UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:26-CV-20771-DPG

Brian Flores Tamaris,

Petitioner,

v.

Miami Federal Detention Center, FDC., et al.,

Respondent.
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PETITIONER, BRIAN FLORES TAMARIS', AMENDED REPLY TO RESPONSENTS' RESPONSE TO ORDER TO SHOW CAUSE

Petitioner, BRIAN FLORES TAMARIS, by and through his undersigned counsel, hereby files this Reply to Respondents' Response to Order to Show Cause, and in support thereof states as follows:

FACTUAL BACKGROUND

1. Petitioner entered the U.S. without inspection on or about November 17, 2022, and has resided in the U.S. for over three (3) years.

2. Petitioner has timely filed for asylum.

3. Petitioner was not apprehended or encountered at a port of entry; he was encountered when he was detained for driving without a valid license on January 14, 2026. A warrant for his arrest was issued under 8 U.S.C. § 1226. (Attached hereto as "Exhibit A," copy of warrant).

4. On or about December 10, 2023, the Department handed to Petitioner at Miramar, FL a Notice to Appear, which included a hearing date to appear before an immigration judge on November 18, 2027.

ARGUMENT

A. Petitioner is not an Applicant for Admission subject to Detention pursuant to 8 U.S.C. §1225(b)(2)(A) and Detention under §1226 is Applicable. Buenrostro is not dispositive on the due process claim and therefore Habeas relief remains available.

Here, the Petitioner's detention is subject to 8 U.S.C. §1226 rather than 1225(b)(2).

As explained by the U.S. Supreme Court, 8 U.S.C. §1225(b) "primarily applies to aliens seeking entry into the United States," whereas 8 U.S.C. §1226 "applies to aliens already present in the United States." *See*, *Jennings v. Rodriguez*, 583 U.S. 281, 297, 303 (2018). Here, the Notice to Appear alleges that Petitioner "[e]entered the United States as an unknown location, on unknown dates' you were not then admitted or inspected by an immigration officer." Further, Petitioner has not been charged as an arriving alien. The Notice to Appear charges the Petitioner as an alien present in the United States who has not been admitted or paroled; therefore, Petitioner's detention squarely falls under 8 U.S.C. §1226. *See, e.g., Boffill*, 2025 WL 3246868, at *6 (NTA charged petitioner as present in the United States without admission or paroled so the classification places him squarely within section 1226); *Merino*, 2025 WL 2941609, at *3 ("Petitioner, who has resided in the country for nearly a decade and was apprehended while already within United States, not at the border, falls under §1226(a), not §1225(b)(2)…"); *Patel v. Hardin*, No. 2:25-CV-870-JES-NPM, 2025 WL 3442706, at *5 (M.D. Fla. Dec. 1, 2025) ("It is undisputed that Patel has been in this country since 2011. His detention is thus governed by §1226(a).")

Petitioner's due process claim survives the *Buenrostro* decision and viable relief remains

on his habeas petition in the form of release. The *Buenrostro* decision did not decide or dispose of the due process claim, the decision contains no mention of due process, other than by pass mentioning that the Supreme Court's decision in *Zadyvas v. Davis*, 533 U.S. 701 (2001) does not apply to individuals in pending removal proceedings, but rather to individuals who already have a final order of removal.

After the issuance of Buenrostro, several judges in the same district have granted habeas petitions strictly on a due process cause of action. As Judge Cardone explained:

> The Court's conclusion is not changed by the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*. Marceau argues that her detention without an opportunity for a meaningful individualized custody determination is unlawful on both statutory grounds, as well as constitutional due process grounds… [T]he Buenrostro-Mendez court did not reach the due process question, confining its analysis and holding to statutory interpretation. And the case remanded to the district court, not for dismissal, but "for further proceedings consistent with this opinion." Presumably, those further proceedings will entail consideration of Buenrostro-Mendez's due process claim, which the district court declined to reach in the first instance. Indeed, the Government's counsel states it bluntly during oral argument. "We have one issue before the Court now: the statutory question. … There's not, in other words, a due process claim here." In sum, Buenrostro-Mendez has not bearing on this Court's determination of whether is Marceau is being detained in violation of her constitutional right to procedural due process.

Marceau v. Noem, No. EP-26-CV-237 KC, 2026 WL 368953, at *2 (W.D. Tex. Fec. 9, 2026) (internal citations omitted). Judge Cardone went on to grant the habeas petition on procedural due process grounds. *Id.*

Noncitizens are entitled "to due process of law in the context of removal proceedings" and it has been "well established." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025)(per curiam), quoting Reno v. Flores, 507 U.S. 292, 306 (1993). Here, Petitioner has lived in the U.S. for over four (4) years and has no criminal history, no history of violence, and no pending criminal charges. It is apparent why due process is violated when Respondents seek to detain him in jail-like conditions without the opportunity for review of his detention before a neutral magistrate.

The Court should apply the familiar three-prong balancing test to Petitioner's due process claim. *Matthews v. Eldridge*, 424 U.S. 319, 96 (1976). On the first prong, private interest, 'the Fifth Amendment entitles noncitizens to due process of law in the context of removal proceedings," and "the interest being free from physical detention by [the] government " is "the most elemental of liberty interest [.]" *See*, *Lopez v. Arevalo v. Ripa*, EP-25-CV-337-KC, 2025 WL 2691828, *10 (W.D. Tex Sep. 12, 2025) *see also*, *Demore v. Kim*, 538 U.S. 510, 527-28 (2003). Here, Petitioner has the outmost liberty interest.

Additionally, in a preliminary decision, the Seventh Circuit considered the government's position on the scope of § 1225(b)(2) and found it unlikely to succeed on the merits. *See Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-63 (7th Cir. 2025)

B. Petitioner is not an Applicant for Admission in §1229a Removal Proceedings and his detention pursuant to 8 U.S.C. §1225(b)(2)(A) is not Proper.

Petitioner's detention is governed by 8 U.S.C. §1226 not §1225(b)(2)(A). Also, §1229a is a removal statute rather than a detention statute.

The application of 8 U.S.C. §1226(a) does not turn on whether someone has been previously admitted to the United States. Section 1226(a) affords access to bond to noncitizens that are inadmissible. Section 1225(b)(2)(A) requires an active construction of the phrase seeking admission and therefore "applicants for admission," cannot apply to Petitioner. Further, §1225(b)(2) applies to other noncitizens who is an applicant for admission, if the examining immigration officer determine that a noncitizen seeking admission is not clearly and beyond a doubt entitled to be admitted. See, 8 U.S.C. §1225(b)(2). But, *Jennings*, considered §1226 along with §1225(b)(2), where §1226(a) authorizes the Government to certain certain noncitizens already in the country pending the outcome of removal proceedings. *Jennings*, 583 U.S. at 289.

Further, the heading under which §1225 falls, states the following "inspection by immigration officers; expedited removal of inadmissible arriving noncitizens; referral for hearing." *See*, 8 U.S.C. §1225.

C. Section 1226 does not only apply to those noncitizens that have been admitted

Petitioner is subject to detention under 8 U.S.C. §1226 rather than 8 U.S.C. §1225. In January 2025, Congress amended several provisions of the INA, including INA §§235, 235. *See*, Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). The additional section discusses individuals who entered without admission or inspection. 8 U.S.C. §1226(c)(1)(E). The additional section encompasses those aliens who are inadmissible under 8 U.S.C. §1182(6)(A), "which are noncitizens present in the Untied States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General." *Id.* The section continues, stating that such noncitizens must also have been "charged with, arrested for, convicted of, having committed, or admits committing such acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of law enforcement office offense, or any other crime that results in death or serious bodily injury to another person." *See*, 8 U.S.C. §1226(c)(1)(E)(ii). Congress has specifically delineated a list of individual present without admission or inspection who are ineligible for bond. See, 8 U.S.C. §1226(c)(1)(E). When Congress creates specific exceptions the statute generally applies. *See*, *Shady Grove Orthopedics Assocs., PA. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). If 8 U.S.C. §1225(b) applied to all noncitizens who were not admitted, such an interpretation would render superfluous 8 U.S.C. §1226(c)(1)(E), which specifically applies to certain categories of inadmissible noncitizens with criminal convictions.

D. Petitioner is not an applicant for Admission and was detained pursuant to a warrant issued under 8 U.S.C. § 1226.

Petitioner was detained on or about January 14, 2026. He was detained pursuant to a warrant issued under 8 U.S.C. §1226.

Mandatory detention under §1225 is premised on an immigration officer's determination that a noncitizen is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." *See*, 8 U.S.C. § 1225(b)(2)(A). At the time of Petitioner's arrest, he did not meet all three criteria, so he could not have been detained under § 1225. Moreover, he was detained pursuant to a warrant issued under § 1226.

Unlike in *Matter of Q-Li*, Petitioner was detained with a warrant and said warrant stated he was being detained pursuant to section 236 of the Immigration Nationality Act. In this instant case, unlike in *Matter of Q-Li*, Petitioner was detained pursuant to a warrant that was issued under section 236 of the Immigration Nationality Act.

Moreover, *Matter of M-S*, is inapplicable here, for Petitioner is not an arriving alien and has not been charged as an arriving alien. Petitioner is not subject to expedited proceedings under 8 U.S.C. §1225(b)(1). In footnote 4 of *Matter of Q-Li*, the Board of Immigration Appeals, stated that "once an alien is detained under section 235(b), DHS cannot convert the statutory authority governing her detention from 235(b) to section 236(b) through the post-hoc issuance of a warrant. *See*, *Matter of Q-Li*, 29 I&N Dec. 66, 69 (BIA 2025). Here, the Department **twice** issued a warrant under section 236 of the Immigration Nationality Act and cannot just state that Petitioner detention falls under 8 U.S.C. §1225.

E. Petitioner does not have to Exhaust Administrative Remedies for there is No Genuine Opportunity for Adequate Relief and an Administrative Appeal would be Futile.

Here, the Immigration Judges are entering orders that are no actioning any bond requests.

Courts generally do not require an exhaustion of remedies where no genuine opportunity for relief exists or an administrative appeal would be futile. *See*, *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982). Matter of Yajure Hurtado is binding precedent on immigration judges and subjects Petitioner, a non-citizen who is present in the United States and has not been admitted or paroled, to mandatory detention without the possibility of a bond, there is no adequate administrative remedy for Petitioner.

F. This Court is not barred by 8 U.SC. § 1252(g) to review Petitioner's claims

Section 1252(g) states that "no court shall have jurisdiction to hear any causes of action or claim by or on behalf of any [noncitizen] arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen] under this chapter." *See*, 8 U.S.C. § 1252(g). However, the bar on jurisdiction under 8 U.S.C. § 1252(g) is narrow. *See*, *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Court is not precluded from jurisdiction over the challenges of the legality of a noncitizen's detention.

In this instant case, Petitioner's claims are collateral to Respondents' decision to commence removal proceedings against him, and instead involve whether Respondents' actions are proper under the Constitution. *See*, *You, Xiu Qing v. Neilsen*, 321 F. Supp. 3d 451, 457 (S.D.N.Y. 2018) (finding that respondents' actions fall outside the ambit of § 1252(g) because the question before the court is not why the Secretary chose to execute the removal order but rather whether the way respondents acted accords with the Constitution); *Prado v. Perez*, 451 F. Supp. 3d 306, 312 (S.D.N.Y. 2020) ("[C]ourts in this district have found that there is no deprivation of jurisdiction to hear claims arising from unlawful arrest or detention, because those claims are too distinct to be said to 'arise from" the commencement of removal proceedings.").

In sum, section 1252(g) does not preclude the Court's exercise of jurisdiction here.

CONCLUSION

Based on the foregoing, the Petitioner requests that the Petition be Granted for his detention is unlawful and in violation of his fifth amendment due process rights. Petitioner does not have to exhaust his administrative remedies for it is futile. Petitioner requests that his Petition be granted and that the Court either order his immediate release or order an adequate bond to occur within the next five (5) days.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 4, 2026, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record and interested parties as listed below.

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