UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:26-cv-20440-RKA

HUMBERTO HERNANDEZ,

Petitioner,

v.

MIAMI FIELD OFFICE DIRECTOR, et al.,

Respondents.

_____/

PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN TO ORDER TO SHOW CAUSE

Petitioner respectfully submits this Traverse to Respondents' Return to the Court's Order to Show Cause. The Government contends that Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2) because he once entered the United States without inspection. That position conflicts with the statutory structure Congress enacted, the Government's own warrant-based arrest record, and persuasive authority within this District. Under a faithful reading of the Immigration and Nationality Act, Petitioner's detention is governed by 8 U.S.C. § 1226(a). He is therefore entitled to a custody redetermination hearing under 8 U.S.C. § 1226(a). Alternatively, even if § 1225(b)(2) were deemed applicable as a statutory matter, continued detention without individualized review violates the Fifth Amendment.

I. This Court Has Jurisdiction Under 28 U.S.C. § 2241

Petitioner challenges only the statutory authority for his detention. He does not seek review of a removal order or the commencement of removal proceedings. This is a core habeas challenge to executive detention and falls squarely within 28 U.S.C. § 2241.

District courts in this District routinely exercise jurisdiction over materially indistinguishable challenges to detention authority. In *Puga v. Assistant Field Off. Dir.*, No. 25-24535, 2025 U.S. Dist. LEXIS 203222 (S.D. Fla. Oct. 15, 2025), in a thorough statutory analysis, the court addressed whether a noncitizen who entered without inspection and was later arrested in the interior was detained under § 1225(b)(2) or § 1226(a). The court held that § 1226(a) governed and ordered a bond hearing. *Id.* at *13-14. Subsequent decisions have followed *Puga's* reasoning. See *Garcia-Gomez v. Ripa*, No. 25-cv-25567-JB, 2025 U.S. Dist. LEXIS 268338 (S.D. Fla. Dec. 31, 2025); *Policarpo v. Parra*, No. 25-25236-CIV-COHN, 2025 U.S. Dist. LEXIS 264048 (S.D. Fla. Dec. 22, 2025); *Basulto v. Morris*, No. 25-cv-25918-JB, 2026 U.S. Dist. LEXIS 8188 (S.D. Fla. Jan. 14, 2026); *Ardon-Quiroz v. Assistant Field Dir., Krome N. Serv. Processing Ctr.*, No. 25-cv-25290-JB, 2025 U.S. Dist. LEXIS 233669 (S.D. Fla. Nov. 30, 2025).

Section 1252 does not strip jurisdiction over challenges to detention authority. This Court may decide which statutory provision governs Petitioner's custody. To the extent Respondents contend that only the immediate custodian is a proper respondent under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), Petitioner does not oppose substitution of the Assistant Field Office Director as the sole respondent.

II. Petitioner's Detention Is Governed by 8 U.S.C. § 1226(a)

A. The Statutory Text Establishes Two Distinct Detention Regimes

The Immigration and Nationality Act establishes separate detention frameworks for distinct procedural postures. Section 1225 governs inspection at the threshold of admission. Section 1226 governs arrest and detention pending removal proceedings.

Section 1226(a) provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United

States." 8 U.S.C. § 1226(a). Congress thus tied § 1226 detention to three textual features: arrest, warrant, and detention pending a removal decision.

Section 1225(b)(2)(A), by contrast, applies when "an immigration officer determines" during the inspection process that an applicant for admission is not clearly entitled to be admitted. That provision addresses what occurs at the point of inspection and examination.

The Supreme Court has emphasized that statutory interpretation must respect Congress's structural choices. See *Jennings v. Rodriguez*, 583 U.S. 513, 521–22 (2018) (analyzing detention provisions by parsing their textual differences).

Reading § 1225(b)(2) to apply to interior, warrant-based arrests collapses the structural distinction Congress created between inspection detention and warrant-based arrest detention. Courts must avoid interpretations that render statutory provisions superfluous. *Corley v. United States*, 556 U.S. 303, 314 (2009). That canon applies with particular force where, as here, the competing interpretation would effectively eliminate the operative function of a neighboring provision. If every individual charged under § 1182(a)(6)(A)(i) is categorically subject to § 1225(b)(2), then § 1226(a)'s warrant-based arrest authority would have no meaningful role as applied to that broad category of removable noncitizens.

Congress does not legislate redundantly, and courts must give effect to each provision. The more coherent reading is that § 1225 governs inspection determinations at the threshold, while § 1226 governs arrest pursuant to warrant once removal proceedings are underway.

B. The "Deemed Applicant" Clause Does Not Expand § 1225 Beyond Its Inspection Context

Respondents rely on 8 U.S.C. § 1225(a)(1), which states that an alien present without admission "shall be deemed for purposes of this chapter an applicant for admission." That clause

defines legal status for purposes of removability; it does not independently confer detention authority.

Detention authority arises from §§ 1225(b) and 1226. The "deemed applicant" language does not erase the operative verbs and procedural posture embedded in § 1225(b)(2). Section 1225(b)(2) speaks of determinations made during inspection. It does not speak of arrest by warrant following an interior enforcement action. Respondents' reliance on the phrase "seeking admission" does not expand § 1225(b)(2) beyond its inspection context. The statutory phrase describes the posture of an individual undergoing examination by an immigration officer. It does not transform every interior arrest of a noncitizen charged as inadmissible into an ongoing "application" for admission. The focus of § 1225(b)(2) remains the inspection determination—not the mere fact that a person has not been admitted.

If § 1225(a)(1) were read to automatically trigger § 1225(b)(2) detention in all contexts, then § 1226(a) would be functionally nullified for any person present without admission. *Puga* addressed this precise argument and concluded that interpreting § 1225(b)(2) to govern interior warrant-based arrests would collapse the statutory distinction Congress created between inspection detention and warrant-based arrest detention. 2025 U.S. Dist. LEXIS 203222, at *12-14.

The narrower reading preserves both provisions: individuals undergoing inspection are detained under § 1225(b)(2); individuals arrested in the interior pursuant to warrant are detained under § 1226(a).

C. The Government's Own Record Confirms Warrant-Based Arrest Under § 1226(a)

The statutory question is confirmed by the Government's own record. Respondents' own exhibit states that "[a] warrant of arrest was approved by the ICE supervisor and HERNANDEZ was taken into custody without incident." ECF 6-1 at 3. The Government's own charging and

arrest mechanism therefore reflects the exercise of § 1226 authority, not an inspection determination under § 1225.

Section 1226(a) is the only detention provision in the INA that expressly authorizes arrest "on a warrant." Section 1225(b)(2) contains no comparable language. It is triggered by inspection determinations. The Government cannot rely on § 1226's warrant authority to effectuate arrest while simultaneously invoking § 1225 as the source of detention authority. The arrest mechanism confirms the applicable detention framework: § 1226(a) governs this custody.

Courts in this District have recognized this distinction. In *Puga,* the court rejected the Government's argument that § 1225(b)(2) governs interior arrests of noncitizens who entered without inspection. The court emphasized the structural distinction between inspection detention and warrant-based arrest. Puga, 2025 U.S. Dist. LEXIS 203222, at *12–14. Subsequent decisions have followed that reasoning. *See Garcia-Gomez v. Ripa, 2025 U.S. Dist. LEXIS 268338* (S.D. Fla. Dec. 31, 2025); *Policarpo v. Parra*, 2025 U.S. Dist. LEXIS 264048 (S.D. Fla. Dec. 22, 2025); *Basulto v. Morris*, 2026 U.S. Dist. LEXIS 8188 (S.D. Fla. Jan. 14, 2026).

D. The Government's Interpretation Expands Mandatory Detention Beyond Clear Congressional Command

Mandatory detention provisions are construed according to their plain terms, and courts do not expand mandatory detention beyond clear statutory language. *Jennings*, 583 U.S. at 539. The mandatory "shall" language in § 1225(b)(2) applies only once that provision is properly triggered. It does not resolve the antecedent question of whether § 1225(b)(2) governs this arrest posture in the first instance. Respondents' interpretation would subject any person who entered without inspection, regardless of the passage of time or procedural posture, to categorical mandatory detention without bond. If Congress intended to impose such sweeping detention authority, it would have spoken clearly. Applying § 1226(a) to interior warrant-based arrests does not restore

pre-IIRIRA doctrine or confer preferential treatment. It simply respects the separate detention mechanisms Congress enacted in the same statute.

Section 1225(b)(2) speaks clearly in the context of inspection. It does not clearly extend to interior, warrant-based arrests years after entry. Expanding mandatory detention beyond the inspection context would enlarge executive detention authority without clear congressional command.

Morales v. Noem, No. 25-cv-62598, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026), adopted a broader interpretation of § 1225(b)(2) under a different reading of the statutory text. That decision does not alter the statutory text, and other courts within this District have reached a different conclusion. Nor does *Buenrostro-Mendez v. Bondi*, ___ F.4th ___, 2026 WL 323330 (5th Cir. Feb. 6, 2026), which is not binding on this Court. The Eleventh Circuit has not yet spoken on whether § 1225(b)(2) governs interior, warrant-based arrests following entry without inspection. In the absence of binding circuit authority, this Court must apply the statutory text and structure.

E. Constitutional Avoidance Supports Application of § 1226(a)

If ambiguity remains, the canon of constitutional avoidance reinforces the narrower interpretation. Interpreting § 1225(b)(2) to mandate detention without bond for all individuals present without admission, regardless of arrest posture, raises substantial due process concerns. Courts should adopt the interpretation that avoids serious constitutional questions. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

Applying § 1226(a) preserves the statutory structure Congress enacted, avoids rendering § 1226 superfluous, and prevents unnecessary expansion of mandatory detention beyond clear statutory command. For these reasons, Petitioner's detention is governed by 8 U.S.C. § 1226(a).

III. Continued Detention Without Individualized Review Violates Due Process

Even if § 1225(b)(2) were deemed to apply, the Constitution independently limits detention. Immigration detention is subject to constitutional constraints. *Zadvydas*, 533 U.S. at 687. *Demore v. Kim* upheld detention under § 1226(c) for a limited period involving criminal aliens and did not address the scope of § 1225(b)(2) as applied to long-term interior residents arrested years after entry or detention without access to any individualized custody review. Unlike *Demore*, this case does not involve mandatory detention of criminal aliens under § 1226(c), nor a brief detention incident to removal proceedings, but categorical detention without access to any bond process based solely on a disputed statutory classification.

Petitioner has received no bond hearing, no individualized finding of flight risk or danger, and no neutral adjudicator review of his custody. Detention without any meaningful opportunity to contest custody raises serious Fifth Amendment concerns. At minimum, due process requires an individualized custody determination before a neutral decisionmaker when detention is not expressly and unambiguously mandated.

IV. Conclusion

The statutory text and structure, persuasive authority within this District, and Respondents' own warrant-based arrest record confirm that Petitioner's detention is governed by 8 U.S.C. § 1226(a). He is entitled to an individualized bond hearing. If such hearing is not provided within seven days, Petitioner should be released from custody. Alternatively, continued detention without meaningful review violates the Fifth Amendment. The Petition should be granted.

Respectfully submitted,

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