

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

LORENA BEATRIZ HERNANDEZ QUINONEZ,

Petitioner,

v.

Kristi Noem, in her official capacity as Secretary of the
Department of Homeland Security;

Todd M. Lyons, in his official capacity as Acting
Director of Immigration and Customs Enforcement;

Garret Ripa, in his official capacity as Miami Field
Office Broward Transitional Center, U.S. Immigration
and Customs Enforcement,

Todd Lyons, Senior Official Performing the Duties of
the Director of U.S. Immigrant and Customs
Enforcement

Respondents.

Case No. 26-cv-20817-WPD

PETITIONER'S TRAVERSE

Ignoring the text of 8 U.S.C. § 1225(b)(2), decades of contrary understanding evidenced in practice by Republican and Democratic administrations alike,¹ and the Supreme Court’s reading of the law, and improperly rendering superfluous 8 U.S.C. § 1226(a) and (c), Respondents seek to mandatorily detain Petitioner, [REDACTED] indefinitely while [REDACTED] which is supposed to protect victims like her, in a process that could take years. The law will not countenance this deprivation of liberty. The Court should grant the Petition.

Respondents continue to mandatorily detain Petitioner under 8 U.S.C. § 1225(b)(2). [DE I at 16]. The precedential decision upon which Respondents rely—*Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—was vacated on February 18, 2026, by the United States District Court for the Central District of California as contrary to law under the Administrative Procedure Act (“APA”).² Accordingly, whether § 1225(b)(2) applies to Petitioner is a question of statutory analysis. As set forth below, Petitioner’s detention is in fact governed by § 1226(a), she is entitled to a full custody redetermination hearing on the merits before an immigration judge,³ and her continued detention without one violates the Immigration and Nationality Act (“INA”) and the Due Process Clause. U.S. Const. Amend. V. [DE I at 16-18]. Respondents address Count I of the Petition and make arguments about exhaustion and jurisdiction, but fail to respond to Count II.

Argument

I. The Vacatur of *Hurtado* Eliminates the Primary Basis for Respondents’ Mandatory Detention Argument.

Respondents’ argument relies heavily on *Hurtado*. As noted above, *Hurtado* is no longer

¹ Judge Adalberto Jordan of the Eleventh Circuit recently expressed concern about the government’s shifting interpretations of §§ 1225 and 1226. During oral argument in *Labrada-Hechavarria v. U.S. Att’y Gen.*, No. 23-13664 (11th Cir. Dec. 12, 2025), he challenged the notion that detention classification could depend on the Government’s “current understanding” of §§ 1225 and 1226, observing that successive administrations could otherwise reinterpret the statute and retroactively alter individuals’ detention posture—“that can’t be the way the world works.” He further cautioned that the Government “can’t have your cake and split it up in two ways so that you get the good side of it and not the bad side of it.” *Id.*, Oral Argument, https://www.courtlistener.com/audio/101807/irela-labrada-hechavarria-v-us-attorney-general-consolidated-with/?type=oa&type=oa&q=irela+labrada+&order_by=score+desc (at 17:59).

² See Ex. 1: Order Granting Plaintiff Petitioner’s Motion to Enforce Judgment, *Maldonado Bautista et.al v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, at 19 (C.D. Cal. Feb. 18, 2026).

³ “An alien requesting a redetermination of his or her custody status under section 236(a) [8 U.S.C. § 1226(a)] must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of R-A-V-P*, 27 I&N Dec. 803 (BIA 2020).

precedential. Respondents argue that *Maldonado Bautista* is not binding outside the Central District of California. But Petitioner does not rely on that decision for preclusive effect. Instead, the BIA precedent that Respondents invoke as controlling authority has been vacated. The legal foundation of their statutory argument has been removed. Without *Hurtado*, there is no precedential BIA decision applying § 1225(b)(2) to noncitizens who entered without inspection years ago and were later re-detained while residing in the United States under pending § 1229a proceedings. The question must now be resolved by reference to the statutory text itself.

In *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), the Supreme Court distinguished § 1225(b) from § 1226(a), stating that “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).” *See id.* (emphasis added).⁴ Respondents ignore the Supreme Court and treat § 1225(b)(2) as a perpetual mandatory detention provision applicable to any noncitizen who was never formally admitted, wherever they are encountered. The majority of district courts who addressed this issue rejected this novel position taken by the government since July 2025.⁵ For example, Judge Martinez noted, “DHS’s interpretation of the applicability of § 1225(b)(2), rather than § 1226, to noncitizens who have resided in the county for years and were already in the United States when apprehended, runs afoul of the statutes’ legislative history, plain meaning, and interpretation by courts in the First, Second, Fifth, Sixth, Eighth, and Ninth Circuits.” *Merino v. Ripa*, No. 25-cv-23845-JEM, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025).⁶ In

⁴ “Section 1225’s title refers to ‘Inspection by immigration officers’ and ‘arriving aliens,’ and § 1225 is replete with references to arrival and inspection. Conversely, § 1226 is titled ‘Apprehension and detention of aliens,’ and features none of this language. In view of the statutes’ history, this makes perfect sense: ... § 1225(b)(2)(A) is the descendant of the statutory provisions that have historically governed detention of noncitizens arriving at the borders for well over a hundred years, whereas § 1226 stems from newer interior-detention laws.” *Buenrostro-Mendez v. Bondi*, 2026 WL 323330, at *14 (5th Cir. 2026) (Douglas, J., dissenting) (cleaned up); *see also id.* at *15 (noting the government’s “unbroken for almost thirty years” “prior practice of detaining inadmissible noncitizens apprehended within this country under § 1226, not § 1225.”).

⁵ Most recently, the Eleventh Circuit in *Labrada-Hechavarria v. U.S. Att’y Gen.*, No. 23-13664, slip op. at 6 (11th Cir. Feb. 23, 2026) (per curiam) (unpublished), noted that “the government has been challenged in at least 362 similar cases in federal district court and that 350 of those cases, decided by over 160 judges, have resolved this same issue against the government.”

⁶ *See also Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Bautista v. Santacruz*, No. 5:25-

holding that the petitioner there, who like Petitioner here entered the country as an Unaccompanied Child and lived here for years before being re-arrested, falls under § 1226(a) and not § 1225(b), he wrote, “[t]his Court likewise declines to follow *Matter of Yajure Hurtado*, whose interpretation of § 1225 is at odds with the text of §§ 1225 and 1226, is inconsistent with earlier BIA decisions, and renders superfluous the recent Laken Riley Act amendments to § 1226(c).” *Id.* He is correct.

Petitioner’s circumstances underscore why Respondent’s theory is wrong and unlawful. Petitioner entered the United States on October 29, 2014, when she was just eleven years old. Upon inspection by the Department of Homeland Security (“DHS”) she was designated an Unaccompanied Child. This designation afforded Petitioner protections pursuant to the Trafficking Victims Protection Reauthorization Act (“TVPRA”), which exempted her from expedited removal under § 1225(b).⁷ Instead, DHS issued her a Notice to Appear, where it alleged that Petitioner was “an alien present in the United States without admission or parole,” not an “arriving alien.”⁸ DHS also issued a Form I-200 (Warrant for Arrest of Alien) and a Form I-286 (Notice of Custody Determination), both expressly invoking detention authority under section 236 of the INA as codified in § 1226, and placing her directly into § 1229a removal proceedings. [Ex. 2]. Petitioner was then transferred into the custody of U.S. Health and Human Services (“HHS”), Office of Refugee Resettlement (“ORR”) pursuant to 8 C.F.R. § 236.3, and later released to her mother who served as her sponsor. [REDACTED]

[REDACTED] Despite her age and the trauma of the offense, she reported the crime, provided information leading to the investigation and arrest of her assailant, and remained cooperative with law enforcement throughout the case. The heinous abuse she endured formed the basis of the Form I-918 Petition for U Nonimmigrant Status which was later filed on Petitioner’s behalf and has been pending before USCIS since January 18, 2022. USCIS subsequently issued a Bona Fide Determination grant, confirming that Petitioner’s U-visa petition is prima facie

cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carbajal v. Wimmer*, No. 2:26-CV-00093, 2026 WL 353510 (D. Utah Feb. 9, 2026); *Lopez Benitez v. Francis*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *Benitez v. Noem et al.*, No. 5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025).

⁷ See DE 7-1

⁸ See DE 7-2

approvable and that she warrants a favorable exercise of discretion by DHS for deferred action.⁹ On November 17, 2025, more than eleven years after her entry, Petitioner was taken into ICE custody while attending her Order of Supervision (“OSUP”) check-in at ICE-ERO Miramar. She was not then an applicant for admission, no new inspection occurred, and no new admissibility determination was made. Under these facts, the governing detention authority is determined by statute – 8 U.S.C. § 1226(a), not § 1225(b)(2), governs Petitioner’s custody.

II. Petitioner was not “seeking admission” at the time of her most recent arrest by ICE, and her detention is therefore not governed by 8 U.S.C. § 1225(b)(2)(A).

Respondents assert that the Petitioner is an “applicant for admission” as defined in § 1225(a)(1) and an “alien seeking admission” under § 1225(b)(2)(A) and is therefore subject to detention under § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an immigration judge. [DE 7 at 4-11]. The government relies upon *Hurtado*, but as noted it cannot.

The issue before this Court therefore turns on the proper interpretation of § 1225 and § 1226. Recently, the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. Feb 6, 2026), found that all non-citizens (who it found are by definition “applicant[s] for admission”) should be treated as “an alien seeking admission” wherever they are encountered, requiring their mandatory detention. This Court relied on *Buenrostro-Mendez* in *Perez Morales v. Noem*, Case No. 26-cv-60251-WPD, DE 15 (S.D. Fla. Feb. 9, 2026), finding that a petitioner residing inside the United States without being admitted was subject to detention under § 1225. Petitioner believes, and would like the opportunity to persuade this Court, that the better-reasoned position is that Petitioner is not “an alien seeking admission” within the meaning of § 1225(b)(2). *Compare Iraheta Morales v. Noem*, Case No. 25-cv-62598-RS (S.D. Fla. Jan. 29, 2026), with *Alvarez Puga v. Assistant Field Office Director Krome*, No. 25-cv-24535-CMA (S.D. Fla. Oct. 15, 2025)

⁹ Respondents contend that any protection against enforcement priority and/or deportation flowing from deferred action does not arise unless and until USCIS issues employment authorization in category C14. That argument misapprehends the nature of the Bona Fide Determination process. USCIS’s bona fide determination reflects an affirmative exercise of prosecutorial discretion. *See* 8 C.F.R. § 214.14(d)(2) (authorizing DHS to grant deferred action to U-visa petitioners); U.S. Citizenship & Immigration Servs., Bona Fide Determination Process for Victims of Qualifying Crimes, PM-602-0187 (June 14, 2021) (explaining that upon a bona fide determination, USCIS may grant deferred action as an exercise of discretion while the petition remains pending). A bona fide determination necessarily reflects DHS’s conclusion that the petition is prima facie approvable and warrants favorable discretionary treatment. The subsequent issuance of employment authorization is a collateral benefit of deferred action, not the predicate for DHS’s discretionary decision itself.

(finding § 1226(a) governs detention rather than § 1225(b)(2)), and *Chaviano Juvier v. Field Office Director*, Case No. 26-cv-20405-JB (S.D. Fla. Feb. 11, 2025) (holding § 1226 governs where the government did not designate the petitioner as an “arriving alien” and instead categorized him as “present in the United States without admission or parole” on the Notice to Appear (“NTA”)).¹⁰

Petitioner was not “seeking admission” at the time of her most recent apprehension in November 2025. When ICE arrested her at an OSUP check-in, she resided in the United States under the same NTA issued on her entry in 2014. No new inspection occurred, no new admissibility determination was made, DHS did not issue a new Form I-200 (Warrant for Arrest of Alien) or Form I-286 (Notice of Custody Determination). That she was not “seeking admission” conforms to a recent BIA decision in *Matter of Forjoe*, 29 I&N Dec. 463 (BIA 2026) (Ex. 3):

We find it reasonable and compliant to define ‘admission,’ as provided in section 237(a)(1)(H) of the INA, 8 U.S.C. § 1227(a)(1)(H), ***by its plain and natural meaning as an entry after inspection***. Such interpretation ***permits a waiver only of fraud committed at the time of an alien’s physical entry into the United States***, rather than the time of his or her adjustment of status. . . this interpretation prevailed for many years. . .

Id. at 471 (emphasis added, cleaned up).¹¹ It is also consistent with how federal courts interpreted the phrase “at the time of application for admission.” Various courts explained that this language refers to the specific moment when a noncitizen seeks to physically enter the United States—not years later while residing within the country. *See Torres v. Barr*, 976 F.3d 918, 924, 931 (9th Cir. 2020) (holding that the relevant inquiry focuses on “the particular point in time when a noncitizen submits an application to physically enter into the United States”). The Eleventh Circuit analyzed the term “applicant for admission” in *Ortiz-Bouchet v. U.S. Att’y Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013), in the context of 8 U.S.C. § 1182(a)(7)(A)(i)(I). Its holding turned on the meaning of the phrase “at the time of application for admission,” concluding that the provision applies only to noncitizens outside seeking entry into the United States, not to individuals already present in the country seeking post-entry relief. The Fifth Circuit holding in *Buenrostro-Mendez*, that “an alien seeking admission” collapses into “applicant for admission” in § 1225(b)(2) (giving the former no

¹⁰ *See also Ardon-Quiroz v. Assistant Field Dir.*, No. 25-cv-25290-JB, 2025 WL 3451645, at *6 (S.D. Fla. Dec. 1, 2025)(application of § 1225(b) to petitioner who entered as Unaccompanied Child absent individualized assessment of flight risk or dangerousness misreads statute and INA).

¹¹ In footnote 3, the BIA purports to limit its ruling to “the issue at hand.” This is precisely the kind of shifting justification that Judge Jordan decried. *See n.1, supra*; *see also Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024) (“‘Respect,’ though, was just that. The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it.”).

independent meaning contrary to the rules of statutory construction) runs afoul of these holdings.¹²

Moreover, from the outset of Petitioner's case in 2014, the government proceeded under § 1226. On the NTA, DHS categorized Petitioner as "an alien present in the United States without admission or parole," not as an "arriving alien." This classification places Petitioner squarely within § 1226. *See Figuera v. Ripa*, No. 26-CV-20307-JB, 2026 WL 467569, at *4 (S.D. Fla. Feb. 19, 2026), citing *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *8 (E.D. Mich. Sep. 9, 2025) (ICE selecting "present" not "arriving" on NTA means § 1226 applies).

Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025), is distinguishable. There the noncitizen was arrested without a warrant shortly after crossing into the United States and paroled into the country. BIA held "that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under ... § 1225(b), and is ineligible for any subsequent release on bond under ... § 1226(a)." *Id.* at 69. Here, DHS formally arrested Petitioner pursuant to a warrant issued under § 1226(a), issued a Notice of Custody Determination invoking detention authority under § 1226(a), and admitted Petitioner was entitled to "request a review of this determination by an immigration judge." Petitioner entered the United States as an Unaccompanied Child and was processed pursuant to the TVPRA framework, not § 1225(b). Having relied on § 1226, the government is estopped from asserting mandatory detention under § 1225(b). *See id.* at 69 n.4.

III. Respondents' argument that Petitioner's placement in 8 U.S.C. § 1229a removal proceedings equates to detention pursuant to 8 U.S.C. § 1225(b)(2)(a) is wrong.

Respondents argue that applicants for admission referred for § 1229a removal proceedings are ineligible for a custody redetermination hearing before an immigration judge due to being detained under 8 U.S.C. § 1225(b)(2). [DE 7 at 8]. Respondents also state individuals subject to expedited removal may be placed in § 1229a proceedings. Section 1229a governs the procedural framework for removal proceedings before an immigration judge. It applies regardless of whether a noncitizen is detained or released. Detention authority, however, is governed by separate

¹² *See also Buenrostro-Mendez v. Bondi*, 2026 WL 323330, at *11 (Douglas, J., dissenting) (noting "(1) that § 1225(b)(2)(A) uses 'seeking admission' alongside and in addition to 'applicant for admission,' and 'a variation in terms suggests a variation in meaning,' and (2) that reading § 1226 to not apply to inadmissible noncitizens ... renders several portions of § 1226 superfluous, including the recently passed Laken Riley Act, because noncitizens subject to mandatory detention under § 1226(c)(1) would already have been subject to mandatory detention under § 1225(b)(2)(A).") (citation omitted)(quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012)).

statutory provisions, including § 1225(b)(2) and § 1226(a), depending on the individual's classification and posture. The mere fact that an individual is placed in § 1229a proceedings does not convert discretionary detention under § 1226(a) into mandatory custody under § 1225(b)(2). And Petitioner has never been subject to expedited removal under § 1225(b)(1). As an Unaccompanied Child from a non-contiguous country, she was statutorily exempt from expedited removal and instead placed directly into § 1229a proceedings pursuant to the TVPRA. *See* 8 U.S.C. § 1232(a)(5)(D)(i). The expedited removal framework, which operates within § 1225(b), has no application to her case. That procedural classification has never changed.

IV. Section 1226(a) is the detention authority outlined in Count I and considers other designations for which § 1225(b)(2) does not account.

Respondents argue that § 1226(a) does not have any impact on the detention directive in § 1225(b)(2). Respondents fail to address Petitioner's designation as an Unaccompanied Child at the time of entry and the statutory consequences of that designation. Petitioner was statutorily exempt from DHS detention and expedited removal under § 1225(b) by virtue of the TVPRA and Homeland Security Act of 2002 ("HSA"). Her Unaccompanied Child status upon entry and subsequent release by ORR further establishes that she is not a mandatory detainee because the TVPRA anticipates Unaccompanied Children are not subject to mandatory detention but should be released upon ORR's identification of a sponsor or, if still in ORR custody upon turning eighteen years old, be considered for release or placement in the least restrictive setting available if transferred to DHS custody. *See* 8 U.S.C. § 1232(c)(2) ("Such aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home."). A plain reading of the statute presumes that every Unaccompanied Child in HHS custody who reaches eighteen years old will not be automatically transferred to the DHS's custody. *See Ramirez v. ICE*, 471 F. Supp. 3d 88 (D.D.C. 2020) (finding DHS/ICE in violation of 8 U.S.C. § 1232(c)(2)(B) when it transferred eighteen-year-old Unaccompanied Children in HHS custody to ICE detention facilities without attempting to place them in the least restrictive placement available). Section 1226(a) is therefore the detention authority for Unaccompanied Children, as § 1225(b)(2) would mean Unaccompanied Children would automatically become mandatory detainees upon reaching eighteen years old. TVPRA and HSA work together with § 1226(a) to exempt Petitioner from mandatory detention.

V. Respondents' assertion that applicants for admission may only be released from

detention on an 8 U.S.C. § 1182(d)(5) parole is erroneous.

Respondents argue that because Petitioner is an “applicant for admission,” she may only be released from detention through DHS’s discretionary parole authority under 8 U.S.C. § 1182(d)(5), and that such parole determinations are unreviewable by an immigration judge or the BIA. [DE 7 at 11]. That argument rests on the erroneous premise that Petitioner is subject to mandatory detention under § 1225(b)(2). Section 1182(d)(5) governs parole of applicants for admission detained under § 1225. It is not a general release mechanism applicable to all noncitizens in removal proceedings. The parole provision becomes relevant only where § 1225 supplies detention authority. If detention instead arises under § 1226(a), release is governed by bond redetermination before an immigration judge. Petitioner was not released on parole under § 1182(d)(5), but under § 1226(a) and the statutory scheme for Unaccompanied Children.

VI. Petitioner need not exhaust her administrative remedies by appealing the immigration judge’s bond determination to the Board of Immigration Appeals.

Respondents argue that this Court should dismiss the Petition because Petitioner did not appeal the immigration judge’s bond determination to the BIA and therefore failed to exhaust administrative remedies. [DE 7 at 12–13]. First, “[t]he exhaustion requirement under 8 U.S.C. § 1252(d)(1) “is not jurisdictional,” but prudential.” *Figuera v. Ripa*, 2026 WL 467569, at *2, citing to *Kemokai v. U.S. Att’y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023) (recognizing that *Santos-Zacaria v. Garland*, 598 U.S. 411, 413 (2023), abrogated prior Eleventh Circuit precedent treating § 1252(d)(1) as jurisdictional). Section 2241 does not impose an exhaustion requirement. *See Santiago-Lugo v. Warden*, 785 F.3d 467, 474 (11th Cir. 2015). Moreover, pursuant to the INA, 8 U.S.C. § 1252(d)(1), applies only to petitions for review of final orders of removal filed in the courts of appeals. It does not apply to habeas petitions challenging detention. *See Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) (“Under the INA, exhaustion of administrative remedies is only required by Congress for appeals of final orders of removal.”).

Second, Petitioner is not required to exhaust administrative remedies if “the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see also Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). The immigration judge denied bond based on *Hurtado*. Because that denial rested on a legal interpretation that no longer carries precedential force, requiring Petitioner to appeal to the BIA serves no purpose and would only prolong her detention.

VII. 8 U. S. C. § 1252(g) does not strip the Court of jurisdiction over Petitioner’s claim.

Respondents contend that 8 U.S.C. § 1252(g) strips this Court of jurisdiction to review the legality of Petitioner’s continued mandatory detention. This misinterprets the statute. Section 1252(g) does not “cove[r] the universe of deportation claims.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). “In fact, what § 1252(g) says is much narrower.” *Id.* The provision applies only to three discrete actions that the Attorney General may take: the “decision or action” to “commence proceedings, adjudicate cases, or execute removal orders.” *Id.* The Supreme Court has “not interpret[ed] this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [it] read the language to refer to just those three specific actions themselves.” *Jennings*, 583 U.S. at 294, 138 S.Ct. 830, (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 482–83). Petitioner does not challenge any of the three actions identified in § 1252(g), but her detention under § 1225.

Respondents’ reliance on *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016), is misplaced. *Alvarez* involved a Bivens action challenging ICE’s discretionary decision to commence removal proceedings and to detain the alien in connection with that decision. As the Supreme Court made clear, § 1252(g) does not divest district courts of jurisdiction to consider habeas challenges to the extent of the government’s detention authority. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) and *I.N.S. v. St. Cyr*, 533 U.S. 289, 311 n.34 (2001). Petitioner’s claim falls within the permissible scope of habeas jurisdiction and therefore this Court has jurisdiction.

VIII. Neither 8 U. S. C. §§ 1252(a)(5) nor (b)(9) strips the Court of jurisdiction to review Petitioner’s claim because she is not seeking the review of an order of removal.

Respondents’ reliance on the channeling provisions at 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9) is misplaced. Petitioner is not seeking review of an order of removal. Her prior removal order was rescinded when the immigration judge reopened proceedings on December 8, 2025. There is presently no final order subject to petition-for-review jurisdiction. As the Eleventh Circuit explained, “[t]o determine whether [§ 1252(a)(5)] applies here, we must determine whether [the petitioner] seeks review of an order of removal.” *Madu v. U.S. Att’y Gen.*, 470 F.3d 1362, 1366 (11th Cir. 2006). Petitioner is not “challeng[ing] a final administrative order of removal or seek[ing] review of a removal order.” *Id.* at 1367. Similarly, § 1252(b)(9) does not divest this Court of jurisdiction because the Petitioner’s claim of unlawful detention does not “aris[e] from any action taken or proceeding brought to remove an alien from the United States.” 8 U.S.C. § 1252(b)(9). “Moreover, while the REAL ID Act amended § 1252(b)(9) by adding an explicit bar on habeas jurisdiction over certain claims, the Act did not expand the scope of (b)(9) by making it

applicable to cases other than those involving ‘review of an order of removal.’ Because § 1252(b)(9) applies only ‘with respect to review of an order of removal,’ and this case does not involve review of an order of removal, we find that section 1252(b)(9) does not apply to this case.” *Id.* at 1367; *see also Canal A. Media Holding, LLC v. USCIS*, 964 F. 3d 1250, 1257 (11th Cir. 2020). This reading corresponds with the jurisprudence from the Supreme Court. Without “attempt[ing] to provide a comprehensive interpretation,” the Court in *Jennings* found it “enough to note that [the claimants] are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined.” *Jennings v. Rodriguez*, 583 U.S. at 841; *see also Nielsen v. Preap*, 586 U.S. 392, 402, (2019).

IX. Petitioner’s continued detention violates her right to due process.

Respondents fail to address Petitioner’s Fifth Amendment due process claim. The Due Process Clause applies to all “persons” within the United States “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. at 693. Under the test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court must consider: (1) the private interest affected, (2) the risk of erroneous deprivation through the procedures used, and (3) the government’s interest. First, Petitioner’s liberty interest is paramount. Freedom from physical restraint “lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Petitioner was previously released from ORR custody after being determined not to pose a flight risk or danger to the community, she continuously resided in the same county in Florida, maintained lawful employment pursuant to a valid Employment Authorization Document, and has no subsequent criminal history. Second, the risk of erroneous deprivation is substantial where detention is imposed without an individualized bond determination. *See Marcello v. Bonds*, 349 U.S. 302, 305–06 (1955). Third, the government’s interest in continued detention without a bond hearing is minimal. Petitioner has a history of compliance with immigration authorities.

Moreover, Petitioner risks effectively indefinite detention if relief is denied. U-visa petitions suffer from long backlogs, often taking years before final adjudication. Congress’ goal in enacting that program was to encourage crime victim cooperation with law enforcement, not lock them up. Petitioner’s detention in the interim raises profound prudential and due process concerns.

Conclusion

For all of these reasons, the Court should grant the Petition for Writ of Habeas Corpus.

BUCKNER + MILES

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 27, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system. I also certify that the foregoing document is being served this day on all counsel of record via transmission of a Notice of Electronic Filing generated by CM/ECF.

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