

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

J.B.S.S.,	)	
	)	
Petitioner,	)	
	)	CASE NO.:
vs.	)	5:26-cv-00158-LGW-BWC
	)	
TONY NORMAND, <i>in his official capacity as</i>	)	
<i>Warden of Folkston D. Ray Detention center; and</i>	)	
LADEON FRANCIS, <i>Field Office Director for ICE)</i>	)	
<i>Atlanta Field Office, and</i>	)	
TODD LYONS, <i>in his official capacity as Acting</i>	)	
<i>Director of Immigration and Customs Enforcement; and</i>	)	
KRISTI NOEM, <i>Secretary of Homeland Security; and</i>	)	
PAMELA BONDI, <i>U.S. Attorney General.</i>	)	
	)	
Respondents.	)	
	)	

PETITIONER'S RESPONSE TO RESPONDENTS' RETURN TO ORDER TO SHOW
CAUSE (ECF. No. 7)

The Petitioner, J.B.S.S., by and through undersigned counsel, respectfully submits this Reply in support of his immediate release. Due to his unlawful arrest without a warrant, that remedy is more suitable to the situation at hand than a bond hearing.

I. The Court Retains Jurisdiction Over Petitioner's Habeas.

The government contends that this Court lacks jurisdiction over Petitioner's habeas petition, citing 8 U.S.C. § 1252(g), which it claims strips federal district courts of jurisdiction over challenges to an alien's detention arising from the Attorney General's decision to commence proceedings, adjudicate cases, or execute removal orders. The government points to Eleventh Circuit interpretations of this provision, such as *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013), and *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016), to support its assertion that challenges to detention during removal proceedings fall within the scope of

“commencing proceedings” and are therefore barred. This interpretation, however, is overly broad and inconsistent with the Supreme Court’s narrow construction of § 1252(g).¹

The Supreme Court has consistently held that § 1252(g) applies only to “three discrete actions” by the Attorney General: “the decision or action to commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). This narrow construction was reaffirmed in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), where the Court clarified that the phrase “arising from” in § 1252(g) does not “sweep in any claim that can technically be said to arise from” the three listed actions, but rather refers “only to those three specific actions themselves.” *Kong v. United States*, 62 F.4th 608, 613 (1st Cir. 2023). Consequently, challenges to the legality of a noncitizen’s detention, particularly those asserting constitutional violations, are generally considered “collateral” to removal proceedings and do not fall within the jurisdictional bar of § 1252(g).

The Supreme Court’s decision in *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001), is particularly instructive. The Court emphasized that Congress must make a “clear and unambiguous statement” of intent to repeal habeas jurisdiction under 28 U.S.C. § 2241. *Id.*, 308-314. Absent such an explicit repeal, federal courts retain jurisdiction to review pure questions of law in habeas petitions. The Court also highlighted the constitutional concerns under the Suspension Clause, which “unquestionably requires some judicial intervention in deportation cases.” *Id.*, 300. This Court

¹ Here, however, Petitioner does not ask this Court to review or enjoin the Attorney General’s *discretionary* decision to commence removal proceedings by issuing a Notice to Appear, to adjudicate the merits of those proceedings, or to execute any removal order. He challenges only the legal authority and procedures governing his civil immigration custody—including his warrantless arrest, Respondents’ misclassification of him as an “applicant for admission” under § 1225, and their refusal to provide the procedures mandated by the INA and its regulations. Detention claims of this sort are collateral to “commencing proceedings,” even as that phrase is used in *Gupta* and *Alvarez*, because they do not seek to restrain or second-guess the initiation or prosecution of removal proceedings themselves. And in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court adjudicated statutory and constitutional challenges to detention under §§ 1225 and 1226 in a § 2241 habeas action, without suggesting that § 1252(g) stripped the district court of jurisdiction over those claims.

already has already decided that similar cases are not barred by § 1252(g) and the Court's reasoning is persuasive. See *Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), *report and recommendation adopted*, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025). As the Supreme Court stated in *Jennings*, § 1226 applies to "certain aliens *already in the country*." 583 U.S. 281, 303-305 (emphasis added).

II. Petitioner's Detention is Unlawful Under § 1225.

Respondents' detention of Petitioner is unlawful. First, as Respondents concede (ECF No. 7 at 2), this Court's recent decisions in *Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), *report and recommendation adopted*, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025), which rejected the government's novel detention theory under 8 U.S.C. § 1225(b)(2), is controlling. See ECF No. 7 "Respondent recognizes this Court's prior ruling in *Villa* concerning a similar challenge to the detention authority at issue here and acknowledges that, if the Court adheres to its legal reasoning in *Villa*, it will control the result in this case.").

Despite this admission, the government erroneously continues to assert that Petitioner is an "applicant for admission" because he entered the United States illegally and has not demonstrated entitlement to admission. Consequently, the government argues he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) throughout his removal proceedings, subject only to discretionary parole by DHS. This legal theory has been also repudiated by a tidal wave of HUNDREDS of recent district court decisions nationwide, all rejecting Respondents' position. These courts consistently find that applying the "arriving alien" framework of § 1225 to interior apprehensions defies the statute's plain language.

Respondents rely heavily on 8 U.S.C. § 1225(a)(1), which provides that "an alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter

an applicant for admission.” That definitional deeming clause, however, does not itself trigger mandatory detention. Detention authority comes from § 1225(b)(2)(A), which applies “in the case of an alien who is an applicant for admission” only “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted,” in which event “the alien shall be detained for a proceeding under section 1229a.” Read in context, § 1225(a)(1) identifies who is treated as an “applicant for admission” for purposes of the chapter, while § 1225(b) governs the inspection and detention process at the border and other points of entry when an “examining immigration officer” is inspecting an alien “seeking admission.” Nothing in that structure supports extending § 1225(b)(2)(A) to someone like Petitioner—arrested in the interior decades after entry—who is plainly no longer in the act of “seeking admission” before an examining officer (who is only available at a port of entry or border crossing). Construing § 1225(b)(2)(A) to cover all present-without-admission noncitizens in the interior would largely read § 1226(a) out of the statute for that entire class and is irreconcilable with the regulatory regime and with this Court’s own analysis in *Villa*. Congress has already provided the detention tool for interior civil immigration arrests in 8 U.S.C. § 1226(a), which authorizes arrest and detention only “[o]n a warrant issued by the Attorney General” “pending a decision on whether the alien is to be removed from the United States.” This warrant-based scheme is the mechanism Congress chose for noncitizens already in the country, including those present without admission.

Petitioner, J.B.S.S., is a noncitizen who has resided in the United States since approximately 2018. He entered the U.S. while seeking asylum and was apprehended at the border upon entry. **After a full review and determination by DHS that he was not a flight risk or danger, he was released from DHS custody on an Order of Release on Recognizance (OREC)**

pursuant to 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1(c). He has been fully compliant with all immigration supervision requirements since his entry until his sudden and unlawful OREC revocation and detention. It is beyond illogical for Respondents to continue to allege that an individual like Petitioner is someone “seeking admission” under § 1225 because the plain meaning of the phrase “seeking admission” “implies action—something that is currently occurring, and ... would most logically occur at the border upon inspection.” *Villa v. Normand*, 2025 WL 3188406, at *6.

Respondents continue to fundamentally misrepresent the holdings from *Jennings v. Rodriguez*, 583 U.S. 281 (2018) which held that there are two separate detention statutes, one that applies to noncitizens apprehended at or near the border upon entry, and the other one for people like Petitioner, who are apprehended within the U.S. years after they entered, who are governed by 8 U.S.C. § 1226(a). “In sum, U.S. immigration law authorizes the Government to detain certain aliens *seeking* admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” (emphasis added). *Id.* at 289.

As seeking admission requires an active attempt to enter—not mere presence—a noncitizen like Petitioner apprehended in the interior of the United States, years after entry, cannot be seeking admission. *Giron Lopez v. Corecivic Cimmaron Correctional Facility, et al.*, No. CIV-25-1175-SLP, 2026 WL 165490, at *5-6 (W.D. Okla. Jan. 21, 2026) (“seeking admission” requires something more than merely residing in the country.”); *Hernandez v. Baltazar*, No. 1:25-CV-03094-CNS, 2025 WL 2996643, at *5 (D. Colo. Oct. 24, 2025) (“For a noncitizen to be deemed ‘seeking admission’ they must currently be taking active steps or some kind of present-tense action to seek lawful entry into the U.S.”); *Issahaku v. Olson*, No. CV 25-180-DLB, 2025

WL 3539290, at *4 (E.D. Ky. Dec. 10, 2025) (“The use of the present progressive term ‘seeking’ ‘implies action.’”) (gathering cases); *Echevarria v. Bondi*, No. CV-25-3252, 2025 WL 2821282, at *6 (D. Ariz. Oct. 3, 2025) (“The word ‘seeking’ is the present participle of the verb ‘seek.’ It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection.”) (cleaned up and citations omitted). Thus, Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225. Respondents’ reliance on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), does not change this conclusion: those Board decisions cannot override the text and structure of §§ 1225 and 1226 as interpreted by this Court in *Villa*, and to the extent they purport to extend § 1225(b)(2) to long-term interior residents like Petitioner, they are inconsistent with both the statute’s plain meaning and the nationwide declaratory judgment in *Maldonado Bautista v. Santacruz* and are not entitled to deference in this Article III court.

III. Respondents’ Unlawful Revocation of Release and Re-Detention

Petitioner’s detention is not the result of an initial custody determination but an unlawful re-arrest executed in violation of mandatory federal regulations, his constitutional right to due process, and the agency’s own prior binding finding that he was eligible for discretionary release. As such, his detention was unlawful ab initio and must be remedied by immediate release.

A. The Revocation Violated Mandatory Regulations and Was Executed Without Lawful Authority

The authority to revoke an Order of Release on Recognizance (OREC) is strictly limited by regulation to a narrow group of high-level officials. 8 C.F.R. § 236.1(c)(9) provides: “When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district

director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained.” This authority is exclusive, and DHS Delegation Order 7030.2 expressly prohibits its redelegation. Exhibit 1. Any revocation by an unauthorized official is therefore ultra vires and invalid.

Petitioner was released on a Form I-220A (Order of Release on Recognizance), which documents a custody determination made under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1. This is not parole under 8 U.S.C. § 1182(d)(5)(A). Both federal courts and the Board of Immigration Appeals (in binding precedents upon Respondents) have repeatedly recognized that an OREC constitutes a release under § 1226(a) pending removal proceedings. See, e.g., *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023). Therefore, even if the Court agreed with Respondents’ position that normally noncitizens who entered without inspection are subject to mandatory detention under § 1225(b)(2), that general assumption does not apply to those who were caught at the border and released on an OREC, like Petitioner.

The regulatory framework for changing a noncitizen's custody status is explicit and mandatory. To revoke an OREC, DHS must: (1) issue a new custody determination, typically via Form I-286; (2) provide contemporaneous written notice to the noncitizen; and (3) advise the individual of the right to seek prompt review by an Immigration Judge. See 8 C.F.R. § 236.1(d)(1)–(3). These are not mere formalities but substantive safeguards to ensure any deprivation of liberty is based on individualized information and subject to fair adjudication.

Here, none of these mandatory procedures were followed. Petitioner was summarily arrested without being provided a new custody determination, written notice, a statement of reasons, or identification of the official who ordered the revocation. Failure to comply with these procedures renders the revocation invalid. See, e.g., *Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025).

B. The Revocation Violated Petitioner's Fifth Amendment Right to Due Process

Because Petitioner had been released on an OREC, he acquired a protected liberty interest in his continued freedom. The summary revocation of that liberty without any process whatsoever violates the Fifth Amendment's Due Process Clause. The governing standard for procedural due process is the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs the private interest, the risk of erroneous deprivation, and the government's interest. Every factor weighs decisively in Petitioner's favor.

First, Petitioner's private liberty interest is paramount. He has lived in the United States for years on supervised release, fully complied with all conditions, and built deep family and community ties. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The abrupt, unexplained deprivation of this liberty constitutes a profound intrusion.

Second, the risk of erroneous deprivation from the procedures used—which were no procedures at all—is exceptionally high. Detaining a compliant individual without advance notice, an individualized assessment, or an opportunity to be heard creates a near-certainty of error. The procedural safeguards required by regulation and affirmed by federal courts—notice, a hearing,

and a decision by an authorized official—are the “substitute procedural safeguards” that would eliminate this risk. Their complete absence here makes the due process violation manifest. See, e.g., *J.U. v. Maldonado*, 2025 WL 2772765, at 10 (holding that “ongoing detention of Petitioner with no process at all... violates his due process rights”); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at 5 (N.D. Cal. July 24, 2025); *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

Third, the government’s interest does not justify this lawless conduct. While the government has an interest in detaining noncitizens who pose a flight risk or danger, that interest is nonexistent here, as evidenced by Respondents’ own years-long determination that Petitioner was suitable for release on supervision. The administrative burden of providing notice and a hearing is minimal compared to the severe harm of arbitrary detention. The government’s failure to provide these basic procedural protections before re-detaining Petitioner renders his redetention unconstitutional under the Due Process Clause and mandates his immediate release.

Once the government released Petitioner, he acquired a significant, constitutionally protected liberty interest in his continued freedom that is far greater than that of an applicant for admission. His situation is therefore governed not by cases concerning initial entry, but by the Supreme Court’s decision in *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). In *Morrissey*, the Court recognized that the revocation of conditional liberty inflicts a “grievous loss” that triggers robust due process protections. The government’s decision to release a noncitizen on supervision creates an “implicit promise,” upon which that individual may rely, that their liberty “will be revoked only if [they] fail[] to live up to the... conditions [of release].” *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025)² (quoting *Morrissey*, 408 U.S. at 482).

² The *Pinchi* court explained that the petitioner’s release from ICE custody after her initial apprehension reflected a specific regulatory determination by the government that she was neither a flight risk nor a danger

See also Chavarria v. Chestnut, No. 25-cv-01755-DAD-AC, 2025 WL 3533606, at *3 (E.D. Cal. Dec. 9, 2025).

The government cannot now ignore the liberty interest it created. Having determined Petitioner was not a flight risk or danger and released him, it cannot strip him of his freedom based on a “flawed legal theory” without affording him any process whatsoever. The summary revocation of Petitioner’s OREC, without notice, a statement of reasons, or an opportunity to be heard, is a flagrant violation of the Fifth Amendment’s Due Process Clause.

The government already determined Petitioner was not a flight risk or danger when it released him on his own recognizance. Because his re-detention is based on a flawed legal theory and infringes on his heightened liberty interest, outright release is the only just remedy.

Numerous courts in identical circumstances have so ordered:

- In *Pineda v. Chestnut*, No. 1:25-CV-01970-DC-JDP (HC), 2026 WL 25510, at *4-6 (E.D. Cal. Jan. 5, 2026), the court ordered that the petitioner “shall be released immediately from the Respondents’ custody with the same conditions she was subject to immediately prior to her detention.” “Respondents shall not impose any additional restriction on her, such as electronic monitoring, unless that is determined to be necessary at a future pre-deprivation/custody hearing;” and “[i]f the government seeks to re-detain Petitioner, it [] must hold a pre-deprivation bond hearing before a neutral arbiter, at which Petitioner’s eligibility for bond must be considered.”
- In *Barrientos v. Chestnut*, No. 1:25-CV-01490-SKO (HC), 2025 WL 3677319, at

to the community, citing 8 C.F.R. § 1236.1(c)(8). And the two years that she has spent out of custody only heightened her liberty interest in remaining out of detention unless she no longer meets those criteria. Therefore, the court ordered that the government may not re-detain Ms. Pinchi during the pendency of these proceedings without providing her with a pre-detention bond hearing before a neutral immigration judge at which the government must demonstrate by clear and convincing evidence, that she is a flight risk or a danger to the community and that no conditions other than her detention would be sufficient to prevent such harms.

*5 (E.D. Cal. Dec. 18, 2025), the court ordered immediate release and forbade re-detention unless the government could prove at a pre-deprivation bond hearing before a neutral decisionmaker by clear and convincing evidence at a hearing that the petitioner was a flight risk or danger to the community such that her physical custody is legally justified.

- In *Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *2 (D.R.I. Dec. 5, 2025), the court found immediate release appropriate “because the Government has put forth no evidence to suggest that Mr. Mendes poses a flight risk or is a danger to the community.”

This Court should order the same relief here.³

³ See e.g., *Arizmendi v. Noem*, No. 25-CV-7056, 2025 WL 3723960 (E.D. NY Dec. 24, 2025) (immediate release granted in a TRO); *Ye v. Maldonado*, 25-CV-6417, 2025 WL 3521298 (E.D. NY Dec. 8, 2025) (Court grants habeas, orders immediate release.); *Ibarra v. Warden of the Federal Detention Center Philadelphia*, 25-cv-6312, 2025 WL 3294726, (E.D. Pa. Nov. 25, 2025). (Grants habeas and orders release.); *Buele Morochio v. Jaminson*, 5:25-cv-05930, 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025). (Grants habeas and orders immediate release. If redetained, government must afford him due processing, including a bond hearing upon request.); *Ousmane Soumare v. Jamal L. Jamison*, CV 25-6490, 2025 WL 3461542 (E.D. Pa. Dec. 2, 2025). (Grants habeas, orders immediate release.) *Yilmaz v. Warden of Fed. Det. Ctr. Philadelphia*, CV 25-6572, 2025 WL 3459484 (E.D. Pa. Dec. 2, 2025). (Court orders immediate release, finding no flight risk or danger); *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528 (E.D. Penn. Dec. 9, 2025). (Grants habeas and order release); *Alberto Picon v. O'Neill*, CV 25-6731, 2025 WL 3634212 (E.D. Pa. Dec. 15, 2025). (Grants habeas and orders immediate release) see also *Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *2 (D.R.I. Dec. 5, 2025) (Finding that Mr. Mendes is constitutionally entitled to a bond hearing but also holding that “because the Government has put forth no evidence to suggest that Mr. Mendes poses a flight risk or is a danger to the community, the Court finds that his immediate release is appropriate.”) (emphasis added); *Barrera Rodriguez v. Hyde*, No. 25-cv-607-JJM-PAS, 2025 WL 3274606, at *2 (D.R.I. Nov. 25, 2025) (same); *Cordova v. Lachvig*, No. 1:25-CV-03037-TLP-JAY, 2025 WL 3679764, at *7 (W.D. Tenn. Dec. 18, 2025) (finding Petitioner is therefore subject to the discretionary bond process under § 1226 and entitled to a bond hearing but also ordering immediate release pending the bond hearing); *Javier De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind., Nov. 25, 2025) (Granting immediate release without bond to a Petitioner detained under 8 U.S.C. § 1225(b)(2) who has been in the country for 19 years and twice bonded in immigration proceedings in the past. “All this begs the question whether the court should order immediate release or a hearing. The court is uninclined to order a hearing consistent with the procedures under § 1226(a) and give the government a pass for not securing a warrant before Mr. De Jesús Aguilar’s arrest, particularly when the government has not asserted this a basis for his continued detention” ... [where there is no] “basis for his continued detention today or extraordinary circumstances or some likelihood of his escape (perhaps a tough position when he has been in the country for 19 years and twice bonded in immigration proceedings).” ... “The simple matter is this: the government has not established a lawful basis for detention— or, otherwise put, Mr. De Jesús Aguilar has established his detention is today unlawful— and the government must live by the rules that Congress has instituted.”).

C. Respondents Are Estopped From Re-Characterizing Petitioner's Detention Status

By releasing Petitioner on an OREC, DHS made a binding determination that his custody was governed by 8 U.S.C. § 1226(a), the statute authorizing discretionary release. Respondents are now barred by the doctrine of collateral estoppel from re-litigating that issue and claiming Petitioner is subject to mandatory detention under a different statute, 8 U.S.C. § 1225(b).

Collateral estoppel, or issue preclusion, prevents a party from re-arguing an issue of fact or law that was already decided against that party in a prior proceeding. Here, the government previously and explicitly determined that Petitioner was eligible for release under § 1226 when it granted him an OREC. That decision necessarily included the legal finding that he was not subject to mandatory detention under § 1225. Petitioner relied on that determination for years, complying with all conditions of his release. To allow Respondents to now reverse their position and invoke a different, more punitive statutory provision would be fundamentally unfair and would undermine the finality of the agency's own decisions. Having made its choice to proceed under § 1226, the government is estopped from now claiming that statute never applied and that Petitioner was, in fact, subject to mandatory detention all along.

Petitioner's fact pattern is similar to *Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, (S.D. NY, Nov. 26, 2025) where Petitioner was previously released on bond, applied for asylum and rearrested recently by the government under § 1225(b) and held without bond. The Court granted his writ of habeas returning him to his previous bond conditions ("Mr. Barco shall remain free of detention or any other restraint under the immigration laws of the United States to which he was not subject upon his release on bond in 2022").

In another similar cases, see *De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. IN., Nov 25, 2025), where the Court granted outright release to undersigned

counsel's client and ordered his release immediately from custody under the same conditions that existed before his detention (bond), in a similar case to Petitioner's. See also *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. IL., Oct. 24, 2025) – where the Petitioner entered on foot, got caught at the border upon entry and released on his own recognizance to apply for asylum. The Court granted the writ of habeas and ordered the government to either: (1) provide Petitioner with a bond hearing before an immigration judge, at which the Government shall bear the burden of justifying his continued detention by clear and convincing evidence of dangerous or risk of flight; or (2) release Petitioner from custody, under reasonable conditions of supervision. *Id.*; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. October 21, 2025) (Petitioner previously released on OREC granted bond hearing before an Immigration Judge, at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk; or (2) release from custody, under reasonable conditions of supervision). There are many more authorities ordering immediate release or shifting the burden to the government when Petitioner has been previously granted release on OREC or bond and complied with the conditions of release.

IV. Petitioner's Detention is Unlawful Under § 1226(a) Due to a Warrantless Arrest, and Failure to Properly Revoke his Order of Supervision, Mandating Immediate Release.

Even assuming, *arguendo*, that Petitioner's detention falls under 8 U.S.C. § 1226(a), his continued detention is unlawful because he was arrested without a warrant, a statutory precondition for detention under this section. Section 1226(a) explicitly provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." Here, Respondents have offered no evidence that any such warrant was ever issued for Petitioner's arrest, notwithstanding his

detailed factual allegations to the contrary. Because the statute conditions civil immigration arrest and detention on the existence of that warrant, the absence of a warrant is a fatal defect in Respondents' asserted § 1226(a) authority. Here, ICE arrested Petitioner without a warrant, probable cause, or reasonable suspicion of criminal activity. There was no justification to arrest him without a warrant.

Further, the absence of a warrant at the time of arrest is a fatal defect to the government's authority to detain Petitioner under § 1226(a). As the court in *Florida v. United States* held, "If the alien has not been arrested on a warrant, then the subsequent provisions giving the Attorney General discretion to detain or release 'the arrested alien' are likewise not triggered." Because the statutory precondition for detention under § 1226(a)—arrest on a warrant—was not met, the government lacks any lawful authority to detain Petitioner. The only appropriate remedy for an arrest and detention made without the required statutory authority is immediate and unconditional release, not merely a bond hearing. The unlawful nature of the initial arrest under § 1226(a) means that the detention is void from its inception, distinguishing this situation from cases where a bond hearing is the remedy for prolonged detention.

The government's response is wholly devoid of any response to Petitioner's facts or legal argument, nor do they respond with any counter evidence claiming that a warrant was issued for Petitioner's arrest. Thus, as the government failed to rebut or contest Petitioner's factual account of the events of his warrantless arrest, the Court should consider them undisputed for the purpose of this proceeding.⁴

⁴ See also *Burnette v. Northside Hosp.*, 342 F. Supp. 2d 1128, 1140 (N.D. Ga. 2004) ("Failure to respond to the opposing party's summary judgment arguments regarding a claim constitutes an abandonment of that claim and warrants the entry of summary judgment for the opposing party."); *Brown v. Ramsay*, 785 F. Supp. 3d 1214, 1229 (S.D. Fla. 2025) (finding defendant waived challenge to plaintiff's declaratory judgment claim where "in three briefs submitted to the Court over the course of briefing the two Motions, [defendant] never addressed [the claim] despite [plaintiff]'s Motion specifically arguing the issue."); *A.L. v. Jackson Cnty. Sch. Bd.*, 635 F. App'x 774, 787 (11th

Similarly, again assuming, *arguendo*, that Petitioner's detention falls under 8 U.S.C. § 1226(a), his initial detention was unlawful as it occurred without a warrant as mandated by 8 U.S.C. § 1357(a)(2). Furthermore, his continued detention is unlawful under 8 U.S.C. § 1226(a), because Respondents failed to provide him with a bond hearing. Thus, the Court should find this fact uncontested for purposes of this petition. As such, the only appropriate remedy for Respondents' additional egregious failure to follow their own regulations or abide by due process is to order Petitioner's immediate and unconditional release. *See* ECF No. 1.

V. The Court Should Order Petitioner's Immediate and Unconditional Release

Petitioner's detention is not the result of an initial custody determination, but an unlawful arrest executed in violation of mandatory federal regulations, his constitutional right to due process, and the agency's own prior, binding, finding that he was eligible for discretionary release on recognizance. As such, his detention was unlawful *ab initio*.

Petitioner's recent arrest by ICE was warrantless and contravened 8 U.S.C. § 1357 and its implementing regulation at 8 C.F.R. § 287.8(c)(2)(ii). Together, these provisions establish a clear rule: a warrant is required for a civil immigration arrest under 8 U.S.C. § 1226(a) unless the officer has reason to believe the individual "is likely to escape before a warrant can be obtained." That "likely to escape before a warrant can be obtained" proviso is a mandatory statutory predicate for any warrantless civil immigration arrest, not surplusage. Here, Respondents cannot satisfy that

Cir. 2015) (It is axiomatic that a party "waive[s] their claims by failing to brief them, failing to respond to the [opposing party's] motion for summary judgment, and failing to bring to the court's attention evidence that supported their claims"); *Ihor D., v. Noem*, No. 26-CV-351 (JMB/DTS), 2026 WL 146507, at *1 (D. Minn. Jan. 20, 2026) ("Respondents do not oppose the Petition, and on that basis alone, and considering the factual showings made by Petitioner as recounted above, the Court grants the Petition"); *Bland v. California Dep't of Corr.*, 20 F.3d 1469, 1474 (9th Cir. 1994) ("When the State's return fails to dispute the factual allegations contained in the petition and traverse, it essentially admits those allegations."), overruled on other grounds by *Schell v. Witek*, 218 F.3d 1017 (9th Cir. 2000).

exigency requirement because Petitioner was already in the custody of state authorities and thus posed no realistic risk of escape while a warrant was sought. Respondents have not produced any warrant in their Return, and the warrantless arrest therefore violated both the statute and regulation. This procedural failure renders Petitioner's detention void from the outset.

Whether based on Respondents' flawed "arriving alien" theory, the flagrant violation of Petitioner's Fifth Amendment right to due process, or the procedurally defective warrantless arrest, the conclusion is the same: Petitioner's detention is fundamentally unlawful from its inception. In an individual habeas case, 28 U.S.C. § 2243 directs this Court to "dispose of the matter as law and justice require." Where, as here, Respondents have never established a lawful statutory basis for custody—having misclassified Petitioner under § 1225, failed to obtain the warrant that § 1226(a) requires, and disregarded the arrest and exigency limits in 8 U.S.C. § 1357 and 8 C.F.R. § 287.8—law and justice require immediate and unconditional release, not a belated bond hearing that presumes a lawful initial arrest. In *Hamama v. Adducci*, 912 F.3d 869 (6th Cir. 2018), the court emphasized that the Suspension Clause historically protects habeas as a vehicle to secure release from unlawful custody and does not extend to suits seeking only stays of removal or other injunctive relief that does not challenge present physical detention. Petitioner here is squarely seeking that core habeas remedy—release from an unlawful civil immigration confinement—rather than using habeas to obtain nontraditional injunctive relief, underscoring why immediate release is the appropriate disposition.

Federal district courts confronting materially identical unlawful-detention scenarios—long-term interior residents misclassified as § 1225(b)(2) "applicants for admission" and/or re-detained without the statutory warrant or required revocation procedures—have reached the same conclusion. In such cases, courts have exercised their equitable habeas powers to order

outright release, recognizing that bond hearings are an appropriate remedy for prolonged but otherwise lawful detention, whereas detentions that are void ab initio must be corrected by restoring liberty, not by layering additional process onto unlawful custody.

Respondents' alternative request in ECF No. 5 for seven days to arrange a § 1226(a) bond hearing therefore does not cure the defect here. Their proposal would merely extend an illegal confinement and give the government a second opportunity to justify a detention it had no statutory authority to initiate. Because Respondents have not identified any evidence that Petitioner is a danger or a flight risk—and because they have failed to establish any lawful statutory basis for his custody—the Court should exercise its habeas powers and order Petitioner's immediate and unconditional release.⁵

⁵ **Western District of Texas**

Flores-Boziera v. Bondi et al., 5:24-cv-1853-JKP, 2026 U.S. Dist. LEXIS 1859 *12, 2026 LX 29597 (WDTX January 5, 2026) (finding that because Petitioner cannot be detained under 1225(b)(2) and Respondents do not assert that they are detaining Petitioner under 1226, the Court should order outright release).

Eastern District of Pennsylvania

Ibarra v. Warden of the Federal Detention Center Philadelphia, 25-cv-6312, 2025 WL 3294726 (E.D. Pa. Nov. 25, 2025) (granting habeas and ordering release); *Buele Morocho v. Jaminson*, 5:25-cv-05930, 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025) (granting habeas and ordering immediate release; requiring due process, including a bond hearing, for any re-detention); *Ousmane Soumare v. Jamal L. Jamison*, CV 25-6490, 2025 WL 3461542 (E.D. Pa. Dec. 2, 2025) (granting habeas and ordering immediate release); *Yilmaz v. Warden of Fed. Det. Ctr. Philadelphia*, CV 25-6572, 2025 WL 3459484 (E.D. Pa. Dec. 2, 2025) (ordering immediate release after finding no flight risk or danger); *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528 (E.D. Pa. Dec. 9, 2025) (granting habeas and ordering release); *Alberto Picon v. O'Neill*, CV 25-6731, 2025 WL 3634212 (E.D. Pa. Dec. 15, 2025) (granting habeas and ordering immediate release).

Eastern District of New York

Arizmendi v. Noem, No. 25-CV-7056, 2025 WL 3723960 (E.D.N.Y. Dec. 24, 2025) (ordering immediate release in a TRO); *Ye v. Maldonado*, 25-CV-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (granting habeas and ordering immediate release).

Southern District of New York

Gonzalez v. Joyce, No. 25 Civ. 8250, 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025) (ordering immediate release after unlawful immigration court arrest); *Munoz Materano v. Arteta*, 25 Civ. 6137, 2025 WL 2630826 (S.D.N.Y. Sep. 9, 2025) (same); *Valdez v. Joyce*, 25 Civ. 4627, 2025 WL 1707737 (S.D.N.Y. Jun. 18, 2025) (same).

District of Rhode Island

Mendes v. Hyde, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *2 (D.R.I. Dec. 5, 2025) (finding immediate release appropriate "because the Government has put forth no evidence to suggest that Mr. Mendes poses a flight risk or is a danger to the community."); *Barrera Rodriguez v. Hyde*, No. 25-cv-607-JJM-PAS, 2025 WL 3274606, at *2 (D.R.I. Nov. 25, 2025) (same).

Western District of Tennessee

Cordova v. Ladwig, No. 1:25-CV-03037-TLP-JAY, 2025 WL 3679764, at *7 (W.D. Tenn. Dec. 18, 2025) (finding petitioner subject to the discretionary bond process but ordering immediate release pending the bond hearing).

District of Idaho

Quijaba Cordoba v. Knight, 1:25-cv-00605-BLW, --- F.Supp.3d ----, 2025 WL 3228945 (D. Id., Nov. 19, 2025) (Court ordering immediate release as the remedy. “In many circumstances akin to the present case, a bond hearing would indeed be sufficient to rectify the violation of Petitioner’s unlawful detention.” See *E.C. v. Noem*, No. 2:25-cv-01789, 2025 WL 2916264, at *12 (D. Nev. Oct. 14, 2025); see also *Hernandez-Lara v. Lyons*, 10 F.4th 19, 45-46 (1st Cir. 2021). Here, however, Respondents have failed utterly to articulate a legitimate interest in the Petitioner being detained. **There is no evidence** that he is a flight risk or poses a danger to the community. To the contrary, Petitioner’s lack of criminal record, residence in the United States in the past year without incident, and familial ties to the United States all indicate that he is neither a danger nor a flight risk”) (emphasis added).

Additional cases ordering the same:

Camacho v. Hollinshead, No. 1:25-cv-00593-BLW, 2025 WL 3228998 (D. Id., Nov. 19, 2025); *Elias v. Knight*, No. 1:25-cv-00594-BLW, 2025 WL 3228262 (D. Id., Nov. 19, 2025); *Casares v. Thompson*, No. 1:25-cv-00596-BLW, 2025 WL 3228988 (D. Id., Nov. 19, 2025); *Ibarra v. Knight*, No. 1:25-cv-00597-BLW, 2025 WL 3228968 (D. Id., Nov. 19, 2025); *Torres v. Hollinshead*, No. 1:25-cv-00599-BLW 2025 WL 3228974 (D. Id., Nov. 19, 2025); *Rodriguez v. Knight*, No. 1:25-cv-00600-BLW, 2025 WL 3228285 (D. Id., Nov. 19, 2025); *Esparza v. Knight*, 1:25-cv-00601-BLW (D. Id., Nov. 19, 2025); *Gonzalez v. Knight*, No. 1:25-cv-00602-BLW, 2025 WL 3228975 (D. Id., Nov. 19, 2025); *Elias v. Knight* No. 1:25-cv-00604-BLW, 2025 WL 3229013 (D. Id., Nov. 19, 2025); *Rangel v. Knight*, No. 1:25-cv-00607-BLW, 2025 WL 3229000 (D. Id., Nov. 19, 2025); *Rodriguez v. Hollinshead*, No. 1:25-cv-00609-BLW, 2025 WL 3228972 (D. Id., Nov. 19, 2025); *Martinez v. Knight*, No. 1:25-cv-00610-BLW, 2025 WL 3228987 (D. Id., Nov. 19, 2025); *Lopez v. Anderson*, No. 1:25-cv-00621-BLW, 2025 WL 3228997 (D. Id., Nov. 19, 2025).

One particular case with persuasive reasoning in a similar case of undersigned counsel's, *Javier De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind., Nov. 25, 2025), granting immediate release without bond to a Petitioner detained under 8 U.S.C. § 1225(b)(2) who has been in the country for 19 years and twice bonded in immigration proceedings in the past. "All this begs the question whether the court should order immediate release or a hearing. The court is uninclined to order a hearing consistent with the procedures under § 1226(a) and give the government a pass for not securing a warrant before Mr. De Jesús Aguilar's arrest, particularly when the government has not asserted this a basis for his continued detention" ... [where there is no] "basis for his continued detention today or extraordinary circumstances or some likelihood of his escape (perhaps a tough position when he has been in the country for 19 years and twice bonded in immigration proceedings)." ... "The simple matter is this: the government has not established a lawful basis for detention— or, otherwise put, Mr. De Jesús Aguilar has established his detention is today unlawful— and the government must live by the rules that Congress has instituted." These cases demonstrate that federal courts are exercising their equitable habeas powers to grant the only meaningful remedy for a fundamentally unlawful detention: unconditional release, which is the appropriate remedy in this case due to the unlawful arrest and lack of any legitimate reason for Petitioner's detention."

Given that Petitioner's detention is likewise unlawful, the appropriate remedy is immediate release, not merely a bond hearing that would prolong his illegal confinement.

VI. All Named Government Respondents Are Necessary Parties to Afford Complete and Final Relief.

Respondents improperly disregarded the federal Respondents beyond the warden. *See* ECF No. 7. Retaining all named Respondents—including those beyond the immediate habeas

custodian—is essential for this Court to grant complete and effective relief.⁶ While the “immediate custodian” rule from *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) is true for core habeas claims, it does not control the distinct claims for declaratory and injunctive relief that are vital to securing a meaningful remedy.

This distinction between core habeas and broader equitable relief is confirmed by the Ninth Circuit’s decision in *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010). There, the court rejected the argument that *Padilla* barred class-wide habeas and injunctive relief in an immigration-detention case merely because class members were confined in different facilities under different wardens, emphasizing that *Padilla* had expressly reserved the question of who the proper respondent is for “an alien detained pending deportation.” The court held that nothing in *Padilla* prevents federal courts from granting systemic or class habeas relief where Rule 23 and jurisdictional requirements are met, and that the presence of multiple immediate custodians does not itself create a jurisdictional defect.

The Supreme Court’s holding in *Rumsfeld v. Padilla* was created to address the specific jurisdictional requirements of the habeas statute and prevent forum shopping in challenges to physical custody. It does not, however, foreclose naming other federal officials as respondents in parallel claims for prospective equitable relief brought under the Administrative Procedure Act, 5 U.S.C. § 702, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202 and declaratory and injunctive orders under 28 U.S.C. § 1331. For these distinct non-habeas claims, the proper defendants are the officials who exercise the “legal reality of control” over the policies and actions

⁶ Petitioner acknowledges that under *Rumsfeld v. Padilla*, the proper respondent to the habeas claim is the immediate custodian (Respondent Normand). See ECF 1, Complaint. To the extent the Court deems them other listed Respondents improper on the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as Respondents-Defendants on the non-core claims, so that effective, agency-directed relief can issue to the officials with authority to implement it.

at issue. *See Padilla v. Rumsfeld*, 352 F.3d 695, 707 (2d Cir. 2003), *rev'd on other grounds*, 542 U.S. 426 (2004). An injunction must bind the party with the actual power to act. Here, the immediate custodian at Folkston Annex Detention Center is merely an agent acting at the direction of ICE and DHS. The non-habeas Respondents—the Secretary of Homeland Security and the ICE Field Office Director—are the officials with the exclusive legal authority to order Petitioner's release, implement bond orders, and set conditions of supervision pursuant to federal regulations. *See* 8 C.F.R. §§ 236.1, 1003.19. To dismiss the officials in control would render any prospective order from this Court a nullity.

Furthermore, retaining these policymaking officials Respondents is critical to prevent the government from frustrating judicial review and providing a final, complete remedy. First, dismissing the non-habeas Respondents creates a significant risk that the government could moot this litigation by simply transferring Petitioner to a different facility outside this district—a tactic that would create serious jurisdictional hurdles. The *Padilla* litigation itself highlights this exact danger. *See Rumsfeld*, 542 U.S. at 441 (noting *Padilla* was moved before the petition was filed). Keeping the officials with national and regional transfer authority as parties ensures the Court's power to adjudicate the claims and provide “complete relief,” consistent with the principles of FRCP 19. Keeping the DHS and ICE leadership in the case both prevents gamesmanship through transfers that would otherwise frustrate effective habeas review and ensures that any final order—including one forbidding re-detention under the vacated Bautista policy—binds the officials who actually control transfers, releases, and alternative-to-detention conditions.

Second, the necessity of retaining the federal Respondents extends beyond preventing the mooted of this litigation. Even if this Court grants the writ and orders Petitioner's immediate release, that order would be hollow if the non-habeas Respondents are not bound by a

corresponding injunction. Having been dismissed from the action, these officials—who wield the ultimate authority to detain—would be free to re-detain Petitioner under the same unlawful interpretation of their authority the moment he is released. This would nullify the Court’s ruling and force Petitioner to begin this entire process anew, transforming the Great Writ into a revolving door of litigation. The prospective declaratory and injunctive relief sought is therefore not ancillary but essential to ensure any remedy is both meaningful and final. Only by keeping the officials with the power to detain as parties can the Court enjoin them from re-detaining Petitioner without due process and prevent such a perverse outcome. In dozens of other district court decisions cited in the Complaint, which have uniformly retained non-habeas federal officials to ensure their orders could be effectively implemented. None of these courts dismissed the non-habeas Respondents. Therefore, Petitioner respectfully requests that the Court to confirm in its final order that all named government Respondents/Defendants remain in this action. While the Warden is the proper Respondent for the § 2241 challenge to current physical custody under *Rumsfeld v. Padilla*, the non-habeas Respondents are necessary and proper defendants for the claims seeking prospective declaratory and injunctive relief, which are essential to ensuring that any remedy afforded is both complete and final.

In conclusion, Petitioner seeks an order granting him immediate and unconditional release from custody, as a result of Respondents’ unlawful detention of Petitioner.

Respectfully Submitted,

This 14th Day of February, 2026.

/s/ Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on February 14th, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

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