UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOSE SANCHEZ CRUZ,
Plaintiff,

Case No. 26-60351-CIV-SMITH

v.

KRISTI NOEM, et al.,

Defendants,

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Issue Presented

Whether Respondents have shown that Petitioner's current detention is authorized by the mandatory-detention provision of 8 U.S.C. § 1225(b)(1)(B)(ii) (thereby foreclosing any bond hearing), or whether-given Petitioner's posture in full removal proceedings under 8 U.S.C. § 1229a-his detention is instead governed by 8 U.S.C. § 1226(a), which carries bond eligibility.

Governing Rules

1. **Section 1225(b) detention is mandatory for covered "applicants for admission," and the statute does not provide bond hearings**

The Supreme Court has recognized that 8 U.S.C. § 1225(b)(1) and (b)(2) most naturally mandate detention of applicants for admission until the relevant proceedings conclude, and that neither provision says anything about bond hearings or imposes a time limit in the statutory text. Jennings v. Rodriguez, 583 U.S. 281, 138 S. Ct. 830 (2018).

2. Expedited removal applies to "arriving" noncitizens and may also be applied to certain physically present noncitizens who lack two years' continuous physical presence

The expedited removal statute must be applied to noncitizens "who [are] arriving" and can be applied to other noncitizens who have not been physically present continuously for the two-year period immediately prior to the inadmissibility determination. Linares v. Garland, 71 F.4th 1201 (9th Cir. 2023).

3. Credible-fear screening is part of the expedited-removal framework, and a positive credible-fear finding leads to "full consideration" in standard removal proceedings

Under the expedited-removal framework, if a covered noncitizen indicates fear, the officer must refer the person for a credible-fear interview; if credible fear is found, the person receives full consideration of the asylum claim in a standard removal hearing. ,.

4. Section 1229a removal proceedings are the "sole and exclusive procedure" for determining removability unless otherwise specified

A proceeding under 8 U.S.C. § 1229a is the "sole and exclusive procedure" for determining whether an alien may be admitted or removed, unless otherwise specified. 8 USCS § 1229a.

Argument

1. Respondents have not carried their burden to show Petitioner's *current* detention is governed by § 1225(b)(1)(B)(ii), rather than § 1226(a)

Respondents' return assumes that because Petitioner was once served with an expedited removal order in June 2023 and later obtained a vacatur of a negative credible-fear finding, his detention authority necessarily remains § 1225(b)(1) even after the Government issued a Notice to Appear and litigated a merits hearing in § 1229a proceedings.

But the statutory structure and the record facts Respondents recite show a material transition: Petitioner is now in standard removal proceedings (a merits hearing occurred and an immigration

judge entered a removal order), and his appeal is pending before the Board of Immigration Appeals. Khalafala v. Kane, 836 F. Supp. 2d 944 (D. Ariz. 2011),.

2. **The record reflects Petitioner is being processed through § 1229a proceedings, which Congress describes as the sole and exclusive procedure for removal determinations. Avila-Santoyo v. AG, 713 F.3d 1357 (11th Cir. 2013).**

Respondents' own chronology confirms that after the immigration judge vacated the negative credible-fear determination, Petitioner became subject to an nta and was released, and later-after re-arrest-Immigration and Customs Enforcement issued a new Notice to Appear and the immigration judge conducted a merits hearing and ordered removal. ,.

Congress has stated that, unless otherwise specified, § 1229a proceedings are the "sole and exclusive procedure" for determining whether an alien may be removed. 8 USCS § 1229a.

3. **Respondents' position effectively reads § 1225(b)(1)(B)(ii) as controlling detention even after the case is in the sole and exclusive § 1229a track, without identifying statutory text in the provided authorities that expressly extends § 1225(b) detention through the entire § 1229a merits-and-appeal process. Reyes v. Lyons, 801 F. Supp. 3d 797 (N.D. Iowa 2025).**

The authorities provided describe that a positive credible-fear finding results in full consideration of the asylum claim in a standard removal hearing.

That description underscores the shift from screening to full adjudication; it does not, on its face, resolve which detention statute governs once the case is in the standard hearing posture.

4. **Respondents' reliance on a categorical no bond hearing rule under § 1225(b) does not answer the threshold question: whether Petitioner is, at this stage, detained under § 1225(b) at all. Oscar v. Ripe, 751 F. Supp. 3d 1324 (S.D. Fla. 2024).**

Jennings (as summarized in the provided materials) supports that § 1225(b) detention is mandatory for covered applicants for admission and that the statute does not provide bond hearings. Jennings v. Rodriguez, 583 U.S. 281, 138 S. Ct. 830 (2018).

But that proposition only applies if Petitioner's detention is properly classified under § 1225(b) rather than under a different detention provision applicable to § 1229a proceedings.

5. **Respondents' "arriving alien" framing is incomplete because expedited removal can extend beyond "arriving" noncitizens, and the key question becomes whether DHS properly placed Petitioner in expedited removal at the time of the current detention episode**

Respondents argue Petitioner is detained under § 1225(b)(1) and is in expedited removal proceedings.

The provided case authority explains that expedited removal must be applied to noncitizens "who [are] arriving" and can be applied to other noncitizens who lack two years' continuous physical presence. Linares v. Garland, 71 F.4th 1201 (9th Cir. 2023).

Thus, even if Petitioner is not an "arriving" noncitizen in the ordinary sense, that does not end the analysis; the statute can reach certain physically present noncitizens as well.

However, Respondents' return (as provided) does not identify facts establishing that, at the time of the June 2025 arrest and July 2025 Notice to Appear, DHS made the specific determinations described in the expedited-removal framework (including the two-year continuous physical presence criterion) as the basis for the *current* detention authority.

Instead, Respondents' factual narrative emphasizes the issuance of a Notice to Appear and the conduct of a merits hearing in § 1229a proceedings.

On this record, Respondents have not shown-by reference to the statutory predicates reflected in the provided authorities-that Petitioner's present custody is properly treated as § 1225(b)(1) custody rather than custody incident to § 1229a proceedings.

6. The two-year gap and re-arrest underscore that the Court must analyze the *current* detention episode's statutory basis, not simply the 2023 expedited-removal history

Respondents' own timeline reflects that Petitioner was released on June 23, 2023, and then encountered and arrested again on June 23, 2025, followed by a new Notice to Appear on July 27, 2025.

That sequence matters because it demonstrates a new custody event and a new charging document leading to a merits hearing and removal order.

Respondents' return does not supply, in the provided materials, a statutory explanation tying the 2025-2026 detention episode to a still-operative expedited-removal order rather than to the § 1229a case that culminated in the November 26, 2025 merits decision and the pending Board of Immigration Appeals appeal.

7. Due process and Zadvydas arguments do not resolve the statutory classification dispute on this record, and Respondents' authorities do not foreclose relief if detention is under § 1226(a)

Respondents argue that mandatory detention under § 1225(b) is constitutionally permissible and that Zadvydas is inapplicable because it concerns post-removal-order detention under § 1231 rather than pre-removal detention. Bah v. Cangemi, 489 F. Supp. 2d 905 (D. Minn. 2007),.

But Petitioner's core reply point is antecedent: Respondents have not established that § 1225(b) is the correct detention statute for Petitioner's present posture in § 1229a proceedings with a pending Board of Immigration Appeals appeal.

If the Court determines the detention authority is § 1226(a), then Respondents' "no bond hearing under § 1225(b)" authorities do not answer whether Petitioner is entitled to a bond hearing under the correct statute.

8. Proper respondent: the Court may dismiss improper supervisory respondents without denying the Petition on the merits

Respondents contend that, under Rumsfeld v. Padilla, 542 U.S. 426, 124 S. Ct. 2711 (2004), the immediate custodian is the proper respondent and that Acting Assistant Field Office Director Carlos Nunez is the only appropriate respondent.

Even if the Court agrees, that is a curable party-identification issue and does not resolve whether Petitioner's detention is authorized by the statute Respondents invoke.

Requested Relief

Because Respondents have not shown on this record that Petitioner's current detention is properly governed by 8 U.S.C. § 1225(b)(1)(B)(ii) rather than detention incident to § 1229a proceedings, the Court should reject Respondents' mandatory-detention/no-bond theory and order Respondents to provide Petitioner a bond hearing under the appropriate detention statute, or grant such other relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 6, 2026, the foregoing response was electronically filed with the clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted

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