

JAN PETER WEISS
Law Offices of Jan P. Weiss, P.A.
1926 10th Ave. North
Suite 400
Lake Worth, FL 33461
jan@janpweissesq.com

Attorney for Petitioner

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

MATEO GASPAR-MENDEZ	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.: 1:26-cv-21066-WPD
	)	
PAMELA BONDI, <i>et al.</i> ,	)	
	)	
Respondents.	)	
_____	)	

**PETITIONER'S REPLY TO RESPONDENT'S RETURN IN OPPOSITION TO THE
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, by and through undersigned counsel, submits the following reply to Respondent's Response to Order to Show Cause. First, as conceded by the government's response, their expansive interpretation of § 1225 has been uniformly rejected by countless other courts including within the Southern District of Florida. *See Perez v. Parra*, Case No. 25cv24820, 6-10 (S.D. Fla) (exhaustively listing the district court decisions across the United States rejecting Respondents' interpretation of § 1225).

Like the petitioner in *Perez v. Parra*, here the Department of Homeland Security itself proceeded under § 1226 from the outset by providing Mr. Gaspar Mendez with a Notice to Appear charging him as "present in the United States without admission or parole." *See* D.E. 1 at Exhibit E. The Honorable Judge Williams found that "this classification places him squarely within

§1226” as an individual apprehended within the interior of the United States. The Judge went on to cite a number of other district courts that have granted similar petitions on the very set of circumstances that Petitioner finds himself in. *Id.* at 6.

The Fifth Circuit’s recent decision in *Victor Buenrostro-Mendez v. Bondi, et al*, regarding mandatory detention, is not binding on this Court. Although a minority of Courts in the in Southern District of Florida have recognized the Fifth Circuit’s decision, the overwhelming majority have supported Petitioner’s position, and recently a Southern District Court held that “the decisions of other district courts are not binding on districts courts within this circuit. The Respondent’s response further points to the dissent in the Fifth Circuits decision, writing that the majority opinion ignores the fact that the Government’s newly discovered mandate arrives without historical precedent...and the fact that the overwhelming majority of courts in the Fifth Circuits and elsewhere have recognized that the Government’s position is totally unsupported....and ignores the Supreme Court’s clearly stated understanding of the statutory scheme.” *See, Exhibit A, Pacheco-Guzman v. Bondi, et al.*, 26:cv-20897 at footnote 3.

- 1. There is no question that Jennings reached the conclusion it did with the understanding that § 1225(b) applies at or near the border and § 1226(a) to those encountered in the interior and not subject to expedited removal—these are key distinctions that would have otherwise changed the analysis.**

While 8 U.S.C. § 1225 does not explicitly state that its application is limited to ports of entry (POEs) or their immediate vicinity, this was without question the Supreme Court’s understanding in *Jennings*. The Court’s conclusions regarding the statute’s interpretation and constitutionality relied heavily on the historically limited rights afforded to aliens at the country’s borders. This was not an incidental assumption; the Supreme Court is fully cognizant of the limited constitutional rights at the border, and the government itself argued this precise distinction in support of its interpretation of § 1225 and § 1226.

Indeed, the Court presented the precise question this Court is being asked to answer now to the Solicitor General more than once. For example, Justice Sotomayor asked, "Clarifying question. For an alien who is found in the United States illegally, has not been admitted, are they held under 1225(b) or are they held under 1226(a)?"¹

The Solicitor General responded, "So they are held under – if they are not – if they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not (c)."²

Seeking further clarity, Justice Sotomayor posed a hypothetical of an EWI alien stating, "I'm talking about an alien who has come into the United States illegally without being admitted who takes up residence 50 miles from the border."³

Without hesitation, the Solicitor General confirmed: "The answer is they are held under 1226(a) and that they get a bond hearing under it - - and this is at page 156a of the appendix."⁴

As discussed below, the simple reality is that the Supreme Court and all the litigants in *Jennings* recognized that § 1225 is a statute applicable at or near the border, and therefore, the warrant requirement of the Fourth Amendment and the due process clause of the Fifth Amendment have little or no application.

Those advocating for the government's new position have often asserted that nothing in § 1225 says it applies only at POEs and near the border so it must apply everywhere and anywhere. But this ignores context and the assumption that Congress seeks to legislate constitutionally. Moreover, just as the § 1225 does not explicitly state its application is at or near the border, § 1226

¹ (*Id.* at p. 7.)

² (*Id.* at pp. 7-8.)

³ (*Id.* at p. 8.)

⁴ (*Id.* at p. 8-9.)

does not say its application is in the interior of the United States. The absence of such language does not change the fact that its application is in the interior of the United States. This distinction between the geographical location of their application was explicitly acknowledged in *Jennings*.

The application of § 1225 at POEs and near the border is clear, unless one's entire test for interpretation is whether the statute explicitly states: "this statute applies only at X." The placement of § 1225 strongly supports its border-centric application. It is preceded by statutes plainly applying at POEs: § 1221 (arrival/departure manifests), § 1222 (detention and health examinations of arriving aliens), § 1223 (contracts with transportation companies regarding arriving aliens), and § 1224 (designation of POEs for aircraft). It is immediately followed by § 1225A, governing pre-inspection at airports. Simply put, § 1225 is surrounded by statutes that obviously apply at the borders and POEs.

Furthermore, the statute's implementing regulations affirm this understanding. The very first section, 8 C.F.R. § 235.1(a), states: "Generally. Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this section." The subsequent regulatory sections under 8 C.F.R. § 235 et. seq. consistently address procedures at the point of entry. Furthermore, most the implementing regulations have to do with airports, vessels, and other things that are clearly taking place at the border.

- 2. Section 1225's real world application and purpose is to set forth the procedures for inspection of the millions of "applicants for admission" who arrive at the country's POEs every year.**

Annually, millions of foreign nationals arrive at United States Ports of Entry (POEs)⁵ seeking entry.⁶ In 2022 for example, DHS granted approximately 97 million admissions into the U.S. with an estimated 45 million of those admissions being nonimmigrants who were issued an I-94.⁷ The majority of these individuals present facially valid non-immigrant visas, such as B-1/B-2 visitor, F-1 student, or H-1B temporary worker visas.⁸

Upon arrival, every such individual, regardless of their documentation, is legally deemed an "applicant for admission" pursuant to INA § 1225(a)(1). This foundational statute, which governs the inspection procedures at all POEs, defines an "applicant for admission" as either "[1] An alien present in the United States who has not been admitted or [2] who arrives in the United States..." 8 U.S.C. § 1225(a)(1).

The inspection process mandated by INA § 1225 functions as a critical sorting mechanism, resulting in one of three primary outcomes. First, an inspecting officer may determine that the alien possesses valid, unexpired documents and is admissible, thereby admitting them into the United States.

Second, if the officer determines the alien is inadmissible either for seeking entry through fraud or material misrepresentation (8 U.S.C. § 1182(a)(6)(C)) or for lacking valid entry documents (8 U.S.C. § 1182(a)(7)), the alien will be subject to expedited removal (ER) pursuant to 8 U.S.C. § 1225(b)(1). Significantly, there are many grounds of inadmissibility,⁹ but only aliens

⁵ The term "POE" is used throughout this brief as a short hand reference to any time or place designated by the attorney general for the admission of aliens.

⁶ (See Ex. 1 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022, Alice Ward, Office of Homeland Security Statistics, U.S. Dept. of Homeland Security.)

⁷ (*Id.*)

⁸ (*Id.*)

⁹ See generally 8 U.S.C. § 1182(a).

determined to be inadmissible under § 1182(a)(6)(C) or § 1182(a)(7) may be processed for Expedited Removal.¹⁰

In the second scenario, the alien is subject to expedited removal under INA § 1225(b)(1)(A). This is a summary process intended to be completed in a matter of hours, if not minutes. At airports and seaports, this authority is most commonly invoked not for lack of documents, but for alleged fraud or willful misrepresentation under § 1182(a)(6)(C).

For example, an inspecting officer may conclude that an alien arriving with a validly issued B-2 visitor visa is misrepresenting their nonimmigrant intent and secretly plans to remain permanently. Following questioning, the officer issues a Form I-860, a summary order of removal. Critically, this expedited removal order is immediate and final. The alien receives no hearing before an Immigration Judge. No appeal. And none of the procedural rights afforded in full removal proceedings under § 1229a.¹¹ While such aliens may claim a fear of return, triggering a separate review process, that distinct process itself does not shed light on the issues presented in this matter.¹²

Significantly, once an alien is issued an expedited removal order, the alien's subsequent removal (as well as any incidental detention) is under the custody and detention authority proscribed by 8 U.S.C. § 1231. The goal is for such removal immediately either by return to the contiguous territory the alien arrived from or on the carrier/vessel they arrived on if by sea or land.

¹⁰ § 1225(b)(1)(A)(1).

¹¹ § 1225(b)(1)(C).

¹² It is, nonetheless, important to point out that Congress was careful to unambiguously state its intent that aliens placed in this fear review process through § 1225(b)(2)(B)(iii)(I), explicitly titled "Mandatory detention" proscribes exactly that: "Any alien subject to procedures under this clause shall be detained pending a final determination of credible fear of persecution, and, if found not to have such a fear, until removed. The fact that Congress went out of its way to specifically mandate detention for those in this process but never sought to provide a similarly worded provision accompanying § 1225(b)(2)(A) is consistent with both Petitioner's interpretation under the statutory terms and the plain language interpretation employed by many.

The third category encompasses all “other aliens” specified in § 1225(b)(2)(A). These are applicants whom the inspecting officer does not believe to be admissible based on one of the grounds of inadmissibility set forth in § 1182 (other than § 1182(a)(6)(C) or § 1182(a)(7)).¹³

For instance, if an inspecting officer at an airport encounters a LPR with a conviction that potentially renders them inadmissible under the criminal grounds at § 1182(a)(2), that officer lacks the authority to issue an expedited removal order.¹⁴ Instead, the officer's sole recourse under the statute is to refer the alien for full removal proceedings before an Immigration Judge pursuant to § 1229a, where the alien will have the opportunity to be heard, contest the charges, and apply for any relief from removal which they are eligible to seek before an IJ.¹⁵ As this statutory framework demonstrates, the procedures detailed in § 1225 are designed for, and overwhelmingly applied at, the nation's ports of entry. Just as the plurality in *Jennings v. Rodriguez*, repeatedly alluded to, § 1225(b) authorizes detention of those applicants for admission who are “seeking admission into the country”—while it is 8 U.S.C. § 1226 which authorizes detention of those “already in the country.”¹⁶

In sum, far from a “detention” statute, § 1225 is the precise mechanism by which millions of applicants for admission arriving at the POEs are inspected, admitted, referred for proceedings, or summarily removed every year.

3. DHS has consistently treated Petitioner as though they are subject to § 1226, and therefore, have created a liberty interest that cannot be abrogated by the government unilaterally deciding to “switch tracks.”

¹³ § 1225(b)(2)(A)

¹⁴ See *id.* (proscribing its application only to those applicants for admission found inadmissible pursuant to § 1182(a)(6)(C) or § 1182(a)(7)).

¹⁵ *Id.*

¹⁶ *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

As stated in the opening, every DHS created, authored, and signed document issued in conjunction with Petitioner's encounter with DHS explicitly cited § 1226 for authority; meanwhile, § 1225 is not referenced anywhere in any of those documents. Nonetheless, the government now attempts to switch Petitioner's detention to being under § 1225. This attempted switch is not new to this case. Indeed, it seems to be an argument attempted by the government—and rejected by courts—from coast to coast.¹⁷

Courts faced with such arguments from the government in cases where DHS had previously consistently treated the alien as being subject to § 1226 have rejected this purported switching. In so doing, courts have explained that "settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2)."¹⁸ In this context, courts have also found DHS's prior treatment of an alien as though they are subject to § 1226 has resulted in concluding such an alien "enjoys a liberty interest under § 1226(a) and the procedural protections thereunder that cannot be unilaterally abrogated without process by the Government simply "switching tracks."¹⁹

4. Exhaustion is Prudential Not Jurisdictional and Can be Excused Where Administrative Review is Inadequate, Futile, or Would Cause Irreparable Harm

Petitioner remains detained without any opportunity for release on bond. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional, and other courts have repeatedly excused it where administrative review is inadequate, futile, or would cause irreparable harm. *F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 U.S. Dist. LEXIS 111539 (N.D. Okla. June 12, 2025) (declining to

¹⁷ See e.g. *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025).

¹⁸ *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

¹⁹ *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7–8 (N.D. Cal. Sept. 12, 2025).

require exhaustion where immigration detainee was “trapped in prolonged detention without a meaningful opportunity for bond”); *Quintana Casillas v. Sessions*, No. 17-cv-01395, slip op. at 9–11 (D. Colo. 2018) (explaining that when “the question presented is purely legal and has been repeatedly mishandled administratively, exhaustion serves no useful purpose.”). Here, the appellate body is the Board of Immigration Appeals, the same body that issued the decision stripping immigration judges of their jurisdiction to hear bonds.

Other districts have held that habeas corpus relief was available despite a pending BIA appeal, because “[e]ach additional day of detention without a bond hearing constitutes irreparable harm that cannot be remedied after the fact” *LG v. Choate*, No. 23-cv00611, slip op. at 14 (D.N.M. 2024). The BIA appeal process here exemplifies why exhaustion is unnecessary. As *Rodriguez v. Bostock* explained, while the BIA has occasionally remanded bond denials where immigration judges misapplied § 1225(b), it has declined to issue a precedential ruling. 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025). Consequently, many immigration judges continue to deny bond altogether, and appeals typically take six months or more, during which noncitizens remain detained unlawfully, with severe consequences for their health, families, and ability to defend against removal. *Id.* Because Petitioner’s injury is the very fact of unlawful detention without a bond hearing, administrative remedies are neither timely nor effective. Habeas corpus is the only adequate remedy.

5. Neither 8 U.S.C. 1252(g) nor 8 U.S.C. 1252(b)(9) Bar Review of Petitioner’s Claims.

The Court does have subject matter jurisdiction over the Petitioner’s habeas claim. District Courts and the Eleventh Circuit have held that section 1252(g) bars review of or challenges to final administrative orders of removal, however, it does not apply to the facts of the Petitioner’s case as he is not challenging his removal proceedings. Section 1252(g) states “the provision applies only

to three discrete actions that the Attorney General may take: her decision or action to commence proceedings, adjudicate cases, or execute removal orders”. *Cetino v. Hardin*, 2025 U.S., 3 Dist. Lexis 257174. Courts have interpreted this provision narrowly, applying only as to those three specific actions; “when asking if a claim is barred by § 1252(g), Courts must focus on the action being challenged.” *Id. See, Madu v. United States*, 2006 U.S. Dist.LEXIS 52516; *Madu v. United States AG*, 470 F.3d 1362 (11 th Cir. 2006); *Patel v. Hardin*, 2025 U.S. Dist.LEXIS 233409; *Cetino v. Hardin*, 2025 Dist.LEXIS. Therefore, Jurisdiction is proper here despite 8 U.S.C. § 1252(g) because Petitioner is not seeking direct review of the removal order, instead Petitioner is challenging unlawful custody and removal procedure. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 S. Ct. 1959 (2020); *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (2001).

The “Zipper” clause does not apply to the petitioner as he is not challenging the decision to detain him or to seek to remove him. The Petitioner is not challenging ICE’s and DHS’s decision to detain him or their effort to remove him from the United States or challenging any part of the process by which his removability will be determined. *Madu v. United States AG*, 470 F.3d 1362, (11 th Cir. 2006). The *Madu* Court’s decision is similarly situated to the Petitioner in this case because Petitioner challenges the Department’s and Immigration Court’s interpretation of law, specifically regarding mandatory detention under § 1225(a), not the Attorney General’s decision to detain him and place him in removal proceedings in the first place. Here, the Court found that because the language of 8 U.S.C.S. § 1252(b)(9) unambiguously divests all courts of habeas jurisdiction over cases that fall within its purview. Yet § 1252(b) is equally clear that § 1252(b)(9) applies only with respect to review of an order of removal. *Id.* at 2.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be granted, and an order should be issued immediately releasing Petitioner from his five-month unlawful detention or an immediate deadline should be imposed before which Respondents must provide Petitioner with a discretionary custody redetermination (bond) hearing.

Respectfully submitted,

/s/ Jan Peter Weiss

Dated: March 4, 2026

Jan Peter Weiss, Esquire
Counsel for Petitioner
Law Office of Jan Peter Weiss
1926 10th Avenue North, Suite 400
Lake Worth, Florida 33461
Phone: (561) 582-6401
Fax: (561) 582-5458
Email: jan@janpweissesq.com
Florida Bar No.: 297887

MATEO GASPAR-MENDEZ

Petitioner,
v.

PAMELA BONDI, U.S. Attorney General, et al.

)
)
)
)
)
)
)

Case No.: 1:26-cv-21066-WPD

INDEX OF SUPPORTING DOCUMENTS

Attachment No.	Document Title
1	<i>Pacheco-Guzman v. Bondi, et al., 26:cv-20897</i>
2	2022 Annual Flow Report – Department of State
3	Jennings Oral Argument Transcript