

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

CELESTINO FLORA TORRES

Petitioner,

v.

RONNIE WOODALL, in his official
capacity as Warden of the Florida Baker
Correctional Facility; GARRET
RIPA, in his official capacity as Miami Field
Office Director, Immigration and Customs
Enforcement's Enforcement and Removal
Operations; TODD LYONS, in his official
capacity as Acting Director of Immigration
and Customs Enforcement; KRISTI NOEM,
in her official capacity as Secretary of the
Department of Homeland Security;
PAMELA BONDI, in her official capacity
as Attorney General, and EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW

Respondents.

No. 3:26-cv-00154-JEP-LLL

PETITIONER'S REPLY

INTRODUCTION

Petitioner filed a Petition for Writ of Habeas Corpus and Request for Order to Show Cause on January 27, 2026. (Doc. 1). This Court issued an Order to Show Cause on February 20, 2026. (Doc. 5). Federal Respondents filed a Response on March 23, 2026. (Doc 9). Petitioner is replying to Respondent's Response *See* Doc. 5; Doc. 9.

ARGUMENT

I. 8 U.S.C. § 1252(g) and §1252(b)(9) Do Not Bar Review of Petitioner's Claim.

8 U.S.C. § 1252(g) bars jurisdiction “only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘*commence* proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (“We did not interpret this language to sweep in any claim that technically can be said to ‘arise from’ the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.”). “When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. United States Citizenship and Immigr. Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020). Petitioner is not challenging the discretionary decision to commence removal proceedings; the issue of the present case is whether Petitioner is detained mandatorily under 8 U.S.C. § 1225(b)(2) or discretionarily under 8 U.S.C. § 1226(a). *See Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *3 (M.D. Fla. Dec. 1, 2025); *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Hinojosa Garcia v. Noem*, No. 2:25-CV-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *see also Duvallon Boffill v. Field Off. Dir., Miami Field Off., U.S. Immigr. and Customs Enf’t, et al*, No. 25-cv-25179, 2025 WL 3246868 at *3;4 (S.D. Fla. Nov. 20, 2025)

This claim is not barred by 8 U.S.C. §1252(b)(9) either given that Petitioner is not requesting a review of a removal order. *See Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation); *see also Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *3 (M.D. Fla. Dec. 1, 2025); *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Hinojosa Garcia v. Noem*, No. 2:25- CV-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *see also Duvallon Boffill v. Field Off. Dir., Miami Field Off., U.S. Immigr. and Customs Enf't, et al*, No. 25-cv-25179, 2025 WL 3246868 at *4 (S.D. Fla. Nov. 20, 2025)

II. Seeking Administrative Relief Would be Futile.

Respondents' mention the lack of administrative exhaustion, however, the exhaustion requirement under 8 USC § 1251(d)(1) "is not jurisdictional," but prudential. *Kemokai v. U.S. Att'y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023) (acknowledging the abrogation of prior Eleventh Circuit precedent interpreting § 1252(d)(1) as a jurisdictional bar by *Santos-Zacaria v. Garland*, 598 U.S. 411, 413 (2023)). Additionally, pursuing the administrative relief would be futile given the Board of Immigration Appeal's Decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

In *Yajure Hurtado*, decided just in September, the BIA rejected the precise argument raised in this case. 29 I&N Dec. at 220 ("Under the plain reading of the INA, we affirm the [IJ's] determination that he did not have authority over the bond request because aliens who are present in the United States without admission are applicants for

admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”). Administrative “exhaustion is not required where . . . an administrative appeal would be futile.” *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (citing *Von Hoffberg v. Alexander*, 615 F.2d 633, 638 (5th Cir. 1980)). The result of any “bond appeal to the BIA is nearly a foregone conclusion under [*Yajure Hurtado*], any prudential exhaustion requirements are excused for futility.” *Puga v. Assistant Field Off. Dir., Krome North Serv. Processing Ctr.*, 25-cv-24535, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025); see also *Jefry Josue Del Cid Del Cid and Marlon Letona Marroquin Marroquin v. Pamela Bondi*, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025); *Guerrero Orellana v. Moniz*, --F. Supp. 3d--, 2025 WL 2809996, at *4 n.2 (D. Mass. Oct. 3, 2025); *Inlago Tocagon v. Moniz*, --F. Supp. 3d--, 2025 WL 2778023, at *2 (D. Mass. Sep. 29, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 WL 2710211, at *5 (D. Nev. Sep. 23, 2025); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *9–10 (D. Nev. Sep. 17, 2025); *Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *3 (M.D. Fla. Dec. 1, 2025).

III. Petitioner is Being Detained Pursuant to 8 USC § 1226¹.

There are three relevant statutes to authorize detention. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an

¹ Petitioner is aware of the split-decisions *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) and *Herrera Avila v Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026), but respectfully maintains that those decisions, which takes the minority position on this issue, were wrongly decided. Most importantly, that decision is not binding on this Court.

Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Third, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

In the present case, Petitioner does not have an order of removal, is not in expedited removal proceedings, and has not been designated as an “arriving alien”. *See* Doc. 9-2. Furthermore, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute is built around the idea that these individuals are subject to border inspections because they are “seeking admission” to the United States. For that reason, it makes little sense to apply § 1225 to someone who has been living inside the United States for more than 20 years, as Petitioner has, because such an individual is no longer in the posture of an arriving applicant for admission.

Petitioner has been present in the United States for more than 20 years before his apprehension by ICE, which makes “his detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond,” *Puga*, 2025 WL 2938369, at *3, not § 1225(b)(2), applicable to noncitizen “applicant[s] for admission” to the United States. § 1225(b)(2)(A).

It has been found by courts throughout the country that Respondents' interpretation of the INA to expand the scope of 8 USC §1225 detention, "directly contravenes the statute, disregards decades of settled precedent," and is erroneous. *Hernandez Alvarez v. Morris*, 25-24806 (S.D. Fla. Oct. 27, 2025), ECF 6 at 5; *Cerro Perez v. Parra*, 25-24820 (S.D. Fla. Oct 27, 2025), ECF 9 at 6, *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-cv-24292 (S.D. Fla. Oct. 10, 2025), ECF 41 at 10; *see also Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sep. 9, 2025) ("Finally, the BIA's decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation."); *see also Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *5 (M.D. Fla. Dec. 1, 2025); *Puga*, 2025 WL 2938369, at *3–6; *Merino v. Ripa*, No. 25-23845, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); *Lopez v. Hardin*, No. 25-cv830, 2025 WL 2732717, at *2 (M.D. Fla. Sep. 25, 2025); *Guerra v. Joyce*, No. 25-cv-00534, 2025 WL 2986316, at *3 (D. Me. Oct. 23, 2025); *Lomeu v. Soto*, 25-cv-16589, 2025 WL 2981296, at *7–8 (D.N.J. Oct. 23, 2025); *Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at *4 (D.N.J. Oct. 23, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120, 2025 WL 2977650, at *5–6 (D. Colo. Oct. 22, 2025); *Aguiar v. Moniz*, No. 25-cv-12706, 2025 WL 2987656, at *3 (D. Mass. Oct. 22, 2025); *Rivera v. Moniz*, 25-cv-12833, 2025 WL 2977900, at *1–2 (D. Mass. Oct. 22, 2025); *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042, at *7 (D. Md. Oct.

21, 2025); *Miguel v. Noem*, 25-11137, 2025 WL 2976480, at *6 (N.D. Ill. Oct. 21, 2025); *Pineda v. Simon*, No. 25-cv-01616, 2025 WL 2980729, at *2 (E.D. Va. Oct. 21, 2025); *Matheus Araujo DA Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163, at *2 (D. Mass. Oct. 21, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610, at *4–6 (N.D. Ill. Oct. 20, 2025); *Polo v. Chestnut*, No. 25-cv01342, 2025 WL 2959346, at *11 (E.D. Cal. Oct. 17, 2025); *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigr. Processing Ctr.*, No. 25-cv-01187, 2025 WL 2959274, at *3 (E.D. Cal. Oct. 17, 2025).

i. Section 1226(a) provides the default detention authority for individuals arrested in the United States for a removal proceeding.

Section 1226 provides the “default rule” for noncitizens who are apprehended “inside the United States” and detained for removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 288. The plain language of § 1226(a) provides that DHS “may” arrest and detain a noncitizen “pending a decision on whether the alien is to be removed from the United States” while also permitting the noncitizen’s release “on bond” or other conditions. 8 U.S.C. § 1226(a). By statute, removal proceedings cover people, like Petitioner, who are charged with being inadmissible after entering the country without inspection. *See* 8 U.S.C. § 1229a(a)(1) (directing the immigration judge to “conduct proceedings for deciding the inadmissibility . . . of [a noncitizen]”); *see also id.* § 1229a(a)(2), (c)(2)(A), & (e)(2)(A) (referring to charges and determinations of inadmissibility). Given that Congress wrote § 1226 to cover inadmissible noncitizens, it necessarily applies to individuals, like Petitioner, who is charged as inadmissible for being “present in the United States without being

admitted or paroled,” 8 U.S.C. § 1182(a)(6)(A)(i), and are detained “pending a decision on whether [they will] be removed,” *id.* at § 1226(a).

“The historical context in which [§ 1226] was adopted confirms the plain import of its text.” *Biden v. Texas*, 597 U.S. 785, 804 (2022) (citing *Niz-Chavez v. Garland*, 593 U.S. 155, 165 (2021)). When it enacted Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585 in 1996, Congress maintained the basic detention framework that had long provided bond to people who had entered without inspection and were arrested for a deportation proceeding. Congress did so by replacing the language providing for detention and bond “[p]ending a determination of deportability” in the predecessor statute, 8 U.S.C. § 1252(a) (1995), with “pending a decision on whether the alien is to be removed” in § 1226. Through this change, Congress thus made clear that the noncitizens who entered without inspection and whom IIRIRA reclassified as inadmissible rather than deportable would remain eligible for bond during removal proceedings. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (explaining that § 1226(a) “restates” the provisions in former § 1252(a)(1) (1995) providing for “release on bond” to people in the country (including those who entered without inspection)); *accord* H.R. Rep. No. 104-828, at 210. Had Congress intended for § 1226 to apply only to deportable noncitizens, it could have simply retained the prior language referring to “deportability,” as it did in these sections of the statute. *See, e.g.*, 8 U.S.C. § 1229c(a)(1) (retaining reference to “deportable”).

ii. Section 1226(c) reinforces that § 1226 provides people like Petitioner with access to bond.

Section 1226(c) confirms the applicability of § 1226 to inadmissible noncitizens like Petitioner through the statute's structure. Section 1226(c) is an exception to § 1226's general release authority. Section 1226(c) carves out a subset of inadmissible noncitizens from bond eligibility under § 1226(a) wise they are charged with removal on certain criminal or terrorism-based grounds, instead subjecting them to mandatory, no-bond detention. *See* 8 U.S.C. §§ 1226(c)(1)(A) & (D), 1226(c)(4); *see also* 8 U.S.C. § 1226(a) (permitting release on bond "[e]xcept as provided in subsection (c)"); *Nielsen v. Preap*, 586 U.S. at 397, 409 (2019).

Section 1226(c) is thus the exception that proves the rule: § 1226(a) generally affords bond to inadmissible noncitizens—including those, like Petitioner, who entered the country without inspection—*unless* the exception in § 1226(c) applies. Indeed, if § 1226(a) did not generally provide bond to inadmissible noncitizens, Congress would have had no need to exclude a subset of them from bond-eligibility under § 1226(a) in the first place. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (the fact that Congress has created specific exceptions "proves" that the statute applies in general).

Congress confirmed this point just last year when it enacted the Laken Riley Act ("LRA"). The LRA added a new ground of mandatory detention to § 1226(c) that specifically targets noncitizens who entered the country without inspection if they are also charged with, arrested for, convicted of, or admit to committing certainly newly-added

crimes. *See* 8 U.S.C. § 1226(c)(1)(E). The LRA thus makes it clear that § 1226(c) is the exception to the general rule that noncitizens charged as inadmissible for entering the country without inspection are eligible for bond under § 1226(a). Otherwise, these would have been no need for Congress to exclude a subset of those entrants from § 1226(a) bond eligibility.

CONCLUSION

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and Request for Order to Show Cause, this Court should grant the petition.

Respectfully submitted,

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Dated: April 21, 2026

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Respectfully submitted,

/s/ Kenia Garcia
Kenia Garcia, Esq.