

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

DEIBIS GARCIA CHINEA,)

Petitioner)

vs.)

Case No.: 26-cv-00804-TPO

PAMELA BONDI, in her official capacity as Attorney)
General of the United States, KRISTI NOEM, in her)
official capacity as Secretary of the Department of)
Homeland Security, TODD LYONS, in his official capacity)
as Acting Director of Immigration and Customs)
Enforcement; JUAN BALTAZAR, in his official capacity)
as Warden of the Denver Contract Detention Facility,)

Respondents.)

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO HABEAS PETITION

INTRODUCTION

Petitioner filed a Petition for Writ of Habeas Corpus and Request for Order to Show Cause on February 26, 2026. (Doc. 1). This Court issued an Order to Show Cause on March 4, 2026, which required Respondents to respond on or before March 13, 2026. (Doc. 4). Respondents filed a timely response. (Doc. 8).

Respondents largely reiterate arguments already addressed and rebutted in the Petition, including their reliance on *Jennings* and their attempt to characterize Petitioner's detention as governed by 8 U.S.C. § 1225 rather than § 1226. The Petition has already demonstrated why those arguments fail as a matter of statutory text, structure, constitutional principles, and controlling precedent.

This Reply addresses Respondents' remaining contention that 8 U.S.C. §§ 1252(g) and 1252(b)(9) bar this Court's jurisdiction, insofar as those arguments are incorporated by reference in Respondents' filing.

ARGUMENT

I. This Court has jurisdiction over Petitioner's habeas.

Respondents argue that 8 U.S.C. § 1252(g) divests this Court of jurisdiction. (Doc. 8-1 at *8.) That argument fails. The Supreme Court has made clear that 8 U.S.C. § 1252(g) is narrow. "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.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret this language to sweep in any claim that technically can be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.").

Petitioner is not challenging the commencement of proceedings, the adjudication of his removability, or the execution of any removal order. He challenges only the legal authority for his current detention. That is a custody challenge squarely within traditional habeas jurisdiction. Accordingly, § 1252(g) does not apply.

Respondents also invoke 8 U.S.C. § 1252(b)(9). That argument is equally unavailing. The Supreme Court has repeatedly clarified that § 1252(b)(9) is not a "zipper clause" that channels all immigration-related claims into petitions for review of removal orders. Rather, it applies only to

claims seeking judicial review of removal orders or matters inextricably intertwined with the removal determination itself. *Jennings*, 583 U.S. at 293–94.

Petitioner does not seek review of a removal order. He does not challenge the basis for removability, the evidence against him, or the ultimate outcome of his removal proceedings. He challenges only whether he may be subjected to mandatory detention without access to a bond hearing. That issue is collateral to the merits of his removal case and is properly brought through habeas. Section 1252(b)(9) therefore poses no jurisdictional bar.

II. Respondents’ merits arguments fail.

Respondents candidly acknowledge that this Court has already rejected their interpretation of § 1225(b)(2) in materially indistinguishable cases. (Doc. 8 at *2). Nothing in their abbreviated response meaningfully distinguishes Petitioner’s case from those prior rulings.

The material facts are undisputed. Petitioner entered the United States on November 8, 2021, and was expressly released on November 18, 2021 pursuant to 8 U.S.C. § 1226(a) under an Order of Release on Recognizance (“OREC”). (Doc. 8 at *2 n.2). That prior exercise of discretionary custody authority confirms that DHS processed Petitioner within the detention framework governed by § 1226, not § 1225(b).

Despite this undisputed history, Respondents contend that the Government may now subject Petitioner to mandatory detention under § 1225(b)(2)(A). *Id.* That position is inconsistent with the statutory scheme. Section 1226 governs the detention of noncitizens who have been placed in removal proceedings under 8 U.S.C. § 1229a and who are detained pending a decision on removal. Having processed Petitioner, placed him into removal proceedings, and exercised

discretionary authority to release him under § 1226(a), Respondents cannot now retroactively recharacterize his detention framework in order to foreclose bond eligibility.

Respondents rely on *Nielsen v. Preap*, 586 U.S. 392 (2019), but that decision does not support their position. *Preap* addressed whether the Government loses its authority to detain certain noncitizens under § 1226(c) if it fails to take them into custody immediately upon their release from criminal confinement. *Id.* at 411. The Supreme Court held only that a delay in taking custody does not extinguish the Government's statutory detention authority. *Id.* *Preap* did not address the situation presented here, where DHS affirmatively exercised its discretionary custody authority under § 1226(a) by releasing Petitioner on OREC and later sought to treat him as subject to mandatory detention under a different statutory provision. Nothing in *Preap* authorizes the Government to disregard its prior exercise of § 1226 authority or to recharacterize the governing detention statute after the fact.

Respondents' theory would allow the Government to treat Petitioner as detained under § 1226 when releasing him, but as detained under § 1225 when seeking to deny him access to a bond hearing. The INA does not permit such a shifting detention framework. Once DHS exercised discretionary authority under § 1226(a) and released Petitioner on OREC, his detention pending removal proceedings falls within the statutory scheme governed by § 1226.

Courts addressing similar circumstances have recognized that once the Government processes a noncitizen and releases him under § 1226 authority, subsequent detention pending removal proceedings must also be analyzed under § 1226 rather than § 1225. *See, e.g., Ekenge v. Baltazar*, No. 26-cv-00630-SBP at *5 (D. Col. Mar. 3, 2026); *Yaman v. Lyons*, No. 26-cv-00556-

DC-SCR, 2026 WL 323060, at *4-5 (E.D. Cal. Feb. 6, 2026); *Abdulahi A.M. v. Bondi*, No. 26-cv-1018-DWF-DLM, 2026 WL 323523, at *1-2 (D. Minn. Feb. 6, 2026).

Instead, Respondents rely on the Fifth Circuit’s decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502-08 (5th Cir. 2026). (Doc. 8). But that decision is not binding in this Circuit and, in any event, involved materially different facts. In *Buenrostro-Mendez*, the petitioner had not previously been processed and released under §1226 authority. *Id.* By contrast, here DHS affirmatively exercised discretionary custody authority under §1226(a) when it processed Petitioner and released him on OREC. That prior release confirms that the Government itself previously treated Petitioner as detained under §1226, not §1225. *Buenrostro-Mendez* therefore does not address the situation presented here, where DHS seeks to retroactively recharacterize the governing detention framework after previously exercising §1226 authority.

Respondents’ reliance on *Jennings v. Rodriguez* is likewise misplaced. As the Petition explains, *Jennings* distinguishes between noncitizens “seeking admission” at the border and those already in the country and detained pending removal proceedings under § 1226. (Doc. 1 ¶¶ 49–50). Petitioner falls squarely within the latter category. Because DHS processed him and exercised discretionary authority to release him under § 1226(a), his current detention must be governed by that same statutory framework.

Because § 1226—not § 1225—governs Petitioner’s detention, he is entitled to the procedural protections associated with that provision, including access to a bond hearing before an immigration judge. Respondents’ contrary interpretation conflicts with the statutory structure and with this Court’s prior rulings addressing materially identical circumstances.

CONCLUSION

For the foregoing reasons, the Court should find that it has jurisdiction over this case, grant the petition, and order immediate release or a bond hearing under 8 U.S.C. §1226(a).

Respectfully submitted,

/s Deliane Quiles

Deliane Quiles, Esq.
Florida Bar No. 1044089
Liliana Y. Gomez, P.A.
5000 SW 75th Ave., Suite 400
Miami, FL 33155
786.502.7615 Tel
Deliane@gomezquileslaw.com
Counsel for Petitioner

Dated: March 16, 2026

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Respectfully submitted,

/s Deliane Quiles

Deliane Quiles, Esq.
Florida Bar No. 1044089
Liliana Y. Gomez, P.A.
5000 SW 75th Ave., Suite 400
Miami, FL 33155
786.502.7615 Tel
Deliane@gomezquileslaw.com
Counsel for Petitioner

Dated: March 16, 2026