

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

ANGEL FUENTES LOPEZ,
Petitioner,

v.

KRISTI NOEM, *et al.*;
Respondents.

Case No. 2:26-cv-00708-SPC-NPM

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION
FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

COMES NOW, the Petitioner, ANGEL FUENTES LOPEZ, by and through undersigned counsel, and hereby submits this Reply to the Respondents' opposition to Mr. Fuentes Lopez's Petition for Writ of Habeas Corpus.

Petitioner, Angel Fuentes Lopez, entered the United States as a teenager in 2016, and has continuously resided in this country ever since. He was detained by ICE and is being held without a bond hearing. The Petition establishes violations of Mr. Fuentes Lopez's due process rights and his entitlement to immediate release or a constitutionally adequate bond hearing.

Respondents argue that (1) 8 U.S.C. § 1252(g) strips this Court of jurisdiction over the Petitioner's claim, (2) 8 U.S.C. § 1252(b)(9) strips this Court of jurisdiction over the Petitioner's claims, (3) the Petitioner failed to exhaust available administrative remedies, and (4) the Petitioner is properly detained under § 1225

and is not eligible for a bond hearing. Not so. As the Respondents concede, this Court has already rejected the arguments they rely on here in cases that present identical issues. *See, Response* p. 5, citing *Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *see also Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025) & *Bravo Perez v. Warden, Glades County Detention Center*, No. 2:26-CV-00678-SPC-DNF, 2026 WL 804163, at *1 (M.D. Fla. Mar. 24, 2026)(both addressing identical issues and ordering a bond hearing or release). As in *Hinojosa Garcia*, *Vasquez Carcamo*, and *Bravo Perez*, Mr. Fuentes Lopez's should also be granted here.

I. This court has jurisdiction over Petitioner's claims.

Respondents first argue that the INA divests this Court of jurisdiction here under 8 U.S.C. § § 1252(g) & (b)(9). Neither section applies here.

As the Supreme Court held in *Reno*, § 1252(g)'s jurisdictional bar 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.”). Critically, “[w]hen asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. United States Citizenship and Immigr. Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020).

Here, Mr. Fuentes Lopez asks the Court to answer a legal question—whether he is subject to mandatory detention under § 1225(b)(2) or discretionary detention under § 1226(a). He does not ask the Court to second-guess the respondents’ decision to commence removal proceedings against him. Thus, § 1252(g) does not bar this action. *See Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *3-4 (S.D. Fla. Sept. 9, 2025) (finding § 1252(g) inapplicable to an alien’s challenge of immigration detention based on ICE’s noncompliance with statutory requirements when revoking an order of supervised release).

Respondents next argue that § 1252 (b)(9)¹, the INA’s “zipper clause,” deprives this Court of jurisdiction. Again, not so. Supreme Court and Eleventh Circuit both hold that § 1252 (b)(9) only applies to claims requesting review of a removal order, something the Petition does not seek.

As in *Jennings*, Mr. Fuentes Lopez is “not asking for review of an order of removal[,]” is not “challenging the decision to detain [him] in the first place or to

¹ Judicial review of all questions of law and fact..., arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court should have jurisdiction, by habeas corpus under § 2241 or title 28 or any other habeas corpus provision, by § 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such question of law or fact. 8 U.S.C. § 1252(b)(9).

seek removal[,]” and is “not even challenging any part of the process by which [his] removability will be determined.” *Jennings*, 583 U.S. at 294. *See also, Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention). Here, Mr. Fuentes Lopez’s Petition merely seeks an adequate bond hearing or his release. Thus, neither of §§ 1252 (b)(9) or (g) apply to deprive this Court of jurisdiction.

II. Administrative Remedies Need Not be Exhausted Where Issues Have Been Predetermined.

Respondents next argue the Court should dismiss this action because Petitioner has not exhausted all available administrative remedies by requesting a bond hearing. This is not required, however, where the administrative body has already pre-determined the issue presented. As cited by the Petition, the Board of Immigration Appeals (“BIA”) has already decided the issue presented here in *Matter of Yajure Hurtado* (Petition, p.15). There, the BIA held that immigration judges have no authority to consider bond requests from noncitizens who entered the United States without inspection, “and must be detained for the duration of their removal proceedings.” 29 I&N Dec. 216, 220 (B.I.A. 2025).

Thus, Mr. Fuentes Lopez need not exhaust administrative remedies if “the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see also Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Requiring Mr. Fuentes Lopez

to make an administrative request for a bond hearing here would be futile because the result is already predetermined by *Yajure Hurtado*. This Court, as well as district courts around the country have reached the same conclusion.²

III. The Petitioner's detention is governed by § 1226 – Not § 1225.

The INA's plain language, its legislative history, and governing case law all squarely support Mr. Fuentes Lopez's position that § 1226 governs his detention, not § 1225. The key difference is that § 1225 applies to noncitizens actively seeking entry at the border, while § 1226 applies to those already present in the country.

The Supreme Court delineates the critical differences between § § 1225 and 1226 in *Jennings*. There, the Court explains that § 1225 "authorizes the Government to detain certain aliens seeking admission into the country[.]" while § 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings*, 583 U.S. at 289.

In fact, the statute intentionally treats noncitizens already in the country differently than those seeking entry, and the Supreme Court expressly finds that those in Mr. Fuentes Lopez's circumstances are afforded additional rights.

² See, e.g., *Contreras-Lomeli v. Raycraft*, No. 2:25-cv-12826, 2025 WL 2976739, at *3 (E.D. Mich. Oct. 21, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610, at *4 (N.D. Ill. Oct. 20, 2025); *Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648, at *2–3 (W.D. Mich. Oct. 17, 2025); *Puga v. Assistant Field Office Director, Krome North Service Processing Center*, No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025); *Ballestros v. Noem*, No. 3:25-cv-594-RGJ, 2025 WL 2880831, at *3 (W.D. Ky. Oct. 9, 2025); *Artiga v. Genalo*, No. 25-CV-5208-OEM, 2025 WL 2829434, at *3–4 (E.D. N.Y. Oct. 5, 2025); *Inlago Tocagon v. Moniz*, No. 25-cv-12453, 2025 WL 2778023, at *2 (D. Mass. Sept. 29, 2025); *Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC, 2025 WL 2730228, at *3–4 (S.D. Cal. Sept. 24, 2025); *Vasquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *9–10 (D. Nev. Sept. 17, 2025).

[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission...and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely '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)); see also *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

Leng May Ma is clearly dispositive of this issue in favor of Mr. Fuentes Lopez. Moreover, when considering amendment of the INA in 1996, Congress also expressly acknowledged that noncitizens present in the United States have more substantial due process rights than new arrivals. See H.R. Rep. 104-469, p.1, at 163-66 (recognizing "that an alien present in the U.S. has a constitutional liberty interest to remain in the U.S., and that this liberty interest is most significant in the case of a lawful permanent resident alien"). Following the amendment, federal regulations further explained, "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).³

³ This interpretation is also directly supported by the language of § 1225. While § 1225(b)(2) mandates detention of applicants for admission "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to admission," the INA defines

Despite this history, DHS announced a change to its policies in a memo to ICE employees dated July 8, 2025:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.

ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission, AILA Doc. No. 25071607 (July 8, 2025); *see also Merino v. Ripa*, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025) (discussing the memo).

The BIA adopted and applied this new policy in *Matter of Yajure Hurtado*, *supra*. However, as this court has continuously pointed out, “DHS’s new interpretation flies in the face of the plain language and historical understanding of the INA discussed above.” *Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *4 (M.D. Fla. Oct. 31, 2025) It also nullifies Congress’s recent amendment of the INA through the Laken Riley Act, codified at 8 U.S.C. § 1226(c)(1)(E). *Id.* That amendment mandates detention of noncitizens who meet

“admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Thus, by using the term “seeking admission,” § 1225(b)(2) limits its application to aliens actively attempting to lawfully enter the United States. That interpretation is supported by § 1225’s repeated reference to “arriving aliens” and the existence of § 1226—a separate statute that allows for detention and removal of noncitizens already present in the country.

certain criminal and inadmissibility criteria. *Id.* If mere inadmissibility already made detention of a resident noncitizen mandatory under § 1225, the Laken Riley Act would have no effect. *Id.*

It is undisputed that Fuentes Lopez has been in this country since June 5, 2016. His detention is thus governed by § 1226(a). As a noncitizen detained under § 1226(a), Fuentes Lopez has a right to a bond hearing. *See Jennings*, 583 U.S. at 306 (“Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.”) (*citing* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

CONCLUSION

WHEREFORE, Petitioner renews his requests that this honorable Court exercise jurisdiction over this matter; declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations and Order Petitioner’s immediate release or an adequate Bond hearing and Order such other relief as this Court may deem just and proper.⁴

Respectfully submitted,

/s/ Carolina A. Collado
Attorney for Petitioner
JIMENEZ MAZZITELLI MORDES
9350 S. Dixie Highway, PH 5
Miami, FL 33156
Carolina@jmmlawfirm.com
305-461-3077

⁴ The Petitioner would note that the absence of any rebuttal is not a waiver or abandonment of any claim or argument made previously.