion and Deportation Proceedings

Before enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546 (Sept. 30, 1996) ("IIRIRA"), administrative proceedings before the U.S. Immigration Court were divided into two distinct types of proceedings. Exclusion proceedings applied to aliens who had not effectuated an "entry," while deportation proceedings applied to aliens who had effectuated an "entry." Aliens in exclusion proceedings were not eligible for release on bond while aliens who had been placed in deportation proceedings were generally eligible to seek such discretionary release.

B. Enactment of IIRIRA

Upon enactment of IIRIRA, Congress did away with the concept of "entry" and replaced it with the concept of "admission." H.R. CONF. REP. NO. 104-828, 104th Cong., 2d Sess. 207. Unlike the pre-IIRIRA version of the Immigration and Nationality Act ("INA" or "Act"), certain aliens who had arrived in the United States without inspection would no longer be subject to a ground of deportation but would instead become subject to a ground of inadmissibility. Id. at 208.

The current version of §1225 allows certain aliens to be subjected to a process referred to as "expedited removal." Aliens described at §1225(b)(1)(A)(i) are subject to "expedited removal." Aliens coming within the purview of §1225(b)(1)(A)(iii) are subject to "expedited removal." Aliens described at §1225(b)(2)(A) are not subject to "expedited removal." What is common amongst these three groups of individuals is that the aliens described in these provisions are those who either make an application for admission before an immigration officer at a designated port-of-entry or fall within a group of aliens "designated by the Attorney General" in accordance with §1225(b)(1)(A)(iii)(I) or who cannot "affirmatively show[], 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." §1225(b)(1)(A)(iii)(II).

Section 1225 does not describe aliens like Petitioner who entered the United States without inspection who are: (1) not included within a designated group of individuals described at §1225(b)(1)(A)(iii)(I); or (2) can establish that the alien has been physically present in the United States for the 2-year period described at §1225(b)(1)(A)(iii)(II). Nonetheless, this Court's decision in Diaz Lopez, as well as the Fifth and Eighth Circuit published opinions discussed above, stand for the proposition that any alien who entered the United States without inspection at any time is subject to mandatory detention.

This then leaves the question as to which aliens are described at §1225(b)(2)(A)? This Court's decision in Diaz Lopez, as well as the Fifth and Eighth Circuit published opinions discussed above, conclude that this provision describes every other alien who does not come within the other two classes of aliens described within §1225(b)(1)(A). Like Petitioner, these aliens are provided access to full removal proceedings in accordance with 8 U.S.C. §1229a, but the Court's reading of §1225(b)(2)(A) is such that it ignores the intended purpose of this provision and the overall context of the removal process.

For example, an alien presents himself to a designated port-of entry with a travel document. The immigration officer learns that this alien has been convicted of an offense that renders the alien as inadmissible in violation of 8 U.S.C. §1182(a)(2)(A)(i)(I) because the conviction is for a crime involving moral turpitude. The inspecting officer has no reason to believe that the alien's travel document was obtained through actionable immigration fraud, therefore the alien is not inadmissible in violation of 8 U.S.C. §1182(a)(6)(C)(i). Moreover, the inspecting officer concludes that the individual obtained the travel document through lawful means, therefore the alien is not inadmissible in violation of 8 U.S.C. §1182(a)(7)(A)(i)(I) inasmuch as the travel document that was presented by the alien was validly issued. This is who is described at §1225(b)(2)(A). While this alien may benefit from being placed in full removal proceedings, this alien remains subject to mandatory detention because this is what §1225(b)(2)(A) requires.

C. The Court's Construction of §1225 Renders a Number of Statutory Provisions and Subsequent Enactments as Superfluous

If the Court's statutory analysis were correct in that aliens described at §1225(b)(2)(A) include aliens like Petitioner, the language at §1225(b)(1)(A)(iii)(I) and at §1225(b)(1)(A)(iii)(II) is superfluous. Petitioner cannot describe an alien who would come within the purview of §1225(b)(1)(A)(iii) who would not otherwise be described by the Court's construction of §1225(b)(2)(B). Indeed, there would exist no need to allow the Attorney General to designate groups of aliens as provided at §1225(b)(1)(A)(iii)(I) and there would be no need to delineate between aliens who can or cannot establish physically presence within the United States for the 2-year period described at §1225(b)(1)(A)(iii)(II).

Similarly, the Laken Riley Act[2] would also be completely superfluous. Enactment of this legislation added §1226(c)(1)(E) and renders as ineligible for release on bond any alien who

> (i) "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
>
> (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law

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[2] Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025).

> enforcement officer offense, or any crime that results in death or serious bodily injury to another person,
>
> when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense."

This Court's decision in Diaz Lopez, as well as the Fifth and Eighth Circuit published opinions discussed above, inform the reader that any alien who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title..." is an alien who is already subject to mandatory detention in accordance with §1225(b)(2)(A).

The fundamental error in the statutory construction analysis set forth in Diaz Lopez, as well as the Fifth and Eighth Circuit published opinions discussed above, involves a misunderstanding of §1225's functional limitations. This provision, like its pre-IIRIRA predecessor, describe the inspection of aliens either at a designated port-of-entry or the processing of aliens in and around international borders who have arrived within the designated 2-year time-frame. Simply put, §1225 does not describe an alien subject to the "interior" enforcement of the INA. The only exception to this general proposition is those aliens described at §1225(b)(1)(A)(iii). Even then, these statutory exceptions inform the reader of Congressional intent that the entirety of §1225 be limited to enforcement operations at or near designated ports-of-entry and at or near international land borders with contiguous territories such as Mexico and Canada.

The statutory construction analysis set forth in Diaz Lopez, as well as the Fifth and Eighth Circuit published opinions discussed above, work in such a way as to render interior enforcement of the INA with operations at or near ports-of-entry through means that conflict with the statutory language and likewise ignore much of what Congress stated in its Joint Conference Report regarding the intended impact of the legislative changes made to the INA through enactment of the IIRIRA. *See generally* H.R. CONF. REP. NO. 104-828, 104th Cong., 2d Sess. 207.

In making this argument, Petitioner recognizes that what Congress reports that it intended through enactment of statutory language is not necessarily the *sine quo non* of the ordinary and plain meaning of the words used in that statutory language. For purposes of this discussion, Petitioner concedes that the Court is placed in the position of trying to reconcile the statutory language with two competing arguments regarding its correct construction. On one side of this argument is Petitioner who argues that his interpretation is consistent with the interpretation employed by aliens, the legacy Immigration and Naturalization Service ("INS"), the U.S. Department of Homeland Security and the Executive Office for Immigration Review ("EOIR") for the 28 years since IIRIRA's general effective date of April 1, 1997. On the other side is a new Presidential Administration challenging what Petitioner would refer to as the long-standing *status quo*. In so stating, Petitioner notes that the only change he can point to in an attempt to explain the undermining of the *status quo* is the inauguration of Donald J. Trump as the 47th President of the United States on January 20, 2025.

D. The Court's Construction of §1225 Conflicts with the Legacy Immigration and Naturalization Service's Understanding of Changes Made Through Enactment of the IIRIRA

Prior to IIRIRA's April 1, 1997 effective date, the legacy INS published guidance relevant to the questions presented herein. 62 Fed. Reg. 10312 (Mar. 6, 1997). This guidance includes the following passage:

> "[a]s for non-criminal aliens, the rule reflects the new $1,500 minimum bond amount specified by IIRIRA. Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination....
>
> Several commenters stated that Sec. 236 of the proposed rule as written is a reversal of long established procedure that provides that a noncriminal alien is presumptively eligible for release. The Service has been strongly criticized for its failure to remove aliens who are not detained. A recent report by the Department of Justice Inspector General shows that when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States. The mandate of Congress, as evidenced by budget enhancements and other legislation, is increased detention to ensure removal. Accordingly, because the Service believes that the regulation as written is consistent with the intent of Congress, the interim rule has not modified the proposed rule in this regard." Id. at 10323.

The fact that aliens and those government officials involved in immigration enforcement operated with the understanding that §1225 does not apply to individuals like Petitioner is not necessarily relevant to the statutory construction issues at hand. However, Congressional understanding of the current state of the law is an important consideration when reviewing the impact of any changes or amendments to that statutory paradigm. *See e.g.* Lorillard v. Pons, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change...").

The statutory construction analysis set forth in Diaz Lopez, as well as the Fifth and Eighth Circuit published opinions discussed above, conflict with Congress' understanding of the INA in a number of ways. Setting aside the discussion, *supra*, regarding how including Petitioner within the confines of §1225(b)(2)(A) renders §1225(b)(1)(A)(iii) as superfluous and likewise renders the Laken Riley Act as superfluous, the Court's construction also renders §1226(c)(1)(A) and portions of §1226(c)(1)(D) as superfluous.

These provisions render certain aliens "who are inadmissible" in accordance with 8 U.S.C. §1182(a)(2) or in accordance with 8 U.S.C. §1182(a)(3)(B) as ineligible to pursue a request for discretionary release on bond. This language is not necessary to require the mandatory detention of the aliens described therein because the aliens described in either provision would come within the mandatory detention language at §1225 accordingly to the analysis provided in Diaz Lopez and the decisions issued by the Fifth and Eighth Circuit Courts of Appeal. Petitioner can provide no examples of an alien who would be described in either of these subparagraphs of §1226(c)(1) who would not otherwise be included within the Court's construction of §1225 as set forth in Diaz Lopez.

E. Petitioner's Construction of §1225 Avoids Rendering Provisions of the INA as Superfluous and is Consistent with a Number of Relevant Supreme Court Decisions.

In Jennings v. Rodriguez, 138 S. Ct. 830, 842 (2018), Justice Alito explained that "§1225 applies primarily to aliens seeking entry into the United States." By contrast, "§1226 applies to aliens already present in the United States." Id. at 846. "Section 1226(a) creates a default rule for those aliens by permitting-but not requiring-the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond[.]" Id. at 846.

In Dep't of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959 (2020), the alien therein "crossed the southern border without inspection" and was thereafter detained by the Border Patrol "within 25 yards of the border." Id. at 1967. Notwithstanding the alien's arrival without inspection, he was processed for "expedited removal" in accordance with §1225(b)(1)(A)(i).

Discussing the Due Process rights of "an alien seeking initial entry," the Court stated that

> "[w]hen an alien arrives at a port of entry-for example, an international airport-the alien is on U.S. soil, but the alien is not considered to have entered the country...On the contrary, aliens who arrive at ports of entry-even those paroled elsewhere in the country for years pending removal-are 'treated' for due process purposes 'as if stopped at the border.'
>
> The same must be true of an alien like respondent. As previously noted, an alien who tries to enter the country illegally is treated as an 'applicant for admission,' §1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'" Id. at 1982-1983.

While Petitioner recognizes that Thuraissigiam considers the use of the same habeas provision as he employs herein, 28 U.S.C. §2241, under much different circumstances, Justice Alito would have no reason to distinguish aliens like the individual described in Thuraissigiam from someone like Petitioner who has "effected an entry" if the correct construction of §1225 is as this tribunal concluded it was in Diaz Lopez.

F. The Constitutional Claims Set Forth in the Complaint Were Not Discussed At Any Length in the Government's Response, in Diaz Lopez or the Published Opinions Issued by the Fifth and Eighth Circuit Courts of Appeal

In Diaz Lopez, this Court briefly mentioned the petitioner's claim that his indefinite detention "violates the Due Process Clause of the Fifth Amendment to the United States Constitution." Diaz Lopez, *supra*, at *22. Citing to Demore v. Kim, 539 U.S. 510, 531 (2003) this Court stated, "'[d]etention during removal proceedings is a constitutionally permissible part of' the deportation proceeding." Diaz Lopez, *supra*, at *22. While the Court's citation includes its conclusion that "the Supreme Court has held that due process does not require a bond determination for a section 1226(c) detention during the entirety of removal proceedings," two reasons distinguish the Supreme Court's decision from the claim presented herein.

First, the issue presented in Demore v. Kim related to the question of whether the language at §1226(c) requiring the mandatory detention of aliens convicted of delineated offenses was consistent with an alien's right to Due Process. While the Supreme Court concluded that this form of mandatory detention did not violate Due Process, the question presented herein is distinguishable. Petitioner has not been convicted of any offense that would disqualify him from seeking discretionary release on bond as set forth at §1226(a) thus the analysis provided by the U.S. Supreme Court in Demore would be quite different.

Moreover, Petitioner notes that the Office of the U.S. Solicitor General sent correspondence to the Supreme Court years after this case was argued to apologize about the statistics that the federal government had used in its brief and during argument relating to the average length of time a case takes to work its way through EOIR as it pertains to aliens who are subject to mandatory detention as a result of

§1226(c).[3] While this apology came years after the argument had been presented, the adjusted statistics reflected a substantial change in the information that the Court relied upon in rendering its determination that this provision did not violate affected aliens' guarantee to Due Process in the course of their removal proceedings.

At its core, any discussion of whether Petitioner can set forth a cognizable Due Process claim will require additional information that is not currently available given the procedural posture of the instant matter. Were the Court to deny Petitioner's statutory claim, he would ask that this matter be scheduled for a hearing on a pathway forward to provide this tribunal with the information that it will require to better assess the question of whether mandatory detention of aliens like Petitioner would implicate Fifth Amendment's Due Process concerns.

G. Respondents' Invocation of 8 U.S.C. §1252(g) and 8 U.S.C. §1252(b)(9) is Misplaced.

In Madu v. U.S. Att'y Gen., 470 F.3d 1362 (11th Cir. 2006), the alien challenged the existence of an order of deportation through a habeas petition filed in accordance with 28 U.S.C. §2241. The factual dispute therein was whether he had complied with an Immigration Judge's ("IJ") order requiring his voluntary departure from the United States. This same order included an alternate order of removal if the alien did not voluntarily depart as required. Whether or not an order of deportation existed depended on whether the alien had complied with the order allowing his

[3] https://www.aila.org/blog/solicitor-general-apologizes-to-the-supreme-court-again (last accessed April 13, 2026).

voluntary departure. The District Court concluded that it lacked jurisdiction to consider the habeas petition in light of the REAL ID Act of 2005[4] and transferred the matter to the Circuit Court.

The panel in Madu held that the District Court erred when it concluded that it lacked jurisdiction to consider the habeas petition. The panel noted its joinder with "the Third Circuit in holding that a petitioner who contests the very existence of an order of removal does not seek 'review of an order of removal' within the meaning of the REAL ID Act." Id. at 1366, *citing* Kumarasamy v. U.S. Att'y Gen., 453 F.3d 169 (3rd Cir. 2006).

The panel also considered two other statutory provisions which the government argued would preclude judicial review of the alien's habeas petition.

The first is 8 U.S.C. §1252(g), which provides that

> "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."

The panel disposed of this concern by concluding that

> "[w]hile this provision bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions."

[4] Pub. L. No. 109-13, Div. B, 119 Stat. 231 (May 11, 2005).

The remaining statutory provision is 8 U.S.C. §1252(b)(9), which provides, in pertinent part, that:

> "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact."

The panel disposed of this concern by concluding that

> "[b]ecause section 1252(b)(9) applies only '[w]ith respect to review of an order of removal,' and this case does not involve review of an order of removal, we find that section 1252(b)(9) does not apply to this case."

Respondents cite to Gupta v. McGahey, 709 F.3d 1062 (11th Cir. 2013), for the proposition that "[s]ecuring an alien while awaiting a removal determination constitutes an action taken to commence proceedings." Response at 5. Petitioner agrees. The problem with Respondents' argument, however, is that the Petition does not challenge the fact of Petitioner's arrest for purposes of initiating removal proceedings against him. What the Petition challenges is Petitioner's ongoing and indefinite detention pending a determination in the removal proceedings initiated against him. While it was the means of the alien's arrest that was at issue in Gupta, the Petition herein does not challenge Petitioner's arrest. Rather, the question presented herein is whether Petitioner is subject to mandatory detention following his arrest.

Reliance on Canal A Media Holding, LLC v. USCIS, 964 F.3d 1250 (11th Cir. 2020), is equally unavailing. Canal A involved a challenge to the denial of a nonimmigrant visa petition filed by an employer and on behalf of an employee who had an open case pending before an IJ. The Court dismissed the challenge, concluding that it lacked subject matter jurisdiction because this challenge was "inextricably linked to any ultimate removal order against [the employee]." Id. at 1257.

The panel disagreed, concluding instead that "[t]he District Court's expansive interpretation of the zipper clause does not square with that provision's 'narrow' scope." Id. The panel further noted that

> "...a claim only 'aris[es] from' a removal proceeding when the parties are 'challenging ... removal proceedings.' Regents, 140 S. Ct. at 1907[5]; *see* Madu, 470 F.3d at 1367. This rule makes sense. The zipper clause promotes judicial economy by consolidating 'challenges to any action related to removal proceedings ... with the review of the final order of removal.' 14A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure §3664 (4th ed. Apr. 2020 update). Here, because the Plaintiffs have not brought any challenge to [the employee's] removal proceedings, the zipper clause's channeling function has no role to play."

As it did in reference to whether §1252(g) precludes subject matter jurisdiction, the Circuit Court relied on Madu as a means of explaining why provisions like §1252(b)(9) do not apply to habeas petitions like the Petition herein. In Madu, the panel wrote that "the question ... is whether there is a removal order at all, which ... is a different question than whether an extant removal order is lawful. Madu, *supra*,

[5] Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020).

at 1367. This is indistinguishable from the legal issues raised herein. *See also* Reno v. Amer.-Arab Anti-Discrim. Comm., 525 U.S. 471 (1999).[6]

CONCLUSION

Petitioner submits that the vast majority of District Courts that have considered the legal issues presented have sided with the position set forth in the Petition, that similarly situated aliens are detained in accordance with §1226 and are entitled to an individualized bond hearing in accordance with 8 C.F.R. §1003.19. The Board of Immigration Appeals' ("Board") about-face in Matter of Yajure Hurtado with respect to whether aliens who entered without inspection are subject to mandatory detention is inconsistent with the tools of statutory construction, agency policy and decades of case law affording aliens like Petitioner the opportunity to seek a custody redetermination hearing before an IJ.

The Board's decision-making, and Respondents' position herein, are inconsistent with the statutory text and act only to prolong the violation of Petitioner's Constitutional rights to be free from indefinite detention. Without action taken by this Court, Petitioner will continue to be subject to ongoing violations of his Fifth Amendment rights to procedural and substantive Due Process of law.

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[6] Writing for the majority, Justice Scalia concluded that this provision should be interpreted narrowly, adding that "[i]t is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." Id. at 471. Here, Petitioner does not seek judicial review of any of the three "discreet actions" mentioned in §1252(g). Rather, Petitioner challenges the very existence of an unexecuted order of deportation. To the extent such order of deportation exists, Petitioner likewise challenges the lawfulness of Respondents' decision to detain him indefinitely pending execution of the outstanding order of deportation, an aspect of his removal proceedings that is in no way shielded from judicial review by operation of this provision of the INA.

WHEREFORE, Petitioner respectfully requests the following:

1. That the Court **GRANT** the petition for habeas corpus and order that Petitioner be provided an individualized bond hearing in accordance with 8 C.F.R. §1003.19;
2. That were the Court to deny the petition for habeas corpus on its statutory construction analysis, Petitioner asks that further proceedings be conducted to consider the Constitutional claims set forth in the petition for habeas corpus.
3. That the Court take any further action it seems just and proper under the circumstances presented;

Dated: April 13, 2026

Respectfully submitted,

/s/ David Stoller /s/
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CERTIFICATE OF SERVICE

I, David Stoller, certify that on April 13, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to:

Mai Tran, Assistant U.S. Attorney
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Jacksonville, Florida 32202

/s/ David Stoller /s/
David Stoller, Esquire
Attorney for Petitioner