

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

MELVI ALEXANDER MATA  
GUEVARA

Petitioner,

v.

DAVID EASTERWOOD, Field Office  
Director of Enforcement and Removal  
Operations, St. Paul Field Office,  
Immigration and Customs  
Enforcement;

KRISTI NOEM, in her official capacity  
as Secretary of the U.S. Department of  
Homeland Security;

TODD LYONS, in his official capacity  
as acting director of U.S. Immigration  
and Customs Enforcement;

PAM BONDI, in her official capacity as  
Attorney General of the United States.  
Respondents.

Case No. 26-789

PETITIONER'S RESPONSE TO  
TEXT ONLY BRIEFING ORDER.

**PETITIONER'S RESPONSE TO COURT'S JANUARY 29, 2026**

**BRIEFING ORDER**

Petitioner respectfully submits this response pursuant to the Court's January 29, 2026 Text-Only Briefing Order directing the parties to brief: (1) Petitioner's rights during the pendency of his appeal before the Board of Immigration Appeals ("BIA"), including whether he received fair notice of any application of 8 U.S.C. § 1225 rather than § 1226; and (2) documentation concerning Petitioner's current authorization of release during appeal.

I. PETITIONER'S RIGHTS DURING THE PENDENCY OF HIS BIA APPEAL AND LACK OF FAIR NOTICE OF § 1225 DETENTION

(1) Petitioner's rights due to pending appeal with BIA and prior notification of application of Sec. 1226, whether he has had fair notice of his status under 1225.

This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause), regardless of the stage of proceedings before the Executive Office of Review. There is no legal distinction between the detention-related rights of individuals whose removal proceedings are pending before an Immigration Judge and those whose cases are pending on appeal before the Board of Immigration Appeals.

Detention during removal proceedings, including during the pendency of a BIA appeal, is governed by the same statutory and regulatory

framework. *See* 8 U.S.C. § 1226 (allowing for arrest and detention “pending a decision”); 8 CFR §§ 236.1 and 1236.1 (describing the time frame as “at the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed”) (emphasis added); *and* 8 U.S.C. § 1225 (providing for detention for a proceeding under section 1229a).

Detention standards only shift upon a final administrative order which occurs either: (1) when an order of removal by an Immigration Judge and the period to appeal this decision has passed (30 days from the date of the issuance of the decision) or (2) a final determination by the Board of Immigration Appeals. *See* 8 C.F.R. §§ 1241.1 (describing that orders become final only after waiver of appeal, or decision by the BIA); 1003.39 (describing finality of decision); 1003.6 (staying execution of decision until after waiver of appeal, or decision by the BIA); *Solano-Chicas v. Gonzales*, 440 F.3d 1050, 1054 (8th Cir. 2006) (“[A]n order of removal...becomes final, inter alia, upon an order from the BIA affirming the IJ's order”).

Only after a final administrative decision has been issued does a second statutory/regulatory scheme related to detention apply. *See* U.S.C. § 1231 (requiring mandatory detention during the 90-day removal period and permitting continued detention only under certain circumstances). This

removal period explicitly begins only after the removal order becomes “administratively final.” 8 U.S.C § 1231(a)(1)(B)(i).

### **A. Procedural Posture**

Petitioner entered the United States in June 2009. DHS placed him into removal proceedings on August 6, 2020, by filing a Notice to Appear with the Immigration Court. An Immigration Judge entered a decision on April 24, 2024. Petitioner timely appealed that decision to the BIA on May 21, 2024.

On November 1, 2024, the BIA issued a Notice of Intent to Take Case Off the Board’s Docket. Petitioner responded on December 18, 2024, expressly requesting that his appeal remain on the active docket for adjudication. Since that time, the BIA has taken no further action, including issuing a transcript or briefing schedule. The appeal remains pending, and no final administrative order exists. Petitioner anticipates a briefing schedule to be issued at some point in the future. In the meantime, a decision on his removal case is not final.

### **B. Lack of Fair Notice of § 1225 Detention**

Prior to his arrest on January 28, 2026, Petitioner had never been detained by the Respondents, either before or during his removal proceedings. DHS has been aware of Petitioner’s date and manner of entry

since at least August 2020 and had continuous access to his person throughout the pendency of proceedings.

At no point prior to his January 2026 arrest did DHS provide notice, either formally or informally that Petitioner was considered subject to detention under 8 U.S.C. § 1225. DHS did not indicate any change in detention authority or status during the more than five years Petitioner remained at liberty while proceedings were pending. The sudden invocation of § 1225 at the time of arrest therefore occurred without fair notice and raises serious due process concerns.

## II. DOCUMENTATION CONCERNING PETITIONER'S CURRENT AUTHORIZATION OF RELEASE DURING APPEAL

Petitioner has never been detained by DHS prior to January 28, 2026. Accordingly, he has never received documentation concerning release from custody, conditions of release, or parole authorization during the pendency of his appeal. No such documentation exists.

## III. CONCLUSION

Because Petitioner's removal order is not administratively final, detention authority remains governed by 8 U.S.C. § 1226, not § 1225 or § 1231. DHS provided no prior notice that Petitioner was subject to § 1225

detention, despite years of awareness of his immigration history and procedural posture. Additionally, no documentation exists regarding authorization of release during appeal because Petitioner was never previously detained by the Respondents.

Respectfully submitted,

DATED: January 30, 2026

Respectfully submitted,

/s/ Gloria Contreras Edin

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