UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FREDDY ANTONIO TELLEZ LOPEZ, Civil Action No. 0:26-cv-60206

Petitioner,

v.

MARCOS CHARLES, Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Acting Executive Associate Director.
JUAN AGUDELO, Interim Miami Field Office Director.
CHARLES WALL, Principal Legal Advisor for ICE's Office of the Principal Legal Advisor.
PAMELA BONDI, U.S. Attorney General,
KRISTI NOEM, U.S. Secretary of the Department of Homeland Security,
TODD M. LYONS, Senior Official Performing the Duties of the Director of US Immigration and Customs Enforcement.

Respondents.

_______________________________________/

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

District Courts have the authority to grant writs of habeas corpus. *See* 28 USC 2241(a). Habeas corpus is fundamentally "a remedy for unlawful executive detention." *Munaf v. Geren*, 533 U.S. 674, 693 (2008) (citation omitted). A writ may be issued to a petitioner who demonstrates that he is being held in custody in violation of the Constitution or federal law. See 28 USC 2241(c)(3). The Court's jurisdiction extends to challenges involving immigration-related detention. *See Zadydas v. Davis*, 533 Us. 678, 687 (2001).

In their opposition, Respondents "recognize that [a plethora of] adverse district court decisions from the Southern District of Florida have been issued with respect to [their] argument, but maintain and preserve its position [only] for appellate purposes. *See* Footnote 1 page 2 of Respondent's Response.

Respondents' opposition confirms the central legal error underlying Petitioner's continued detention: Respondents conflate the statutory definition of "applicant for admission" under 8 U.S.C. § 1225(a)(1) with the detention authority governing interior removal proceedings.

The question before this Court is not whether Petitioner was ever an "applicant for admission" in 2021. The question is which detention statute governs now, after:

1. He physically entered the United States in April 2021;
2. He was released on his own recognizance;
3. He resided openly in the interior for over four (4) years;
4. The Immigration Judge vacated the expedited removal order; and
5. DHS placed him into full removal proceedings under 8 U.S.C. § 1229a.

Under the plain structure of the INA, consistent Supreme Court precedent, and the Eleventh Circuit authority, Petitioner's detention is governed by § 1226(a), not § 1225(b)(2)(A). Because he was arrested in the interior and placed into removal proceedings under § 1229a, his detention falls squarely within § 1226(a). *Jennings v. Rodriguez,* 583 U.S. 281 (2018); *See also Sopo v. U.S. Att'y Gen.* 825 F. 3d 1199 (11th Cir. 2016). He is therefore being detained without lawful statutory authority. Because § 1225 no longer applies and Respondents have failed to exercise detention authority consistent with § 1226(a), his continued confinement is unlawful. The appropriate *habeas* remedy is immediate release. *Id.*

Courts within the Southern District of Florida have repeatedly confirmed that § 1226(a)—not § 1225(b)(2)— governs the detention of noncitizens apprehend in the interior and placed into § 1229a proceedings. *See*, e.g., *Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ (S.D. Fla. Oct. 15, 2025); *Zamora Policarpo v. Parra*, No. 25-25236-CIV-COHN (S.D. Fla. Dec. 22, 2025); *Espinal Encarnación v. ICE Field Office Director*, No. 25-61898-CIV-DAMIAN (S.D. Fla. Dec. 23, 2025). In *Zamora Policarpo,* the court further held that the petitioner's failure to appeal the BIA did not bar habeas where the challenge concerned the statutory authority for detention, and concluded that detention was properly governed by § 1226(a), entitling the petitioner to a bond hearing.

Respondents' reliance on *Matter of Yajure Hurtado*, *Jennings v. Rodriguez*, and generalized statutory definitions does not alter that conclusion.

I. RESPONDENTS MISFRAME THE STATUTORY QUESTION

Respondents repeatedly argue that Petitioner qualifies as an "applicant for admission" under §1225(a)(1) because he entered without inspection and was never formally admitted. That premise is not disputed.

But the statutory definition of "applicant for admission" does not answer the detention question.

The INA separates:

- **Inspection and admission detention** under § 1225; and
- **Post-arrest detention pending removal proceedings** under § 1226.

Section 1226(a) expressly governs the arrest and detention of a noncitizen "pending a decision on whether the alien is to be removed from the United States." That is precisely Petitioner's procedural posture today.

Respondents' interpretation would render § 1226(a) inapplicable to any noncitizen who entered without inspection—no matter how long ago, no matter whether they were released, and no matter whether they are in full § 1229a proceedings. That reading collapses two (2) distinct

statutory frameworks and effectively nullifies § 1226(a) for a broad category of interior noncitizens. Statues must be interpreted to give the effect to all provisions, not to render one superfluous. *See* Duncan v. Walker, 533 U.S. 167, 174 (2001) *("It is our duty to give effect, if possible, to every clause and word of a statute.")* and *See also* Corley v. United States, 556 U.S. 303, 314 (2009) (courts should *"give effect, if possible, to every clause and word of a statute"*).

II. VACATUR OF EXPEDITED REMOVAL TERMINATED § 1225(b)(1) AUTHORITY

The procedural history is critical.

1. Petitioner was initially placed in expedited removal under § 1225(b)(1) in April 2021.
2. He was released on his own recognizance, wherein the government determined that he was not a flight risk or a danger to society.
3. In October 2025, the Immigration Judge vacated the expedited removal order.
4. DHS then initiated removal proceedings under § 1229a by issuing a Notice To Appear [hereinafter, the "NTA"].

Once expedited removal was vacated and DHS placed Petitioner into full removal proceedings under § 1229a, the statutory detention authority necessarily shifted. Section 1225(b)(1) governs detention during the pendency of expedited removal proceedings. It does not authorize detention after those proceedings have been terminated. Upon vacatur of expedited removal and commencement of § 1229a proceedings, the applicable detention statute is 8 U.S.C. § 1226(a).

Courts within this District have expressly recognized that § 1226(a) operates as the default detention authority for noncitizens who are physically present in the United States and placed into § 1229a removal proceedings. See *Cerro Perez v. Parra*, No. 1:25-cv-24820-CV-Williams (S.D. Fla. Oct. 27, 2025) (granting § 2241 habeas petition and holding that once expedited removal was no longer operative, detention was governed by § 1226(a), requiring an individualized bond hearing); *Alvarez Puga v. Assistant Field Office Director, Krome N. Serv. Processing Ctr.*, No. 1:25-cv-24535-CIV-Altonaga (S.D. Fla. Oct. 15,

2025) (granting in part habeas relief and recognizing § 1226(a) as the governing detention statute following placement into § 1229a proceedings).

These decisions reflect the statutory structure of the INA. Section 1225 governs applicants for admission and expedited removal. Section 1226 governs arrest and detention pending a decision on removal in full § 1229a proceedings. To hold otherwise would permit DHS to resurrect § 1225 detention authority indefinitely—even years after release into the interior and after formal initiation of removal proceedings before an Immigration Judge—an interpretation inconsistent with both the statutory text and the structure of the INA.

Respondents cite 8 C.F.R. § 235.3(b)(3), but regulations cannot expand detention authority beyond the statute itself. Once expedited removal was vacated, the mandatory detention provision of § 1225(b)(1) ceased to apply.

Petitioner is now detained solely pending adjudication of removal proceedings under § 1229a. That detention, if authorized at all, must arise under § 1226(a). However, Respondents have continued to treat him as subject to mandatory detention under § 1225. Because § 1225 authority terminated upon vacatur of expedited removal, and because no lawful basis for mandatory detention exists under § 1226(a), Petitioner's continued confinement is unauthorized and unlawful.

III. MATTER OF *YAJURE HURTADO* DOES NOT CONTROL THIS COURT

Respondents rely heavily on *Matter* of *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That reliance is misplaced for several reasons.

A. BIA Decisions Do Not Bind Article III Courts on *Habeas* Review

This Court exercises independent authority under 28 U.S.C. § 2241 to determine the legality of detention. Agency interpretations do not bind federal courts on constitutional or statutory *habeas* questions. *See* INS v. St. Cyr, 533 U.S. 289, 302–03 (2001) (affirming that §

2241 confers jurisdiction on federal courts to review the legality of executive detention and rejecting the argument that agency determinations foreclose habeas review).

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B. The Southern District of Florida Has Repeatedly Rejected the Government's Position

Respondents themselves acknowledge that numerous judges in this District have concluded that § 1226(a)—not § 1225(b)(2)—governs detention in materially indistinguishable cases.

The Government "preserves" its position for appeal. But preservation for appeal does not create controlling precedent.

Until the Eleventh Circuit rules otherwise, the clear weight of authority within this District supports Petitioner.

IV. *JENNINGS v. RODRIGUEZ* DOES NOT AUTHORIZE INDEFINITE MANDATORY DETENTION HERE

Respondents rely on Jennings to argue that § 1225(b) mandates detention without bond.

Jennings held only that courts may not rewrite § 225 to impose periodic bond hearings as a matter of statutory construction. It did not:

- Decide which statute governs interior post-release detention;
- Authorize indefinite detention without constitutional limits; or
- Address a case where expedited removal was vacated after years of interior residence.

Jennings concerned arriving aliens detained shortly after entry. Petitioner was released and lived in the interior for four (4) years before re-arrest.

The procedural posture is fundamentally different.

VI. SECTION 1182(d)(5) PAROLE DOES NOT DISPLACE HABEAS RELIEF

Respondents argue that parole under § 1182(d)(5) is the only mechanism for release.

That argument assumes the conclusion that § 1225 governs detention. If § 1226(a) governs—as Petitioner contends—then bond jurisdiction lies with the Immigration Judge.

The existence of DHS parole authority does not eliminate the Court's *habeas* jurisdiction to determine whether detention is authorized under the correct statute.

V. EXHAUSTION DOES NOT BAR RELIEF

Respondents note that Petitioner did not appeal the Immigration Judge's bond jurisdiction ruling to the BIA.

Exhaustion is prudential in § 2241 immigration cases, not jurisdictional. Courts routinely excuse exhaustion where:

- The issue is purely legal;
- Further review would be futile; or
- Irreparable injury would result from delay.

Administrative "exhaustion is not required where not genuine opportunity for adequate relief exists … or an administrative appeal would be futile[.]" *Linfors v. United States*, 673 F.2 332, 334 (11th Cir. 1982).

Here:

1. The IJ denied bond solely for lack of jurisdiction.

2. The BIA has adopted the same interpretation in *Yajure*.
3. Multiple district courts have excused exhaustion as futile on this precise issue.

Here, requiring exhaustion of an appeal to the BIA would serve no purpose other than delay as the BIA rejected the precise argument Petitioner raises here, concluding that "aliens who are present in the United States without admission are applicable for admission under …8 USC section 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I&N Dec. at 220. Because Immigration Judges are bound by BIA precedent, any request for a bond hearing would serve no purpose. *See* e.g., *Puga v. Assistant Field Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535, 2025 WL 2938369, at *3-6 (S.D. Fla. Oct. 15, 2025) ("Since the result of Petitioner's custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado*, any prudential exhaustion requirements are excused for futility."; *Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sep. 8, 2025)(waiving exhaustion as "the most recent BIA decision on [whether section 1225 or 1226 applies] has adopted the legal interpretation of the new DHS policy that petitioners challenge.")

VIII. CONDITIONS-OF-CONFINEMENT CLAIMS DO NOT DEFEAT CORE *HABEAS* RELIEF

Respondents argue that conditions-of-confinement claims are not cognizable in *habeas*. Even if that were correct, it is beside the point. Petitioner's core claim is that he is detained under the wrong statutory authority and is; therefore, entitled to an individualized bond hearing. The Court may disregard any conditions allegations entirely and still grant *habeas* relief based on unlawful detention classification alone.

IX. DUE PROCESS LIMITS PROLONGED CIVIL DETENTION

Petitioner has been detained since **October 1, 2025**, without ever receiving an individualized bond hearing. He has no criminal history, substantial family and community ties in the United States, a demonstrated history of compliance with prior release, and a pending

appeal before the BIA. Yet he remains detained based solely on a categorical statutory interpretation that this Court has the authority to reject.

Civil immigration detention must bear a reasonable relation to its nonpunitive purpose. While Congress may authorize brief periods of mandatory detention in limited circumstances, prolonged detention without an opportunity to assess flight risk or danger to the community raises serious due process concerns. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 529–30 (2003).

This case does not involve mandatory detention under § 1226(c), nor does it involve a recent border arrival. Petitioner has already endured months of detention without any neutral determination of whether continued confinement is necessary. At minimum, due process requires an opportunity to demonstrate that detention is unwarranted under the individualized standards Congress established in § 1226(a).

Civil immigration detention must bear a reasonable relation to its nonpunitive purpose. While Congress may authorize limited periods of detention, prolonged confinement without lawful statutory authority violates due process. Petitioner has been detained for months under an incorrect statutory framework. Because Respondents lack valid authority to continue his detention under § 1225, and have not lawfully justified detention under § 1226(a), the continued deprivation of liberty cannot stand. The Constitution does not permit executive detention based on an erroneous statutory classification. Immediate release is therefore required.

X. CONCLUSION

Respondents' theory would permit DHS to detain a noncitizen indefinitely under § 1225 even after:

- Release into the interior,
- Years of residence,
- Vacatur of expedited removal, and
- Initiation of full § 1229a proceedings.

That interpretation collapses distinct statutory frameworks and exceeds Congress's grant of detention authority.

Once expedited removal was vacated, § 1225(b)(1) authority terminated as a matter of law. Because Respondents continue to detain Petitioner under a statutory provision that no longer applies, his detention is unlawful under 28 U.S.C. § 2241(c)(3).

Habeas corpus is a remedy for unlawful executive detention. Where detention lacks statutory authorization, the proper remedy is release.

For these reasons, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of *Habeas Corpus*;
2. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a); and
3. Order Respondents to release Petitioner immediately.

Dated: February 4, 2026

Respectfully submitted,

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TABLE OF AUTHORITIES

Federal District Court Decisions

1. Alvarez Puga v. Assistant Field Office Director, Krome North Service Processing Ctr.
   Chief Judge Cecilia M. Altonaga, No. 1:25-cv-24535-CIV-Altonaga (S.D. Fla. Oct. 15, 2025)
2. Cerro Perez v. Parra
   Judge Kathleen M. Williams, No. 1:25-cv-24820-CV-Williams (S.D. Fla. Oct. 27, 2025)
3. **Merino v. Ripa**
   S.D. Fla., No. 25-23845 (Oct. 15, 2025)
4. **Lopez v. Hardin**
   M.D. Fla., No. 25-cv-830 (Sept. 25, 2025)
5. **Pizarro Reyes v. Raycraft**
   E.D. Mich., No. 25-cv-12546 (Sept. 9, 2025)
6. **Gil-Paulino v. Sec'y of DHS**
   S.D. Fla., No. 25-24292 (Oct. 10, 2025)

Statutes

1. **8 U.S.C. § 1225(b)(1)** — Expedited removal detention authority.
2. **8 U.S.C. § 1226(a)** — Detention authority pending § 1229a removal proceedings.
3. **8 U.S.C. § 1229a** — Removal proceedings authority.
4. **28 U.S.C. § 2241** — Habeas corpus jurisdiction and remedy for unlawful detention.

Regulations

1. **8 C.F.R. § 235.3(b)(3)** — Regulation on detention classifications.