

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

CASE NO. 2:26-cv-610-JES-DNF

FABIAN FERNANDEZ PIZO,
(A-)

Petitioner,

v.

WARDEN, *Florida Soft Side South Detention
Center*, et al.,

Respondents.

_____)
**PETITIONER'S. FABIAN FERNANDEZ PIZO, REPLY TO RESPONDENTS'
OPPOSITION TO WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner, FABIAN FERNANDEZ PIZO, (hereinafter "Petitioner") hereby files his reply to Respondents' Opposition to Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, and in support thereof states as follows:

INTRODUCTION

Petitioner respectfully requests this Court grant his Petition for Writ of Habeas Corpus. As set forth in the Petition, Petitioner challenges his unlawful detention based on his improper classification as an "arriving alien" and the Government's continued detention without providing an individualized bond hearing, in violation of the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. Respondents' Opposition mischaracterizes Petitioner's claims as a challenge to the commencement of removal proceedings and improperly invokes jurisdiction-stripping provisions that do not apply. Respondents' interpretation conflicts with the statutory structure of the Immigration and Nationality Act, the weight of authority within this

District, and fundamental constitutional principles governing civil detention. As numerous courts in the Middle District have recognized, detention of noncitizens arrested within the United States during removal proceedings is governed by 8 U.S.C. § 1226(a), which requires access to an individualized bond hearing. Furthermore, because Petitioner challenges the legality of his ongoing detention, this Court retains jurisdiction, and the Petition should be granted.

ARGUMENT

A. This Court Retains Jurisdiction Over Petitioner's Habeas Claims.

Respondents' reliance on 8 U.S.C. § 1252(g) is misplaced because Petitioner does not challenge the Government's discretionary decision to commence removal proceedings. Rather, Petitioner challenges the legal authority and constitutionality of his continued detention without a bond hearing, which falls squarely within this Court's habeas jurisdiction under 28 U.S.C. § 2241. 8 U.S.C. § 1252(g) does not bar review of independent detention claims. Habeas petitions challenging the legality of immigration detention fall outside the scope of § 1252(g) because such petitions do not seek to halt or invalidate removal proceedings, but instead contest the conditions and statutory basis of custody.

Respondents' attempt to characterize Petitioner's detention as part of the "commencement of proceedings" improperly stretches the statute beyond its plain meaning. Petitioner is only asking this Court for an order requiring that his detention comply with the governing statutory framework and constitutional requirements. Accordingly, § 1252(g) does not deprive this Court of jurisdiction to consider Petitioner's claims.

B. Petitioner is Not Subject to Mandatory Detention Under § 1225(b).

Respondents' argument that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) is legally and factually incorrect. As discussed in Petitioner's habeas petition,

Petitioner is not an “arriving alien” nor an “applicant for admission.” Petitioner entered the United States in 2018, was released from custody on bond in 2019, and has lived in the United States for years before his re-detention in 2026. At the time of his recent arrest, Petitioner was not seeking admission, was not at the border, and was not subject to expedited removal processing.

Section 1225 governs individuals seeking admission at or near the border, not individuals like Petitioner who have long been physically present in the United States. It is Petitioner’s position that detention should be governed by 8 U.S.C. § 1226, which provides for bond and individualized custody determinations. Respondents’ reliance on Petitioner’s prior expedited removal processing from 2018 does not control his current detention status. A prior classification cannot indefinitely subject an individual to § 1225 years later after release into the interior of the United States. Such a position would create an untenable result where individuals could be subject to mandatory detention indefinitely, regardless of their ties to the community or passage of time.

Section 1226 of the Immigration and Nationality Act (“INA”) permits the Government to detain certain noncitizens who are already present in the United States while their removal proceedings are pending. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Importantly, this provision also incorporates procedural safeguards, including the right to an individualized bond hearing. *Id.* at 306 (noting that federal regulations ensure that individuals detained under § 1226(a) are afforded bond hearings at the outset of their detention) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

As interpreted, the law distinguishes between noncitizens who are already present in the United States and those seeking admission at the border. The Supreme Court has long recognized

this distinction, explaining that individuals who have entered the country—regardless of the legality of that entry—are afforded greater rights than those who are merely seeking admission and remain “on the threshold of initial entry.” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)). Consistent with this principle, the Court has further held that once a noncitizen is physically present in the United States, the protections of the Due Process Clause apply, as they extend to all “persons” within the country, irrespective of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

C. Even if § 1225(b) Applies, Prolonged Detention Without a Bond Hearing Violates Due Process.

Even assuming, arguendo, that § 1225(b) applies, and Petitioner does not concede that it does, Petitioner’s continued detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment. The Supreme Court has long recognized that civil immigration detention must be reasonably related to its purpose and accompanied by adequate procedural safeguards. Freedom from physical restraint lies at the core of liberty protected by the Due Process Clause. Here, Petitioner has been detained since February 2026 without any bond hearing or meaningful opportunity to contest his continued detention. There has been no determination by a neutral decisionmaker as to whether Petitioner poses a danger to the community or a risk of flight.

D. Respondents Fail to Justify Petitioner’s Continued Detention.

Respondents offer no evidence that Petitioner poses a danger or flight risk. Instead, they rely solely on a categorical assertion of mandatory detention. Petitioner, however, has strong ties to the community, a pending application for relief, and no indication that he poses any risk warranting continued detention. Due process requires more than blanket detention—it requires an individualized determination.

CONCLUSION

For the foregoing reasons, Petitioner is entitled to relief because his continued detention without an individualized bond hearing is not authorized by the governing statutory framework and violates due process. Accordingly, the Court should grant Petitioner's, FABIAN FERNANDEZ PIZO, petition and grant any other relief deemed just and proper.

Dated: March 19, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2026, a true and correct copy of the foregoing was electronically filed with the Clerk of Court and served via the CM/ECF system on all counsel or parties of record on the Service List below.

By: /s/ Mariela E. Cano
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