

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 26-CV-20642-KMM

ADRIAN BONCULESCU, and
NAHUN ALEXANDER RODRIGUEZ RODRIGUEZ,

Petitioner,

v.

MIAMI ICE FIELD OFFICE
DIRECTOR *et al.*,

Respondents

_____ /

**PETITIONER NAHUN ALEXANDER RODRIGUEZ RODRIGUEZ'S
REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE**

I. INTRODUCTION

Respondents' Response to the Order to Show Cause relies on a sweeping reinterpretation of the Immigration and Nationality Act that cannot be reconciled with the statute's text, structure, or DHS's own custody documents issued to Petitioner. Respondents contend that Petitioner has always been subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because he entered the United States without inspection. That assertion ignores the administrative record and retroactively recharacterizes Petitioner's custody posture years after DHS affirmatively invoked a different detention authority.

DHS issued Petitioner a Notice to Appear but did not file the charging document with the Immigration Court, and removal proceedings were therefore not commenced at that time. See 8 C.F.R. § 1003.14(a). The NTA did not charge Petitioner as an arriving alien. Subsequently, DHS issued a Warrant for Arrest and a Notice of Custody Determination expressly invoking section

236 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1226, and released Petitioner into the United States pursuant to that authority. Those documents are dispositive. Respondents now ask the Court to disregard DHS's own contemporaneous custody determinations and accept a post hoc litigation position that would transform § 1225 into a perpetual mandatory detention statute untethered from inspection, arrival, or parole. The INA does not permit that result.

II. THIS COURT HAS HABEAS JURISDICTION

Respondents argue that jurisdiction is barred by 8 U.S.C. §§ 1252(g) and 1252(b)(9). That argument mischaracterizes both the nature of Petitioner's claims and the scope of those provisions.

Petitioner does not challenge the decision to commence removal proceedings, the adjudication of removability, or the execution of a removal order. He challenges only the statutory authority under which he is detained and seeks a bond hearing under the correct detention statute. Challenges to executive detention fall at the core of habeas corpus. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).

Section 1252(g) is “narrow” and applies only to three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999). Detention authority is not among them. Courts have repeatedly rejected attempts to stretch § 1252(g) to bar habeas challenges to custody determinations. *See, e.g., Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *6–7 (S.D. Fla. Oct. 15, 2025).

Section 1252(b)(9) likewise does not apply. It is a channeling provision, not a claim-barring one, and it does not preclude district court review of detention authority. *Jennings v.*

Rodriguez, 583 U.S. 281, 293–95 (2018); *Aguilar v. ICE*, 510 F.3d 1 (1st Cir. 2007). Petitioner’s claims are therefore properly before this Court.

III. EXHAUSTION IS EXCUSED

Respondents’ exhaustion argument fails because administrative relief is unavailable as a matter of law. The Immigration Judge denied Petitioner’s bond request for lack of jurisdiction pursuant to *Matter of Yajure Hurtado*, a precedential BIA decision binding on Immigration Judges and the Board. Any appeal to the BIA would necessarily be denied on the same ground. Exhaustion is excused where resort to administrative remedies would be futile or where the agency lacks authority to grant effective relief. *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982). Courts in this District have repeatedly excused exhaustion in identical circumstances. *See Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535, 2025 U.S. Dist. LEXIS 203222, 2025 WL 2938369, at *6-7 (S.D. Fla. Oct. 15, 2025) (granting habeas petition and ordering bond hearing under § 1226(a)).

IV. STATUTORY FRAMEWORK GOVERNING DETENTION

The INA establishes distinct detention regimes. Section 1225 governs inspection and admission determinations at or near the border for individuals seeking admission. Section 1226 governs detention pending removal proceedings under 8 U.S.C. § 1229a and authorizes release on bond or conditional parole unless a specific mandatory detention provision applies.

The Supreme Court has described § 1226(a) as the default detention authority for individuals in removal proceedings. *Jennings*, 583 U.S. at 289. By contrast, § 1225(b)(2)(A) applies when an examining immigration officer determines, during inspection, that an alien seeking admission is not clearly entitled to be admitted. Its text and context confirm that it is tied to inspection and arrival, not interior arrests years after entry. *Id.* at 287.

V. PETITIONER'S DETENTION IS GOVERNED BY § 1226(a), NOT § 1225(b)(2)(A)

DHS's own records confirm that § 1226 governs Petitioner's detention. At entry, DHS issued custody documents expressly citing § 1226, initiated § 1229a proceedings, and released Petitioner into the United States. DHS did not detain Petitioner under § 1225, did not require parole under 8 U.S.C. § 1182(d)(5), and did not treat him as subject to mandatory detention. Courts in this District have relied on DHS's own custody documents to reject the same argument advanced here. *See Ceballo v. Parra*, 2025 U.S. Dist. LEXIS 250326, 2025 WL 3481908 (S.D. Fla. Dec. 4, 2025).

VI. PETITIONER'S UAC STATUS CONFIRMS § 1226 APPLIES

Petitioner was designated an unaccompanied alien child and transferred to the custody of the Office of Refugee Resettlement before being released to his mother. See 6 U.S.C. § 279(g)(2). Critically, DHS did not parole Petitioner under 8 U.S.C. § 1182(d)(5), nor did it detain him pursuant to 8 U.S.C. § 1225. Instead, DHS issued a Warrant for Arrest and a Notice of Custody Determination expressly invoking section 236 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1226, and released Petitioner into the United States. Although DHS issued a Notice to Appear, it did not file the charging document with the Immigration Court, and removal proceedings were therefore not commenced at that time.

Respondents' theory would nevertheless treat Petitioner as perpetually subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) years later, following an interior arrest, despite DHS's earlier decision not to detain him under § 1225, not to require parole, and not to initiate removal proceedings. Nothing in the text or structure of the INA supports such a result. Section 1225 governs inspection and admission determinations at the border, not the custody of individuals long after DHS has released them into the interior under § 1226.

Courts have rejected the Government's attempt to treat § 1225(b)(2) as a continuing detention authority untethered from the inspection process and have held that § 1226(a) governs detention once an individual is in the interior and no longer detained for purposes of inspection. *See Rodriguez-Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (declaring detainees were held under § 1226(a), not § 1225(b)(2)).

VII. SECTION 1226 EXPRESSLY APPLIES TO INADMISSIBLE NONCITIZENS

Respondents' assertion that § 1226 applies only to admitted noncitizens is incorrect. Section 1226(c)(1)(E) expressly references inadmissible noncitizens charged under 8 U.S.C. § 1182(a)(6)(A)(i), confirming that inadmissible individuals fall within § 1226's framework unless a specific mandatory detention provision applies.

Courts nationwide have rejected the Government's attempt to read inadmissible noncitizens out of § 1226(a). *Puga*, 2025 WL 2938369, at *3-6; *Merino*, 2025 WL 2941609, at *3; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6-7 (D. Mass. July 7, 2025). *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *8 (D. Minn.

Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).

VIII. RESPONDENTS' RELIANCE ON YAJURE HURTADO IS MISPLACED

Matter of Yajure Hurtado does not bind this Court. Federal courts must independently interpret the INA. Numerous courts, including courts within this District, have rejected *Yajure Hurtado* as inconsistent with the statute's text and structure. See *Hernandez Alvarez v. Acting Warden Roger Morris*, No. 25-24806-CIV-WILLIAMS, 2025 WL 3129987, at *6 (S.D. Fla. Oct. 27, 2025). Respondents' interpretation would create a regime of perpetual mandatory detention for any individual who entered without inspection, regardless of DHS's own custody decisions. Congress did not enact such a system. (N.D. Fla. 2023).

IX. CONCLUSION

Petitioner respectfully requests that the Court declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a), and order Respondents to provide an individualized bond hearing forthwith.

Respectfully submitted,

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