

UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF FLORIDA

Case No.: 26-cv-20552-JB

AXEL YONATAN RAMOS RAMIREZ,

Petitioner,

v.

KRISTI NOEM, in her official capacity
as Secretary of Department of
Homeland Security, *et al.*,

Respondents.

ORDER GRANTING IN PART PETITION FOR WRIT OF HABEAS CORPUS

THIS CAUSE comes before the Court upon Petitioner Axel Yonatan Ramos Ramirez's amended Verified Petition for Writ of Habeas Corpus (the "Petition"). ECF No. [5]. Respondents filed a Response in opposition to the Petition. ECF No. [8]. Upon due consideration of the parties' submissions, the pertinent portions of the record, and the applicable law, for the reasons explained below, the Petition is **GRANTED IN PART**.

I. BACKGROUND

Petitioner is a citizen of Guatemala who has lived in the United States since 2021. ECF Nos. [5] ¶¶ 1–2, ECF No. [8-1] at 1. Petitioner has no criminal history. ECF Nos. [5] ¶ 44, [8-1] at 2. Petitioner's first encounter with the United States Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") took place on February 8, 2023 during a vehicle stop. ECF No. [8-1].

According to the Record of Deportable/Inadmissible Alien, Petitioner admitted to ICE officers that he “had illegally entered the United States and did not have any legal status.” *Id.* at 2. A Warrant of Arrest and Notice to Appear were issued pursuant to section 236 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1226, charging Petitioner with inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) as “an alien present in the United States without being admitted or paroled.” ECF Nos. [8-3] at 1, [8-5]. Removal proceedings were initiated against Petitioner, and he was ordered to appear before an immigration judge on August 21, 2025 “to show why [he] should not be removed from the United States.” ECF No. [8-3] at 1. Petitioner was then released on his own recognizance “[i]n accordance with section 236 of the Immigration and Nationality Act [codified at 8 U.S.C. ¶ 1226].” ECF No. [8-4] at 1. Petitioner appeared for his immigration hearing as scheduled, and the matter was reset to January 25, 2029 to address the merits of Petitioner’s application for relief. ECF Nos. [8] at 6, [8-6].

On December 28, 2025, Florida Highway Patrol (“FHP”) detained Petitioner following a traffic stop of his work vehicle in which Petitioner was a passenger. ECF Nos. [5] ¶ 2, [8-2] at 3. FHP transferred custody of Petitioner to United States Customs and Border Patrol (“CPB”) and, on December 31, 2025, CPB transferred custody of Petitioner to ICE. ECF No. [8] at 6. Petitioner is currently being held at the Broward Transitional Center located in Pompano Beach, Florida. ECF No. [8-7].

On January 28, 2026, Petitioner filed the instant Petition, which he amended on January 30, 2026 to include the required verification. ECF Nos. [1], [5]. Petitioner

raises four claims. Count I alleges that Petitioner's continued detention without a bond hearing violates the INA because the mandatory detention provision at 8 U.S.C. § 1225(b)(2) was improperly applied to him, as a person who previously entered the United States and was residing in the country before being placed in removal proceedings. ECF No. [5] ¶¶ 52–55. Count II alleges that Petitioner's continued detention without a bond hearing violates the applicable bond regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. *Id.* ¶¶ 56–59. Counts III and IV allege that Respondents' policy and practice of applying 8 U.S.C. § 1225(b)(2) to detainees who previously entered the United States and were residing in the country before being placed in removal proceedings, and doing so without advance publication and notice-and-comment, violates the Administrative Procedures Act. *Id.* ¶¶ 60–71. Finally, Count V alleges that Petitioner's continued detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution. *Id.* ¶¶ 72–76. Petitioner requests that the Court issue declaratory relief and enter an order (i) requiring Respondents to provide Petitioner with a constitutionally adequate bond hearing or release him, (ii) setting aside Respondents' "unlawful detention policy," and (iii) awarding Petitioner his reasonable attorney's fees and costs. *Id.* ¶ 78.

Respondents filed its Response to the Petition. ECF No. [8]. The Response does not set forth any analysis of the legal arguments that Respondent asserts in opposition to the Petition. Rather, Respondents advise that in light of the fact that "Judges in this District have reached the opposite conclusion" than Respondents, and

have consistently held that detainees such as Petitioner are not subject to mandatory detention, Respondents “submit[] [an] abbreviated response . . . in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court’s consideration of this matter.” *Id.* at 2. As such, Respondents “rel[y] upon, and incorporate[] by reference, the legal arguments it presented in *Penagos Quintero v. Ripa*, Case No. 25-25746-CIV-BECERRA.” *Id.* at 4. In so doing, Respondents acknowledge that the Court’s decision in *Penagos Quintero* “would control the result here if the Court adheres to that decision,” at least until the appeals are resolved in *Hernandez-Alvarez v. Warden, Federal Detention Center Miami, et al.*, No. 25-14065, and *Cerro Perez v. Assistant Field Office Director, et al.*, No. 25-14075, which are currently pending before the Eleventh Circuit. *Id.*

II. ANALYSIS

District courts have the authority to grant writs of habeas corpus. *See* 28 U.S.C. § 2241(a). Habeas corpus is fundamentally “a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (citation omitted). A writ may be issued to a petitioner who shows that he is being held in custody in violation of the Constitution or federal law. *See* 28 U.S.C. § 2241(c)(3). The Court’s jurisdiction extends to challenges involving immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

A. Jurisdiction

Respondents argue that the Court lacks jurisdiction to consider the Petition based upon 8 U.S.C. § 1252(g). Respondents' position is not supported by either a plain reading of the statute or the applicable case law. Section 1252 is "Congress's comprehensive scheme for judicial review of removal orders." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1256–57 (11th Cir. 2020). To be sure, this provision bars judicial review over "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[.]" 28 U.S.C. § 1252(g). It "is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999). However, "1252(g) is not to be construed broadly as a 'zipper' clause applying to the full universe of deportation-related claims, but instead as applying narrowly to only the three 'discrete' governmental actions enumerated in that subsection." *Wallace v. Sec'y, U.S. Dep't of Homeland Sec.*, 616 F. App'x 958, 960 (11th Cir. 2015) (citing *A.A.D.C.*, 525 U.S. at 472–73). "And although many other decisions or actions may be part of the deportation process, only claims that arise from one of the covered actions are excluded from [a court's] review. . . ." *Camarena v. Dir., Immigr. & Customs Enft*, 988 F.3d 1268, 1272 (11th Cir. 2021) (internal citations and quotations omitted).

Here, Petitioner's claim does not implicate the Attorney General's decision to commence proceedings, adjudicate cases, or execute removal orders. Rather,

Petitioner challenges the legality of his detention. Such claim is reviewable. *See Canal A Media Holding, LLC*, 964 F.3d at 1257–58 (claim was not barred by § 1252(g) where action did not fall into one of three categories as “[w]hen asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.”); *see also Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *6 (D. Minn. Aug. 15, 2025) (petitioner’s due process challenge was not barred by § 1252(g) as it did not “challenge the actions of Respondents in commencing proceedings, adjudicating cases, or executing removal orders.”); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *8 (D. Nev. Sept. 17, 2025) (“[B]ecause Petitioner challenges the lawfulness of his detention during the pendency of his removal proceedings, it is not a challenge to one of the ‘three discrete events along the road to deportation’ that § 1252(g) applies to.”); *Leal-Hernandez v. Noem*, No. 25-cv-02428, 2025 WL 2430025, at *5 (D. Md. Aug. 24, 2025) (“Petition[er] mounts a challenge solely to his continued custody. None of the cases the Government relies on pertain to cases in which a petitioner . . . pursued judicial review of his allegedly unconstitutional custody. In accordance with Supreme Court precedent and the plain language of the text, § 1252(g) does not bar [jurisdiction].”); *Sanchez v. LaRose*, No. 25-cv-2396, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (“Petitioner seeks only review of the legality of her detention, which does not require judicial intervention into the Attorney General’s decisions to commence proceedings, adjudicate cases, and execute removal orders. . . . Adopting [the government’s] interpretation of 8 U.S.C. § 1252(g) . . . would eliminate judicial review of immigration detainee’s claims of unlawful detention[.]”);

Campos Leon v. Forestal, No. 25-cv-01774, 2025 WL 2694763, at *1–2 (rejecting respondents’ § 1252(g) argument and concluding that the court had jurisdiction to hear habeas petition challenging DHS’ refusal to abide by the IJ’s bond order).

Accordingly, section 1252(g) does not prevent this Court from exercising jurisdiction over the Petition.

B. Exhaustion

Next, Respondents argue that the Court should dismiss the Petition because Petitioner has not exhausted his administrative remedies. Petitioner did not file a reply, but argues in his Petition that any appeal to the BIA is futile given the BIA’s recent decision in *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). ECF No. [5] ¶¶ 49, 51. Respondents’ argument misses the mark.

The exhaustion requirement under 8 U.S.C. § 1252(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)). In *In re Yajure Hurtado*, the BIA rejected the precise argument Petitioner raises here. 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.”). The BIA issued *In re Yajure Hurtado* as a

published decision, and such decisions “serve as precedents in all proceedings involving the same issue or issues.” 8 C.F.R. § 1003.1(g)(2); *see also id.* § 1003.1(d)(1).

Thus, considering *In re Yajure Hurtado*, it appears evident that a noncitizen like Petitioner, who has resided in the United States for years but has not been admitted or paroled, will be subject to mandatory detention without bond under section 1225(b)(2) upon review by the BIA. *See In re Yajure Hurtado*, 29 I. & N. Dec. at 221. Administrative “exhaustion is not required where[,]” as here, “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)). Therefore, since any “bond appeal to the BIA is nearly a foregone conclusion under *Matter of 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 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. Sept. 29, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 WL 2710211, at *5 (D. Nev. Sept. 23, 2025).

C. Legality of Petitioner’s Mandatory Detention

Respondents contend that Petitioner’s entry into the United States without inspection or admission renders him an “applicant for admission” under 8 U.S.C. section 1225(b)(2)(A), making him subject to mandatory detention and ineligible for

a bond hearing. In his Petition, Petitioner asserts that his detention is governed by 8 U.S.C. section 1226(a), which allows for the release of noncitizens on bond. ECF Nos. [5] ¶¶ 6, 8. The Court examines each of these statutes in turn.

i. 8 U.S.C. § 1225

Section 1225 governs the inspection, detention, and removal of applicants for admission. See 8 U.S.C. § 1225 *et seq.* Applicants for admission are defined as noncitizens “present in the United States who ha[ve] not been admitted” or those “arriv[ing] in the United States.” *Id.* All applicants for admission “must be inspected by immigration officers to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).¹ To that end, “U.S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2).” *Id.* at 289 (emphasis added).

“Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.* Such noncitizens are generally subject to expedited removal “without further hearing or review.” 8 U.S.C. § 1225(b)(1). However, if the noncitizen expresses “an intention to apply for asylum” or a fear of persecution,” the statute requires referral to an interview with an immigration officer. *Id.* § 1225(b)(1)(A)(ii). If the immigration officer finds a

¹ Indeed, *Jennings* began its analysis by emphasizing the temporal and categorical distinction between the detention statutes. Section 1225 applies to noncitizens who are “seeking admission into the country” at the border or a port of entry, whereas section 1226 governs those “already in the country pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at 285–89.

“credible fear,” the noncitizen “shall be detained for further consideration of the application for asylum.” *Id.* Respondents concede that Petitioner is “not subject to detention under 8 U.S.C. § 1225(b)(1).” ECF No. [7] at 12.

On the other hand, “Section 1225(b)(2) is broader” and “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287. Noncitizens covered under § 1225(b)(2) are detained for removal proceedings “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted” into the country. 8 U.S.C. § 1225(b)(2)(A). Importantly, detention under § 1225(b)(2) is mandatory. *See Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025).

ii. 8 U.S.C. § 1226

Federal immigration law “also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at 289 (emphasis added). Section 1226(a) provides that when a noncitizen has been “arrested and detained pending a decision on whether the alien is to be removed from the United States,” the Attorney General may either continue to detain the individual or release them on bond or conditional release. *See* 8 U.S.C. § 1226(a). The statute thus “establishes a discretionary detention framework.” *Gomes*, 2025 WL 1869299, at *2. Importantly for purposes of the instant action, “[f]ederal regulations provide that aliens detained under [section] 1226(a) receive bond hearings at the outset of detention.” *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1),

1236.1(d)(1)); *see also Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2371588, at *13 (S.D.N.Y. Aug. 13, 2025) (“To be sure, a noncitizen detained under [section] 1226(a) is undoubtedly entitled to a bond hearing before an immigration judge.”).

iii. **Petitioner’s Detention Is Governed By 8 U.S.C. § 1226(a), Not 8 U.S.C. § 1225(b)(2)**

The question of whether section 1225(b)(2) or section 1226(a) governs Petitioner’s detention is a question of statutory interpretation squarely within the Court’s jurisdiction. *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sep. 9, 2025) (noting that the interplay of these two sections is a matter “of statutory interpretation belong[ing] historically within the province of the courts.”) (citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)); *Barrios v. Shepley*, No. 25-cv-00406, 2025 WL 2772579, at *5 (D. Me. Sept. 25, 2025) (district court had jurisdiction to review petitioner’s challenge to the “statutory framework” regarding his detention); *see Gomes*, 2025 WL 1869299, at *8 n.9 (“Courts must exercise independent judgment in determining the meaning of statutory provisions”); *Mosqueda*, 2025 WL 2591530, at *7 (district court had jurisdiction to decide whether § 1225 or § 1226 applied as “[t]hese are purely legal questions of statutory interpretation.”).

From the outset of Petitioner’s case, Respondents proceeded under section 1226. Specifically, ICE’s Order of Release on Recognizance stated that Petitioner was being released on his own recognizance “[i]n accordance with section 236 of the Immigration and Nationality Act,” codified at section 1226. ECF No. [8-4] at 1. Additionally, the NTA that DHS issued to Petitioner did not classify him as an

“arriving alien.” ECF No. [8-3] at 1. Instead, the NTA charged him as “an alien present in the United States who has not been admitted or paroled.” *Id.* This classification places him squarely within section 1226. *See e.g., Pizarro Reyes*, 2025 WL 2609425, at *8 (emphasizing ICE’s selection of “present” rather than “arriving” on the NTA as evidence that § 1226 applied); *see also Hyppolite v. Noem*, No. 25-4304, 2025 WL 2829511, *8 (E.D.N.Y. Oct. 6, 2025) (respondent’s initial classification of petitioner “certainly is relevant to the Court’s assessment of the credibility and good faith of ‘Respondents’ new position as to the basis for [Hyppolite’s] detention, which was adopted post hoc and raised for the first time in this litigation.”) (citation omitted); *Perez v. Berg*, No. 25-cv-494, 2025 WL 2531566, at *2 (D. Neb. July 24, 2025) (“The Court notes that the government itself charged Petitioner as an alien present in the United States who has not been admitted or paroled rather than an arriving alien.”) (quotations omitted).

In addition, “[w]hereas [section] 1225 governs removal proceedings for ‘arriving aliens,’ [section] 1226(a) serves as a catchall.” *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025). As the Supreme Court stated in *Jennings*, section 1226 “creates a default rule” that “applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 303. The inclusion of a “catchall” provision in section 1226, particularly following the more specific provision in section 1225, is “likely no coincidence, but rather a way for Congress to capture noncitizens who fall outside of the specified categories.” *Pizarro Reyes*, 2025 WL 2609425, at *5; *see also Barrera*, 2025 WL 2690565, at *4 (citation omitted). The

circumstances surrounding Petitioner's detention align with section 1226(a), not section 1225(b)(2). Indeed, other Courts in this Circuit and District have uniformly rejected Respondents' expansive interpretation of section 1225. *See, e.g., Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-cv-24292, ECF No. [41], (S.D. Fla. Oct. 10, 2025) (respondent's interpretation of the INA "directly contravenes the statute" and "disregards decades of settled precedent"); *see also Pizarro Reyes*, 2025 WL 2609425, at *7 ("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."); *Puga*, No. 25-24535, 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-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025); *Alvarez v. Morris*, 25-cv-24806, ECF No. [6], (S.D. Fla. Oct. 27, 2024) (collecting cases).

The Court recognizes that this issue is currently before the Eleventh Circuit Court of Appeals in *Hernandez-Alvarez v. Warden, Federal Detention Center Miami, et al.* and *Cerro Perez v. Assistant Field Office Director, et al.*, and that the Fifth Circuit Court of Appeals in *Buenrostro-Mendez v. Bondi, et al.* recently issued a decision in Respondents' favor. *See* No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). However, the *Buenrostro-Mendez* decision is not controlling on this Court, and the Eleventh Circuit has not ruled on the matter. As such, there is no binding authority that contravenes the previous decisions of this Court. Indeed, the

overwhelming weight of authority has consistently held that detainees such as Petitioner are entitled to an individualized bond hearing under 8 U.S.C. § 1226(a).

For the foregoing reasons, the Court concludes that Petitioner's detention is governed by section 1226(a) and, therefore, he is entitled to an individualized bond hearing before an immigration judge. As such, Petitioner's mandatory detention under section 1225(b) without conducting a dangerousness and risk of flight determination rests on an incorrect statutory interpretation and contravenes the INA. Accordingly, Count I of the Petition is meritorious, and Petitioner is entitled to relief thereon.

The Court declines to reach the remaining issues raised in the Petition, as it is granting the relief Petitioner seeks in Count I.

III. CONCLUSION

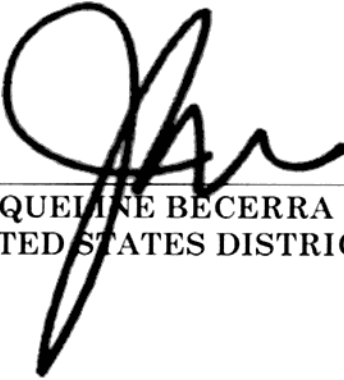
For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Petitioner Axel Yonatan Ramos Ramirez's amended Verified Petition for Writ of Habeas Corpus, ECF No. [5], is **GRANTED IN PART**. The Court has determined that Petitioner falls under 8 U.S.C. § 1226(a), and accordingly, Respondents shall afford Petitioner an individualized bond hearing consistent with 8 U.S.C. § 1226(a) or otherwise release Petitioner.

2. Counts II through V of the Petition are **DISMISSED WITHOUT PREJUDICE**.

3. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Miami, Florida this 13th day of February, 2026.

A handwritten signature in black ink, appearing to read 'JB', is written over a horizontal line. The signature is stylized and cursive.

JACQUELINE BECERRA
UNITED STATES DISTRICT JUDGE