

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

CARLOS AGUSTIN OTERO NOVOA,

Petitioner,

v.

SECRETARY, U.S. DEPARTMENT
OF HOMELAND SECURITY
("DHS"), et al., (all official capacity),

Respondents.

Case No. 2:26-cv-753-SPC-NPM

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**PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241**

INTRODUCTION

Respondents' opposition fundamentally mischaracterizes Petitioner's claims and misapplies controlling law. This is not a challenge to the merits of removability or a request for admission to the United States. Rather, Petitioner challenges the statutory authority under which he is detained and seeks the individualized custody determination to which he is entitled under law.

The Government's position would permit indefinite mandatory detention of any noncitizen who was once apprehended at the border, regardless of years of continuous presence in the United States, compliance with release conditions, and changed circumstances. This interpretation renders meaningless the statutory distinction between applicants for admission at the border and noncitizens already present in the United States. It also violates the Suspension

Clause by eliminating any forum to test whether the detention statute applies to Petitioner's circumstances.

Petitioner respectfully submits that this Court has jurisdiction to review his habeas petition, that he is not subject to mandatory detention under 8 USCS § 1225, that he is entitled to the declaratory relief granted in *Maldonado Bautista v. Noem*, and that his detention without an individualized custody determination violates the Fifth Amendment Due Process Clause.

SUMMARY OF ARGUMENT

Respondents' opposition rests on three fundamental errors: (1) mischaracterizing Petitioner's claims as challenges to the expedited removal order rather than challenges to the statutory authority for detention; (2) advocating an interpretation of the detention statutes that renders meaningless the distinction between applicants for admission at the border and noncitizens already present in the United States; and (3) asserting jurisdictional bars that would eliminate any forum to test whether the detention statute applies to Petitioner's circumstances, in violation of the Suspension Clause.

Jurisdiction. This Court has jurisdiction under 28 USCS § 2241 to review Petitioner's challenge to the statutory basis for his detention. The jurisdiction-stripping provisions in 8 USCS § 1252, and bar review of the validity of expedited removal determinations and discretionary prosecutorial decisions, but they do not bar review of whether the detention statute applies to Petitioner's circumstances. This is a threshold question of statutory applicability protected by the Suspension Clause. Luna v. Holder, 637 F.3d 85, Khouzam v. AG of the United States, 549 F.3d 235.

Statutory Classification. Petitioner is not an applicant for admission subject to mandatory detention under 8 USCS § 1225. He is a noncitizen already present in the United

States who is entitled to a bond hearing under 8 USCS § 1226. The statute applies to aliens who are arriving in the United States, not to aliens who entered over four years ago and have been residing in the interior. Hernandez Avilez v. Garland, 48 F.4th 915, Jennings v. Rodriguez, 583 U.S. 281. Respondents' theory that border apprehension controls forever would render meaningless the statutory distinction between 8 USCS § 1225 and 8 USCS § 1226.

Due Process. Petitioner's detention without an individualized assessment of flight risk and dangerousness violates the Fifth Amendment. Mathews v. Eldridge, 424 U.S. 319 Under the balancing test, Petitioner's substantial liberty interest, the high risk of erroneous deprivation, and the minimal government interest in his detention weigh heavily in favor of providing an individualized custody determination. Demore v. Hyung Joon Kim, 538 U.S. 510 Credible fear screening cannot substitute for a custody determination because it addresses asylum eligibility, not flight risk or dangerousness. Jennings v. Rodriguez, 583 U.S. 281

ARGUMENT

I. THIS COURT HAS JURISDICTION TO REVIEW PETITIONER'S CHALLENGE TO THE STATUTORY BASIS FOR DETENTION

A. Petitioner Challenges the Statutory Authority for Detention, Not the Validity of the Expedited Removal Order

Respondents mischaracterize Petitioner's claims as challenges to the expedited removal order itself. Petitioner does not seek to undo the expedited removal order or challenge the factual determination of inadmissibility. Rather, Petitioner challenges whether 8 USCS § 1225 provides statutory authority for his detention given his circumstances: entry over four years ago, release on recognizance under 8 USCS § 1226, years of continuous presence in the United States, and compliance with release conditions.

This distinction is critical. The Supreme Court has established that challenges to the statutory framework permitting detention fall outside the scope of jurisdictional bars targeting discretionary decisions or operational choices by immigration officials. Demore v. Hyung Joon Kim, 538 U.S. 510. As the Court explained in Demore v. Kim, a challenge to the statutory framework that permits detention without bail is not a challenge to a discretionary judgment or decision regarding detention or release. Demore v. Hyung Joon Kim, 538 U.S. 510. The Suspension Clause protects habeas corpus review as it existed in 1789, which encompassed detentions based on errors of law, including the erroneous application or interpretation of statutes. Luna v. Holder, 637 F.3d 85. Petitioner's claim that 8 USCS § 1225 does not apply to his circumstances is precisely the type of statutory interpretation question that habeas corpus has traditionally addressed.

B. Section 1252(a)(2)(A) Does Not Strip Jurisdiction Over Statutory Applicability Challenges

8 USCS § 1252 strips jurisdiction over challenges to individual determinations made under 8 USCS § 1225, but it does not eliminate review of whether that statute applies in the first place. Respondents' interpretation would mean that once an alien is subjected to expedited removal, he can never challenge whether the statute applies to his circumstances, even if those circumstances have changed dramatically over time.

This interpretation is inconsistent with the Suspension Clause. USCS Const. Art. I, § 9, Cl 2. The Supreme Court has established that a statute denying an alien the ability to test the legality of detention through habeas petition is subject to constitutional scrutiny and may be invalidated as an unconstitutional suspension of the writ. Khouzam v. AG of the United States, 549 F.3d 235. At minimum, the Suspension Clause protects the writ as it existed in 1789, which

included challenges to the erroneous application or interpretation of statutes. Luna v. Holder, 637 F.3d 85

If 8 USCS § 1252 were read to foreclose all review of whether 8 USCS § 1225 applies to an alien who entered over four years ago and has been residing in the interior, no forum would exist to test the legality of detention. This would render the statutory scheme constitutionally deficient. Congress may eliminate habeas corpus only if it provides an adequate and effective alternative to test the legality of detention. Khouzam v. AG of the United States, 549 F.3d 235, Singh v. Mukasey, 533 F.3d 1103. An adequate substitute must give the petitioner a meaningful opportunity to demonstrate that he is being held pursuant to the erroneous application or interpretation of relevant law. Singh v. Mukasey, 533 F.3d 1103

C. Section 1252(g) Does Not Bar Detention Authority Challenges

8 USCS § 1252 bars judicial review of discretionary decisions to commence proceedings, adjudicate cases, or execute removal orders. It does not bar challenges to the statutory framework itself or to the Government's authority to detain an alien under a particular statute.

The Eleventh Circuit has established that challenges to unlawful detention do not arise from the government's decision to execute removal orders within the meaning of 8 USCS § 1252. Ozturk v. Hyde, 136 F.4th 382 Claims concerning detention may be resolved without affecting pending removal proceedings. Ozturk v. Hyde, 136 F.4th 382 Petitioner's challenge to the statutory basis for detention is collateral to the expedited removal proceedings and does not implicate the Government's discretionary decisions regarding commencement, adjudication, or execution of removal.

Moreover, 8 USCS § 1252 must be read in light of the Suspension Clause. If the statute were interpreted to bar all challenges to detention authority, it would eliminate any forum to test

the legality of detention and would constitute an unconstitutional suspension of the writ.

Khouzam v. AG of the United States, 549 F.3d 235, USCS Const. Art. I, § 9, Cl 2.

D. Section 1252(b)(9) Does Not Bar District Court Habeas Jurisdiction

8 USCS § 1252, the so-called "zipper clause," channels to the courts of appeals all questions of law and fact arising from any action taken or proceeding brought to remove an alien from the United States. The Supreme Court has recognized that this provision consolidates review of removal-related claims in the courts of appeals. Jennings v. Rodriguez, 583 U.S. 281. However, the zipper clause does not eliminate district court habeas jurisdiction over detention challenges. The Supreme Court in Jennings v. Rodriguez distinguished between challenges to removal orders (which are channeled to the courts of appeals) and challenges to detention authority (which may be brought in district court through habeas petitions). Jennings v. Rodriguez, 583 U.S. 281, Jennings v. Rodriguez, 583 U.S. 281. The Court emphasized that 8 USCS § 1252 prohibits classwide injunctive relief against the operation of immigration detention statutes, but it does not prohibit individual habeas petitions challenging detention. Jennings v. Rodriguez, 583 U.S. 281

Petitioner brings an individual habeas petition challenging the statutory authority for his detention. This is precisely the type of claim that falls outside the zipper clause's consolidation of removal-related claims. The claim can be resolved without affecting the expedited removal order or the removal proceedings.

E. Section 1226(e) Does Not Bar Challenges to Statutory Detention Authority

8 USCS § 1226 bars jurisdiction over discretionary judgments regarding detention but permits constitutional and statutory challenges to the framework authorizing detention. The Supreme Court in Demore v. Kim established that 8 USCS § 1226 does not bar challenges to the

statutory framework permitting detention without bail, only challenges to discretionary judgments or decisions regarding detention or release. Demore v. Hyung Joon Kim, 538 U.S. 510.

The Eleventh Circuit has applied this principle, holding that the extent of detention authority is not a matter of discretionary judgment. Najera v. United States, 926 F.3d 140. Petitioner's challenge to whether 8 USCS § 1225 provides statutory authority for his detention is a challenge to the statutory framework, not to a discretionary judgment about whether to detain or release him.

F. The Suspension Clause Requires Habeas Review of Statutory Applicability

Even if the jurisdiction-stripping provisions could be read to bar review of Petitioner's claims, such an interpretation would violate the Suspension Clause. USCS Const. Art. I, § 9, Cl 2. The Constitution protects the writ of habeas corpus from suspension except in cases of rebellion or invasion. U.S. Const. art. I, § 9, cl. 2.

The Suspension Clause protects habeas corpus as it existed in 1789, which encompassed challenges to detentions based on errors of law, including the erroneous application or interpretation of statutes. Luna v. Holder, 637 F.3d 85. The writ provided a means of contesting the lawfulness of restraint and securing release. Lopez v. Decker, 978 F.3d 842. Habeas review is available to challenge whether ongoing detention has become unlawful at some point after initial imposition. Lopez v. Decker, 978 F.3d 842.

Petitioner's claim that 8 USCS § 1225 does not apply to his circumstances-given his entry over four years ago, release under 8 USCS § 1226, and years of continuous presence-is precisely the type of statutory interpretation question protected by the Suspension Clause. If no forum exists to test this question, the statutory scheme violates the Constitution.

Congress may provide an adequate substitute for habeas corpus, but any substitute must give the petitioner a meaningful opportunity to demonstrate that he is being held pursuant to the erroneous application or interpretation of relevant law. Singh v. Mukasey, 533 F.3d 1103 No such substitute exists here. The courts of appeals have no jurisdiction to review expedited removal orders. 8 USCS § 1252 The immigration courts have no authority to review detention decisions under 8 USCS § 1225. If district courts also lack jurisdiction, no forum exists to test the legality of detention.

II. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(1)

A. The Statutory Text Limits Section 1225(b)(1) to Aliens Who Are Arriving in the United States

8 USCS § 1225 applies to aliens who are "arriving in the United States" or who have not been admitted or paroled and who have not been physically present in the United States continuously for the two-year period immediately prior to the determination of inadmissibility. The statute's text is present-tense and temporal: it applies to aliens who are arriving, not to aliens who arrived years ago and have been residing in the interior.

Petitioner entered the United States on July 1, 2022. He was released on recognizance on July 2, 2022, under 8 USCS § 1226. He resided continuously in the United States from July 2022 through January 2026—a period of over four years. When the Department of Homeland Security issued the expedited removal order on January 26, 2026, Petitioner was not "arriving in the United States." He was a noncitizen already present in the United States.

The Supreme Court has distinguished between applicants for admission at the border and noncitizens already present in the United States. Jennings v. Rodriguez, 583 U.S. 281 Section 1225 governs noncitizens who arrive or are present but have not been admitted. Hernandez Avilez v. Garland, 48 F.4th 915 Section 1226(a) governs detention of aliens already in the

country pending removal proceedings. Jennings v. Rodriguez, 583 U.S. 281 This statutory distinction would be rendered meaningless if the Government's theory were correct-that once an alien is apprehended at the border, he remains subject to 8 USCS § 1225 forever, regardless of years of continuous presence in the interior.

B. Petitioner's Release Under Section 1226(a) Confirms His Classification

When Border Patrol released Petitioner on July 2, 2022, it did so under 8 USCS § 1226, not under 8 USCS § 1182. This distinction is critical. Section 1182(d)(5) governs parole of applicants for admission and requires case-by-case determinations for urgent humanitarian reasons or significant public benefit. 8 USCS § 1182 Section 1226(a) governs conditional release of aliens already in the country pending removal proceedings and has no such restrictions.

Ortega-Cervantes v. Gonzales, 501 F.3d 1111, Jennings v. Rodriguez, 583 U.S. 281.

The Ninth Circuit has established that parole under 8 USCS § 1182 (requiring urgent humanitarian reasons or significant public benefit) is distinct from conditional parole under 8 USCS § 1226 (no such restrictions). Section 1226(a) provides the option of releasing arrested aliens on bond or conditional parole pending removal decision. Ortega-Cervantes v. Gonzales, 501 F.3d 1111

Border Patrol's decision to release Petitioner under 8 USCS § 1226 confirms that he was classified as an alien already in the country, not as an applicant for admission subject to 8 USCS § 1225. The Government cannot now change that classification retroactively.

C. The Government's "Once Section 1225, Always Section 1225" Theory Is Inconsistent with Statutory Structure

Respondents' theory that border apprehension controls forever, regardless of subsequent events, is inconsistent with the statutory structure. If this theory were correct, the distinction

between 8 USCS § 1225 and 8 USCS § 1226 would be meaningless. Any alien who was once apprehended at the border would remain subject to mandatory detention under 8 USCS § 1225 forever, even if he was released, resided in the United States for years, and developed ties to the community.

This interpretation would also render meaningless the two-year continuous presence limitation in 8 USCS § 1225. If border apprehension controls forever, the two-year continuous presence limitation would never apply to anyone who was apprehended at the border, regardless of how long they subsequently resided in the United States.

The Supreme Court has established that detention under 8 USCS § 1225 must end when proceedings conclude. Jennings v. Rodriguez, 583 U.S. 281 Once proceedings end, detention under that provision must end. Jennings v. Rodriguez, 583 U.S. 281 Here, the proceedings were dismissed on January 26, 2026. At that point, any detention authority under 8 USCS § 1225 ended. The Government cannot revive that authority by issuing a new expedited removal order years after the initial apprehension.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Deny Respondents' motion to dismiss for lack of jurisdiction;
2. Grant the Petition for Writ of Habeas Corpus;
3. Declare that Petitioner is not subject to mandatory detention under 8 USCS § 1225;
4. Declare that Petitioner is entitled to immediate release or an individualized custody determination under 8 USCS § 1226;

5. Order Petitioner's release on the conditions previously imposed unless and until an immigration judge determines at a bond hearing that detention is necessary to ensure appearance at removal proceedings or to protect public safety; and
6. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 20, 2026, the foregoing response was electronically filed with the clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted

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