

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 0:26-cv-60255-DMM

Daniel Miguel Khoury-Barich,  
Petitioner,

v.

Garrett Ripa, Field Office, Field Office  
Director of Enforcement and Removal  
Operations, Miami, Field Office,  
Immigration and Customs Enforcement,  
*et al.*,  
Respondent(s).

\_\_\_\_\_ /

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER  
TO SHOW CAUSE**

Petitioner, through undersigned counsel, respectfully submits this Reply to Respondents' Response to the Court's Order to Show Cause. (ECF No. 7).

**I. The Government Concedes the Controlling Legal Framework in This District**

Respondents acknowledge that numerous judges in this District have concluded that detention of individuals such as Petitioner is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A). *See* ECF No. 7 at 2–4.

Respondents further acknowledge that this Court's recent decision in *Ocegueda Gonzalez v. Noem* “would control the result here if the Court adheres to that decision.” *Id.* at 4

There is no material distinction between the legal issues presented in *Ocegueda Gonzalez* and those presented here. *See Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, (Dec. 23, 2025). As set forth in the Amended Petition (ECF No. 4), Petitioner entered without inspection in 2021, he was released, he has been residing in the United States, he is in § 1229a removal proceedings, he is not subject to expedited removal, he is not detained under § 1226(c) and he has a pending asylum application. *See* ECF No. 4 at 17-19.

Under the statutory structure of the INA, detention in these circumstances falls under § 1226(a).

The Government does not meaningfully dispute the factual posture. Instead, it preserves its legal disagreement while conceding that this Court's precedent governs absent reconsideration.

## **II. The Government's Preservation Posture Does Not Alter the Legal Analysis**

Respondents state they "reserve all rights" and are appealing similar rulings to the Eleventh Circuit. *See* ECF No. 7 at 4.

That appellate posture does not alter this Court's present obligation to apply the law as interpreted in this District.

Until the Eleventh Circuit rules otherwise, this Court's prior decision in *Ocegueda Gonzalez* remains controlling authority within this case. The mere

existence of a pending appeal does not suspend the binding effect of this Court's own precedent.

### **III. Exhaustion Is Excused for the Reasons Already Established**

Respondents again reference exhaustion. As set forth in the Amended Petition (ECF No. 4):

1. The Immigration Judge lacks jurisdiction to conduct a bond hearing when DHS classifies detention under § 1225(b)(2)(A) pursuant to *Matter of Yajure Hurtado*. See ECF No. 4 at 5-6.
2. The Board of Immigration Appeals is bound by that precedent. *Id.* at 6.
3. The administrative process cannot grant the relief sought. *Id.* at 9.

Courts in this District have repeatedly held that exhaustion is excused in precisely these circumstances. Respondents' abbreviated response does not meaningfully rebut that conclusion.

Where the agency insists no bond jurisdiction exists, exhaustion is futile.

### **IV. The Statutory Framework Compels Application of § 1226(a)**

As detailed in the Amended Petition (ECF No. 4):

1. § 1226(a) governs detention "pending a decision on whether the alien is to be removed."
2. § 1225(b) governs individuals seeking admission at the border or recently encountered upon arrival.
3. Petitioner was not apprehended at a port of entry.
4. He was previously released and resided in the United States for years.
5. He is in standard removal proceedings under § 1229a.

Courts across the country, and within this District, have concluded that § 1226(a) governs detention in these circumstances. Until recently, DHS had a longstanding practice of treating aliens already present in the country as detained under § 1226 and subject to bond hearings. *See In re Yajure Hurtado*, 29 I.&N. Dec. 216, 225 (BIA 2025). Respondents recent about-face toward mass mandatory detention under § 1225 was solemnified by the Board of Immigration Appeals (“BIA”). *See id.* at 229. Unfortunately for Respondents, the Supreme Court recently concluded that “agencies have no special competence in resolving statutory ambiguities. Courts do.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400–01, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024). And “[c]ourts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences.” *Id.* at 403, 144 S.Ct. 2244. There is no uncertainty here. The BIA is wrong, and Respondents are wrong, and plainly so. *See Zumba v. Bondi*, No. 25-CV-14626, 2025 WL 2753496, at \*9 (D.N.J. Sep. 26, 2025) (concluding that the court need not defer to the BIA's incorrect decision in *Hurtado* because the statute is clear).

The Government’s reliance on *Matter of Yajure Hurtado* does not override the statutory text. Nor does it overcome this Court’s prior reasoning rejecting that interpretation.

Nevertheless, there is a stronger constitutional reason to reject the BIA's incorrect interpretation of the INA, namely separation of powers as stated in a recent decision from this District, by Judge Roy Dalton Jr. *See Daniela Guaiquire, v. Louis A. Quinones, Jr., et al.*, No. 6:26-CV-169-RBD-RMN, 2026 WL 279369 (M.D. Fla. Feb. 3, 2026) (citation cleaned up). Judge Dalton commented extensively upon the dangers of the Executive Branch's current trend, encroaching upon the judiciary, opining that:

While the relative sphere of power of the three branches is currently under great strain, Article III courts are serving as the proverbial "judicial finger in the constitutional dike." *Conejo Arias v. Noem*, No. SA-26-CV-415 (W.D. Tex. Jan. 31, 2026) (Biery, J.).

"It is emphatically the province and duty of the judicial department"—not the Executive—"to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The Judiciary "has imposed upon it by the constitution, the solemn duty to interpret the laws,...and however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender, or to waive it." *United States v. Dickson*, 40 U.S. 141, 162 (1841). "Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others. Yet the dynamic between and among the branches is not the only object of the Constitution's concern. The structural principles secured by the separation of powers protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011).

The American people rebelled against the tyrant King George III in part because he "made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries," leading to judges abusing the rights of the people to curry favor with the Executive. THE DECLARATION OF INDEPENDENCE ¶ 11 (U.S. 1776). So the Framers, in their genius, established the Judiciary as independent from the

Executive to protect the people—for, as Alexander Hamilton wrote, “liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments.” THE FEDERALIST No. 78, at 403 (Alexander Hamilton) (Gideon ed., 1818). “A Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government.” *United States v. Will*, 449 U.S. 200, 217–18 (1980).

Often unappreciated by the general public is that immigration judges serve at the whim of the President. *See generally* Alisa Chang, *The Trump Administration Fires at Least 7 Immigration Judges in New York*, NPR (Dec. 2, 2025), <https://www.npr.org/2025/12/02/nx-s1-5628393/the-trump-administration-fires-at-least-7-immigration-judges-in-new-york>. They are members of the Executive branch, not independent Article III judges. They lack life tenure and are dependent on the President for their livelihood. They cannot always be expected to safeguard the rights of individuals in the same way as the independent

Judiciary must. *See Stern v. Marshall*, 564 U.S. 462, 483–84 (2011). So no, the Judiciary won't be deferring to the Executive branch about what the law says.

Nor will this Court acquiesce to a statutory interpretation urged by the Executive that reads out entire sections drafted by the Legislature. Just as the Judiciary must remain independent for this country to function, so too must the Legislature. The power to eliminate entire portions of statutes rests with the elected members of the Congress of these United States. *See id.*; *Marbury*, 5 U.S. at 177. Adopting the Government's interpretation of § 1225, which by necessity acts as if § 1226 does not exist, amounts to the Executive's unilateral elimination of an act of Congress, something wholly alien to our system. *See Bautista v. Santacruz*, No. 5:25-CV-01873, 2025 WL 3713987, at \*12 (C.D. Cal. Dec. 18, 2025) (“Respondents’ expansive interpretation...would effectively nullify a portion of the INA through [ ] DHS's . . . interpretive exercise of power.”). What the Government is in effect urging is to give the Executive free rein to rewrite acts of Congress to suit its purpose

and to tell the Judiciary what those laws must mean. This the Court cannot do, for it would fall victim to the very evils the Framers rejected 250 years ago. So the Court gives *Hurtado* the deference a decision drafted by immigration judges wholly beholden to the Executive deserves: none.

*Daniela Guaiquire*, 2026 WL 279369 at \*8-9.

It is unfortunate that Respondents recent about-face toward mass detention under § 1225 requires this Court to serve as the proverbial “judicial finger in the constitutional dike”—*Conejo Arias v. Noem*, No. SA-26-CV-415 (W.D. Tex. Jan. 31, 2026) (Biery, J.)—so that “the political branches have [not] the power to switch the Constitution on or off at will” lest it “lead to a regime in which ... [the Executive Branch], not th[e Supreme] Court, say[s] ‘what the law is.’ ” *Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (quoting *Marbury v Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

## V. Relief Requested

Petitioner respectfully requests that this Court:

1. Declare that Petitioner’s detention is governed by 8 U.S.C. § 1226(a);
2. Order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within seven (7) days; or
3. In the alternative, order Petitioner’s release.

Such relief is consistent with this Court’s prior decisions and with the statutory structure of the INA.

## CONCLUSION

Respondents have preserved their disagreement for appeal, but they acknowledge that this Court's prior ruling in *Ocegueda Gonzalez* would control the result here.

Because Petitioner's detention is governed by § 1226(a), and because exhaustion is excused as futile, the Petition for Writ of Habeas Corpus should be granted.

Respectfully submitted,

By: /s/Joel Alexis Caminero  
Joel Alexis Caminero, Esq.  
Florida Bar # 127294

Attorney for Petitioner

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on February 10th, 2026.

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