

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

JOSE MIGUEL REYES BENITEZ,
(Alien No: )

Petitioner,

v.

Docket: 26-cv-60436-WPD

WARDEN, BROWARD TRANSITIONAL
CENTER, GARRETT RIPA, FIELD OFFICE
DIRECTOR, MIAMI ERO, ICE,
KRISTI NOEM, SECRETARY OF
HOMELAND SECURITY, PAMELA BONDI,
ATTORNEY GENERAL OF THE UNITED STATES,
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW ("EOIR").

Respondents.

**PETITIONER'S REPLY IN OPPOSITION
TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE**

Petitioner, Jose Miguel Reyes Benitez ("Reyes Benitez"), by and through undersigned counsel, submits this Reply in Opposition to Respondents' Response to Order to Show Cause and states as follows:

I. DHS Initiated § 240 Proceedings in 2014, and Detention Authority Must Correspond to That Procedural Posture

Respondents assert that Reyes Benitez is detained under 8 U.S.C. § 1225(b)(1). See Resp. to OSC at 1, 4, 7, ECF No. 8. However, Respondents concede that "On January 15, 2014, DHS filed the NTA with the immigration court and initiated removal proceedings against Petitioner pursuant to INA § 240." Resp. to OSC at 2, ECF No. 8; Clarke Decl. ¶ 13, ECF No. 8-3. That concession is dispositive of the detention framework. Once DHS files a Notice to Appear and initiates removal proceedings under 8 U.S.C. § 1229a, the Immigration Court obtains jurisdiction

pursuant to 8 C.F.R. § 1003.14(a), and detention pending a decision on removability is governed by 8 U.S.C. § 1226(a), absent a separate mandatory detention provision.

The Supreme Court has described § 1225(b) as governing individuals encountered “at the Nation’s borders and ports of entry.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). In *Jennings*, the Court explained that § 1225(b) operates at the threshold of entry, during the inspection and admissibility determination process, where the Government must decide whether a noncitizen “seeking admission” may enter the country. *Id.* That statutory framework is tethered to the border context and to the initial inspection process contemplated by 8 U.S.C. § 1225(a), not to individuals who have long since effected entry and are litigating their removability before an Immigration Judge.

By contrast, § 1226(a) governs the arrest and detention of a noncitizen “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Its text presupposes that removal proceedings are underway and that an adjudicative determination of removability remains outstanding. It is the default detention authority during ordinary removal proceedings conducted under 8 U.S.C. § 1229a, where the Immigration Judge decides inadmissibility or deportability in the first instance. Section 1226(a) expressly authorizes either continued detention or release on bond or conditional parole, reflecting Congress’s judgment that individuals in full removal proceedings are entitled to individualized custody determinations unless a specific mandatory provision applies. Reyes Benitez’ case has been pending before the Immigration Court since 2014, following the filing of the Notice to Appear and initiation of § 240 proceedings. Resp. to OSC at 2–3, ECF No. 8. He was found to have established a credible fear in 2013, issued an NTA, released from custody, and has since appeared for hearings, filed applications for relief, and litigated his case through multiple master and individual hearings over the course of

more than ten years. *Id.* His matter was even administratively closed in 2024 and later recalendared in 2025, further underscoring that he is in ongoing § 1229a proceedings, not in expedited removal.

At this procedural posture, there is no inspection decision pending at a port of entry, no expedited removal order under § 1225(b)(1), and no border-based admissibility screening underway. Instead, there is a decade-old removal case awaiting adjudication before the Immigration Court. That circumstance fits squarely within § 1226(a)'s operative language, detention "pending a decision" on removability. Accordingly, the governing detention authority is § 1226(a), not § 1225(b), and Petitioner is entitled to the custody framework Congress prescribed for individuals in full removal proceedings.

II. The Statutory Sequencing of §§ 1225, 1226, and 1229a Confirms § 1226(a) Governs Detention in Pending § 240 Proceedings

The Immigration and Nationality Act establishes distinct procedural tracks. Section 1225 governs inspection and threshold admissibility determinations. Section 1229a governs full removal proceedings before an Immigration Judge. Section 1226 governs detention during the pendency of those proceedings. Congress expressly tied § 1225(b) detention to inspection-based determinations. See 8 U.S.C. § 1225(b)(1)(A)(i); § 1225(b)(2)(A). Once DHS elects to proceed under § 1229a by filing an NTA with the Immigration Court, the governing detention authority shifts to § 1226. The text of § 1226(a) applies to any noncitizen arrested and detained "pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a).

Section 1226(c) demonstrates that Congress knew how to impose mandatory detention when it intended to do so in pending removal proceedings. See *id.* § 1226(c)(1). By negative implication, where a noncitizen does not fall within § 1226(c), detention defaults to § 1226(a). See *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (specific exceptions confirm general rule). Respondents identify no statutory language authorizing DHS to

revert a decade-old § 240 proceeding back into expedited removal for detention purposes. The absence of such authority is dispositive.

III. 8 U.S.C. § 1252(a)(2)(A) Does Not Bar Review of a Detention-Classification Challenge

Section 1252(a)(2)(A) bars review of the “implementation or operation” of an expedited removal order. 8 U.S.C. § 1252(a)(2)(A)(i). Reyes Benitez does not seek review of an expedited removal order. He challenges whether § 1225(b)(1) is the correct statutory predicate for detention in active § 240 proceedings. No expedited removal order from 2026 is identified in Respondents’ filings. Instead, Respondents document ongoing Immigration Court hearings. Resp. to OSC at 2–3, ECF No. 8. A pure statutory-authority challenge to detention falls squarely within habeas jurisdiction under 28 U.S.C. § 2241.

IV. 8 C.F.R. § 235.3(b)(1)(ii) Does Not Authorize Retroactive Reclassification

Respondents rely on 8 C.F.R. § 235.3(b)(1)(ii) for the proposition that DHS may initiate expedited removal “at any time.” Resp. to OSC at 4, ECF No. 8. That regulation addresses initial placement decisions and does not override statutory sequencing once § 240 proceedings have vested under 8 C.F.R. § 1003.14(a). Administrative closure, re-calendar, and transfer to a detained docket are actions available only within § 240 proceedings. Resp. to OSC at 2–3, ECF No. 8. They are incompatible with an active expedited removal posture.

V. Exhaustion Is Excused Because a Bond Request Would Be Futile

Respondents argue Reyes Benitez has not sought bond. Resp. to OSC at 4, ECF No. 8. Yet Respondents maintain detention is under § 1225(b)(1), which they assert renders Reyes Benitez ineligible for bond. *Id.* at 8. Under Respondents’ own theory, an Immigration Judge would lack jurisdiction to grant relief. Exhaustion is not required where agency review would be futile. *See McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992) (“Where the administrative remedy is

inadequate or its pursuit would be futile, the administrative exhaustion requirement may be excused.”) Finally, even if Reyes Benitez were to attempt to request a custody redetermination hearing before the Immigration Court, such an effort would be futile. Immigration Judges are bound by precedential decisions of the Board of Immigration Appeals. 8 C.F.R. § 1003.1(g). In *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board held that a noncitizen who entered the United States without admission or parole and is classified as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A) is not eligible for bond because the Immigration Judge lacks jurisdiction to redetermine custody. Under that binding precedent, Immigration Judges are required to conclude that they have no authority to conduct a bond hearing for individuals placed in this statutory category.

Here, Respondents have classified Reyes Benitez as subject to detention under § 1225(b)(2)(A). As alleged in the Petition, ICE has declined to set bond and has treated him as mandatorily detained on that basis. (See Pet., Summary of the Facts (discussing denial of bond pursuant to *Matter of Yajure Hurtado*). Because Immigration Judges lack discretion to disregard binding Board precedent, any request for bond would be summarily denied for lack of jurisdiction. Requiring Reyes Benitez to file a bond motion under these circumstances would elevate form over substance and would not alter the legal posture of his detention. Exhaustion is not required where resort to the administrative process would be futile. Where the adjudicator lacks authority to grant the requested relief, the exhaustion requirement serves no purpose. Because the Immigration Judge is bound by *Hurtado* and lacks jurisdiction to conduct a bond hearing under Respondents’ classification, exhaustion is excused.

VI. Due Process Requires Determination of the Correct Statutory Basis for Detention

The Fifth Amendment protects against unlawful restraint. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *Jennings* addressed the meaning of § 1225(b) but did not authorize detention under an inapplicable statute. The Court must determine which statutory provision governs Reyes Benitez' custody and whether he is eligible to seek release on bond before an Immigration Judge.

CONCLUSION

For these reasons, the Court should deny dismissal, exercise jurisdiction under 28 U.S.C. § 2241, and determine that Reyes Benitez' detention is governed by 8 U.S.C. § 1226(a).

Done this 26 day of February 2026.

s/Claudia M. Garcia

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Jose Miguel Reyes Benitez, because I am Benitez' attorney. I have discussed with Benitez the facts described in this petition. Based on those discussions, I hereby verify that the factual statements in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Done this 26 day of February 2026.

s/Claudia M. Garcia

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CERTIFICATE OF SERVICE

I HEREBY DO CERTIFY that on February 26 2026 I filed and electronically served the foregoing documents with the Clerk of Court via this Court's CM/ECF system.

s/Claudia M. Garcia

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