

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

JORGE ZUNIGA ORTIZ	)	
	)	
Petitioner,	)	Case No. <u>1:26-cv-20767-DPG</u>
	)	
v.	)	
	)	
ROGER MORRIS, in his official capacity as	)	
Acting Warden of the Miami Federal Detention	)	
Center, GARRET RIPA, in his official	)	
capacity as Miami Field Office Director,	)	
Immigration and Customs Enforcement's	)	
Enforcement and Removal Operations; TODD	)	
LYONS, in his official capacity as Acting Director	)	
of Immigration and Customs Enforcement; KRISTI	)	
NOEM, in her official capacity as Secretary of the	)	
Department of Homeland Security; PAMELA	)	
BONDI, in her official capacity as Attorney	)	
General; and EXECUTIVE OFFICE FOR	)	
IMMIGRATION REVIEW	)	
	)	
Respondents.	)	

**PETITIONER'S REPLY**

**INTRODUCTION**

Petitioner filed a Petition for Writ of Habeas Corpus and Request for Order to Show Cause on February 5, 2026. (Doc. 1). This Court issued an Order to Show Cause on February 6, 2026. (Doc. 4). Respondents filed a Response on February 26, 2026. (Doc 6). Petitioner is replying to Respondent's Response *See* Doc. 4; Doc. 6.

## ARGUMENT

### I. Petitioner is Being Detained Pursuant to 8 USC § 1226.

8 U.S.C. § 1225(b)(1) is the statutory scheme that governs the expedited removal process and consequent detention. The Supreme Court has explained:

Once “an immigration officer determines” that a designated applicant “is inadmissible,” “the officer [must] order the alien removed from the United States without further hearing or review.” §1225(b)(1)(A)(i).

Applicants can avoid expedited removal by claiming asylum. If an applicant “indicates either an intention to apply for asylum” or “a fear of persecution,” the immigration officer “shall refer the alien for an interview by an asylum officer.” §§1225(b)(1)(A)(i)-(ii). The point of this screening interview is to determine whether the applicant has a “credible fear of persecution.” §1225(b)(1)(B)(v).

If the asylum officer finds an applicant’s asserted fear to be credible, the applicant will receive “full consideration” of his asylum claim in a standard removal hearing. 8 CFR § 208.30(f); see 8 U. S. C. § 1225(b)(1)(B)(ii).

*Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-110 (2020) (citations in original).

In conclusion, even if a noncitizen is initially placed in expedited removal, they can be removed and placed in full removal proceedings pursuant to INA §240; 8 U.S.C. §1229a by undergoing to credible fear process. As Respondents explained, Mr. Zuniga underwent the credible fear process and was placed in full removal proceedings pursuant to INA §240; 8 U.S.C. §1229a. *See* Respondents’ Brief at 3. The Department of Homeland Security issued a Notice to Appear initiating these full removal proceedings and marking Mr. Zuniga as “an alien present in the United States” rather than an arriving alien. *See* Doc 6-6. Respondents have also, subsequently to placing Petitioner in full removal proceedings, afforded Petitioner bond, citing INA §236 as the statutory authority permitting them to do so. *See* Respondents’ Brief at 3, Doc 6-7. Thus, there is no dispute that Mr. Zuniga is currently in full removal proceedings pursuant to INA §240; 8 U.S.C. §1229a. Once placed in full removal proceedings, following a positive

credible fear determination, a noncitizen is eligible for a bond hearing, so long as they are not otherwise excluded from bond hearings, such as those convicted of certain crimes. *See In Re X-K-*, 23 I&N 731 (BIA 2005).

There are three relevant statutes to authorize detention. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Third, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

In the present case, Petitioner has not been ordered removed and is no longer in expedited removal proceedings, as evidenced by the pending §1229a proceedings against him. Petitioner has been present in the United States for more than ten years before his re-apprehension by ICE, which makes “his detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond,” *Puga*, 2025 WL 2938369, at \*3, not § 1225(b)(2), applicable to noncitizen “applicant[s] for admission” to the United States. § 1225(b)(2)(A).

It has been found by courts throughout the country that Respondents’ interpretation of the INA to expand the scope of 8 USC §1225 detention, “directly contravenes the statute, disregards decades of settled precedent,” and is erroneous. *Hernandez Alvarez v. Morris*, 25-24806 (S.D. Fla. Oct. 27, 2025), ECF 6 at 5; *Cerro Perez v. Parra*, 25-24820 (S.D. Fla. Oct 27, 2025), ECF 9

at 6, *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-cv-24292 (S.D. Fla. Oct. 10, 2025), ECF 41 at 10; *see also Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at \*7 (E.D. Mich. Sep. 9, 2025) (“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.”); *see also Puga*, 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-cv830, 2025 WL 2732717, at \*2 (M.D. Fla. Sep. 25, 2025); *Guerra v. Joyce*, No. 25-cv-00534, 2025 WL 2986316, at \*3 (D. Me. Oct. 23, 2025); *Lomeu v. Soto*, 25-cv-16589, 2025 WL 2981296, at \*7–8 (D.N.J. Oct. 23, 2025); *Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at \*4 (D.N.J. Oct. 23, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120, 2025 WL 2977650, at \*5–6 (D. Colo. Oct. 22, 2025); *Aguiar v. Moniz*, No. 25-cv-12706, 2025 WL 2987656, at \*3 (D. Mass. Oct. 22, 2025); *Rivera v. Moniz*, 25-cv-12833, 2025 WL 2977900, at \*1–2 (D. Mass. Oct. 22, 2025); *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539, at \*5–7 (D. Minn. Oct. 21, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042, at \*7 (D. Md. Oct. 21, 2025); *Miguel v. Noem*, 25-11137, 2025 WL 2976480, at \*6 (N.D. Ill. Oct. 21, 2025); *Pineda v. Simon*, No. 25-cv-01616, 2025 WL 2980729, at \*2 (E.D. Va. Oct. 21, 2025); *Matheus Araujo DA Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163, at \*2 (D. Mass. Oct. 21, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610, at \*4–6 (N.D. Ill. Oct. 20, 2025); *Polo v. Chestnut*, No. 25-cv01342, 2025 WL 2959346, at \*11 (E.D. Cal. Oct. 17, 2025); *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigr. Processing Ctr.*, No. 25-cv-01187, 2025 WL 2959274, at \*3 (E.D. Cal. Oct. 17, 2025); *Alvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at \*4–6 (W.D. Mich. Oct. 17, 2025); *Zamora v. Noem*, No. 25-12750, 2025 WL 2958879, at \*1 (D.

Mass. Oct. 17, 2025); *Pacheco Mayen v. Raycraft*, 25-cv-13056, 2025 WL 2978529, at \*6–9 (E.D. Mich. Oct. 17, 2025); *Diaz Sandoval v. Raycraft*, No. 25-cv-12987, 2025 WL 2977517, at \*6–9 (E.D. Mich. Oct. 17, 2025); *Contreras-Cervantes v. Raycraft*, No. 25-cv-13073, 2025 WL 2952796, at \*6–8 (E.D. Mich. Oct. 17, 2025); *Ochoa v. Noem*, No. 25-10865, 2025 WL 2938779, at \*4–6 (N.D. Ill. Oct. 16, 2025); *Hernandez v. Crawford*, No. 25-cv-01565, 2025 WL 2940702, at \*2 (E.D. Va. Oct. 16, 2025); *Piña v. Stamper*, No. 25-cv-00509, 2025 WL 2939298, at \*3 (D. Me. Oct. 16, 2025); *Sequen v. Albarran*, No. 25-cv-06487, 2025 WL 2935630, at \*8 (N.D. Cal. Oct. 15, 2025); *Teyim v. Perry*, No. 25-cv-01615, 2025 WL 2950184, at \*2–3 (E.D. Va. Oct. 15, 2025); *Singh v. Lyons*, 25-cv-01606, 2025 WL 2932635, at \*2–3 (E.D. Va. Oct. 14, 2025); *Alejandro v. Olson*, 25-cv-02027, 2025 WL 2896348, at \*7–9 (S.D. Ind. Oct. 11, 2025); *Chavez v. Kaiser*, No. 25-cv-06984, 2025 WL 2909526, at \*5 (N.D. Cal. Oct. 9, 2025); *Donis v. Chestnut*, No. 25-01228, 2025 WL 287514, at \*11 (E.D. Cal. Oct. 9, 2025); *Eliseo A.A. v. Olson*, No. 25-3381, 2025 WL 2886729, at \*2–4 (D. Minn. Oct. 8, 2025); *Covarrubias v. Vergara*, No. 25-cv-112, 2025 WL 2950097, at \*3 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. 25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025); *S.D.B.B. v. Johnson*, No. 25-cv-882, 2025 WL 2845170, at \*5 (M.D.N.C. Oct. 7, 2025); *Gonzalez v. Bostock*, 25-cv-01404, 2025 WL 2841574, at \*3–4 (W.D. Wash. Oct. 7, 2025); *Hyppolite v. Noem*, No. 25-4304, 2025 WL 2829511, \*12 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-5208, 2025 WL 2829434, at \*7 (E.D.N.Y. Oct. 5, 2025); *Cordero Pelico v. Kaiser*, No. 25-cv-07826, 2025 WL 2822876, at \*15 (N.D. Cal. Oct. 3, 2025); *Orellana v. Moniz*, 25-cv-12664, 2025 WL 2809996, at \*5 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at \*3 (D. Mass. Oct. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at \*5–6 (D. Minn. Oct. 1, 2025).

**II. Petitioner's detention is a violation of his right to procedural due process.**

To determine whether administrative procedures are constitutionally sufficient, the Court must weigh three factors (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the Government's interest. *See Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). All of these factors weigh in Petitioner's favor.

Freedom from imprisonment, including government detention, is central to the liberty protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has a substantial personal interest given that his interest is his freedom from government detention, the liberty that "lies at the heart of the [Due Process] Clause protects". *See id.*

The risk of erroneous deprivation of Petitioner's liberty interest is extremely high, given that Respondents had already determined that Petitioner does not pose a danger to society and is not a flight risk when he entered the United States and was subsequently released and issued bond. *See* Doc 6-7, Doc 6-8. Respondents do not allege that Petitioner presented any danger or flight risk to justify his re-detention. Given that Petitioner has no new criminal history since Respondents initially released and issued his bond, the risk of an erroneous deprivation of his liberty is extremely high.

Respondents have a "generalized interest in ensuring noncitizens appear for their removal hearings and do not pose a risk to the communities in which they live". *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526, at \*4 (W.D. Tex. Nov. 20, 2025). That interest is not advanced by automatically re-detaining noncitizens whom the government has already determined pose neither a flight risk nor a danger to the community, absent any showing of changed circumstances. *See Alvarez-Rico v. Noem, et al*, 4:26-CV-00729, 2026 WL 522322, at

\*6 (S.D. Tex. Feb. 25, 2026). Considering the substantial financial costs of detention, the fiscal and administrative burden of affording such individuals some form of hearing is minimal compared to the burden of re-detaining thousands of noncitizens who were previously released on recognizance, or in the case of Petitioner, issued bond. *See id.*

Given Petitioner's weighty interest in his liberty, the high risk of erroneous deprivation of that liberty, and the minimal weight of the Government's interest, it is evident that Petitioner has raised a substantial claim that his continued confinement without the opportunity for a bond hearing violates his procedural due process rights.

### **III. Petitioner's detention is a violation of her right to substantive due process.**

Given that Petitioner has only ever been in civil proceedings, there is no punitive purpose; instead, the goals of civil detention are to ensure attendance at future immigration proceedings and to prevent danger to the community. *See Zadvydas*, 533 U.S. at 690.

Respondents have already determined that Petitioner does not pose a danger to society and is not a flight risk when they released and issued him a bond, rendering his re-detention is unnecessary. *See* Doc 6-7, Doc 6-8. 8 C.F.R §1236.1(c)(8) also requires that the alien demonstrate to the satisfaction of the Immigration Judge or officer that the alien would not pose a danger to society

Given that Petitioner has no new criminal history since Respondents initially released and issued his bond and there has been no substantial change in circumstances from when Respondents initially released and issued his bond, Petitioner's continued detention is for an improper purpose, which violates his substantive due process rights.

### **CONCLUSION**

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and Request for Order to Show Cause, this Court should grant the petition.

Respectfully submitted,

/s/ Kenia Garcia

Kenia Garcia, Esq.  
Florida Bar No. 102561  
Garcia & Qayum Law Group, P.A.  
3475 West Flagler Street  
Miami, FL 33135  
(305) 230-4020 Tel  
(786) 506-1120 Cell  
(305) 503-7370 Fax  
Kenia@GQLawGroup.com  
*Counsel for Petitioner*

Dated: March 5, 2026

**CERTIFICATE OF SERVICE**

I hereby certify that on March 5, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Respectfully submitted,

/s/ Kenia Garcia

Kenia Garcia, Esq.  
Florida Bar No. 102561  
Garcia & Qayum Law Group, P.A.  
3475 West Flagler Street  
Miami, FL 33135  
(305) 230-4020 Tel  
(786) 506-1120 Cell  
(305) 503-7370 Fax  
Kenia@GQLawGroup.com  
*Counsel for Petitioner*

Dated: March 5, 2026