

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

**OSCAR DANIEL RUIZ RIOS,
Petitioner,**

Case NO. 2:26-CV-759-KCD-DNF

v.

**Garrett J. Ripa, et al,
Respondents.**

/

PETITIONER’S REPLY

Petitioner, Oscar Daniel Ruiz Rios, by and through his undersigned counsel files his reply to Respondents’ Response.

RESPONDENT’S FIRST ARGUMENT

Respondents’ first argument for the Court to deny the Petition for Habeas Corpus is that “title 8 U.S.C. § 1252(g) bars review of Ruiz Rios’ Claims.” (Doc. 6; Response at 4)

Title 8 U.S.C. § 1252(g) does not deprive this Court of jurisdiction to adjudicate Petitioner’s Petition for Habeas Corpus in that Petitioner is just attacking ICE’s decision to treat Petitioner as an “applicant for admission” under § 1225(b) which imposes mandatory detention, rather than as a noncitizen under § 1226(a), which permits a bond hearing before an immigration judge. Section 1252(g) states in pertinent part that “no court shall have jurisdiction to hear any

cause or claim by . . . any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). “It is a ‘discretion-protecting provision’ designed to prevent the ‘deconstruction, fragmentation, and hence prolongation of removal proceedings.’” *Camarena v. Dir., Immigr. & Customs Enf’t*, 988 F.3d 1268, 1272 (11th Cir. 2021) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999)). Nevertheless, the provision “does not cover ‘the universe of deportation claims.’” *Id.* (quoting *Reno*, 525 U.S. at 482). The Supreme Court has explained that section 1252(g) should be narrowly read to encompass only the “three discrete actions that the Attorney General may take: her decision or action to commence proceedings, adjudicate cases, or execute removal orders.” *Reno*, 525 U.S. at 482 (internal quotation marks and citation omitted). While “‘many other decisions or actions’ may be ‘part of the deportation process,’ only claims that arise from one of the covered actions are excluded from [court] review” by this section. *Camarena*, 988 F.3d at 1272.

Wherefore, Petitioner requests for the Court to find that Title 8 U.S.C. § 1252(g) does not bar Petitioner’s claim.

RESPONDENT’S SECOND ARGUMENT

Respondents’ second argument in their Response is that Title 8 U.S.C. § 1252(b)(9) bars review of Petitioner’s claims. (Doc. 6; Response at 4)

Title 8 U.S.C. § 1252(b)(9) does not deprive this Court of jurisdiction over Petitioner’s Petition for Habeas Corpus because in this case, Petitioner does not have an order of removal. Nor is he seeking to challenge the decision to seek removal or the process by which removability will be determined. Instead, as

argued above, Petitioner is challenging his classification under § 1225(b), which requires mandatory detention.

8 U.S.C. § 1252(b)(9) states that “[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, 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.” 8 U.S.C. § 1252(b)(9). But “§ 1252(b)(9) ‘does not present a jurisdictional bar’ where those bringing suit ‘are not asking for review of an order of removal,’ ‘the decision . . . to seek removal,’ or ‘the process by which . . . removability will be determined.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907 (2020) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018)). The Eleventh Circuit has “clarified that the zipper clause only affects cases that ‘involve review of an order of removal.’” *Canal A Media Holding, LLC v. United States Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1257 (11th Cir. 2020) (quoting *Madu v. U.S. Att’y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006)).

Again, in this case, Title 8 U.S.C. § 1252(b)(9) does not deprive this Court of jurisdiction to adjudicate this claim in that Petitioner does not have an order of removal. Nor is he seeking to challenge the decision to seek removal or the process by which removability will be determined. Instead, as found above, he is challenging his classification under § 1225(b), which requires mandatory detention.

Wherefore, Petitioner requests that the Court find that Title 8 U.S.C. § 1252(b)(9) does not bar this Court's review of his claims.

RESPONDENT'S THIRD ARGUMENT

Respondents' third argument in their Response is that Petitioner failed to exhaust his administrative remedies. (Doc. 6; Response at 4) Petitioner requests for the Court to reject this argument in that District courts around the country, including some judges in the United States District Court, Middle District of Florida, have reached this same conclusion and declined to dismiss similar cases based on the alleged failure to exhaust. See, e.g., *Patel v. Hardin*, No. 2:25-cv-870-JES-NPM, 2025 WL 3442706, at *3 (M.D. Fla. Dec. 1, 2025); see also *Mohammed v. Olsen*, No. 1:25-CV-02404-TWPMKK, 2025 WL 3541819, at *2 (S.D. Ind. Dec. 10, 2025).

In this case, Petitioner does not need to exhaust his 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). Recently, the Board of Immigration Appeals (BIA) found that immigration judges have no authority to consider bond requests from noncitizens who entered the United States without inspection "because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Thus, the BIA has already "predetermined" the issue

and requiring Petitioner to make an administrative request for a bond hearing would be futile.

Wherefore, Petitioner requests for the Court to reject Respondent's exhaustion argument.

RESPONDENT'S FOURTH ARGUMENT

Respondents' fourth argument in their Response is that Petitioner is properly detained under Title 8 U.S.C. § 1225. (Doc. 6; Response at 4)

In this case, Petitioner's main argument is that he should be classified under Title 8 U.S.C. § 1226(a) and given a bond hearing before an Immigration Judge instead of being mandatorily detained under 8 U.S.C. § 1225(b)(2). (Doc. 1; Petition)

Title 8 U.S.C. § 1225 governs "applicants for admission," which the statute defines as "[a]n alien present in the United States who has not been admitted" or those "arriv[ing] in the United States." 8 U.S.C. § 1225(a)(1); see *Jennings*, 583 U.S. at 287 (noting that under § 1225, "an alien who arrives in the United States, or is present in this country but has not been admitted, is treated as an applicant for admission (internal quotation marks and citation omitted)). The statute defines "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). Immigration laws require applicants for admission to be inspected by immigration officers to determine whether they should be admitted into the country. *Jennings*, 583 U.S. at 287. Certain applicants are subject to expedited removal. See 8 U.S.C. § 1225(b)(1). But, as relevant here, § 1225(b)(2) "serves as a catchall provision," *Jennings*, 583 U.S. at 288, and provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer

determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained,” 8 U.S.C. 1225(b)(2)(A).

On the other hand, section 1226(a) states: “On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The Attorney General “may continue to detain the arrested alien” or “may release the alien on bond” or “conditional parole.” 8 U.S.C. § 1226(a)(1)-(2) (emphasis added). The Supreme Court has recognized that this section “applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 303. ““For the past three decades,”” the government has recognized “this dichotomy.” *Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245, at *4 (M.D. Fla. Oct. 29, 2025) (quoting *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025) (appeal filed Oct. 24, 2025)). It appears that “most noncitizens who entered without inspection that were placed in standard removal proceedings received bond hearings, unless subject to an exception.” *Pizarro Reyes*, 2025 WL 2609425, at *8.

Courts around the country have almost universally rejected the government’s new interpretation that aliens present in the United States who entered the country without inspection are “applicants for admission” and subject to Title 8 U.S.C. § 1225. See, e.g., *Cetino v. Hardin*, No. 2:25-CV-1037-JES-DNF, 2025 WL 3558138, at *3 (M.D. Fla. Dec. 12, 2025); *Robles v. U.S. Dep’t of Homeland Security*, No. 1:25-CV-1578, 2025 WL 3558128, at *6 & n.3 (W.D. Mich. Dec. 12, 2025); *Martinez-Martinez v. Noem*, No. 25CV2975-GPC(VET), 2025 WL 3552746, at *6 (S.D. Cal. Dec. 11, 2025) (“Given the Government’s longstanding interpretation of §§ 1225(b) and 1226(a), the [c]ourt is further

persuaded that ‘seeking admission’ applies to arriving aliens and not aliens who have entered without inspection and lived in the United States for years.”); *Aguilar v. Bondi*, No. 5:25-CV-01453-JKP, 2025 WL 3471417, at *6 (W.D. Tex. Nov. 26, 2025) (concluding that “§ 1225(b)(2) applies to noncitizens ‘seeking admission,’ and § 1226 applies to noncitizens such as [the p]etitioner who are ‘already in the country’”); *Belsai D.S. v. Bondi*, - - - F. Supp. 3d - - -, 2025 WL 2802947, at *5 (D. Minn. Oct. 1, 2025) (“Overwhelmingly, courts have rejected the interpretation offered by Respondents that § 1225(b)(2) requires the detention of all noncitizens living in the country who are ‘inadmissible’ because they entered the United States without inspection.”); *Pizarro Reyes*, 2025 WL 2609425, at *7.

The Supreme Court’s interpretation of these statutes point in the same direction. The U.S. Middle District Court in *Cetino v. Hardin*, NO. 2:25-CV-1037-JES-DNF, 2025 WL 3558138, at *3-4 (M.D. Fla. Dec. 12, 2025) made the following analysis regarding the application of § 1225(b)(2) to aliens who are present in the United States,

“Courts are meant to ‘construe statutes, not One isolated provisions.’ *King v. Burwell*, 576 U.S. 473, 486 (2015). As mentioned, the Supreme Court has identified § 1226 as the “default rule” applicable “to aliens already present in the United States.” *Jennings*, 583 U.S. at 281, 288. “That Congress separated removal of arriving aliens from its more general section for ‘Apprehension and detention of aliens,’ § 1226, implies that Congress enacted § 1225 for a specific, limited purpose.” *Pizarro Reyes*, 2025 WL 2609425, at *5. The Supreme Court has also observed that “our 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.”). Third, when considering amendment of the INA in 1996, Congress again 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 explained, “Despite 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). Finally, accepting Respondents’ argument would leave § 1226 superfluous. Interpreting § 1225 to govern all noncitizens present in the country who had not been admitted leaves § 1226 with no apparent application. See *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”). *Cetino v. Hardin*, No. 2:25-CV-1037-JES-DNF, 2025 WL 3558138, at *3-4 (M.D. Fla. Dec. 12, 2025); see, e.g., *Lopez*, 2025 WL 3022245, at *4-5 (applying the same reasoning).” *Id.*

Wherefore, Petitioner requests for the Court to find that Petitioner is not properly detained under Title 8 U.S.C. § 1225 in that he entered the United States without inspection and has been in the United States for over sixteen years. (Doc. 1; Petition at 3). Instead, his detention is governed by § 1226, and he is therefore entitled to a bond hearing before an immigration judge.

RESPONDENT'S FIFTH ARGUMENT

Finally, Respondents makes an argument that since Petitioner request a bond hearing with the Immigration Court, that ICE is not a proper party to this suit since bond hearing are not conducted or managed by ICE. (Doc. 6; Response at 4)

This argument by Respondents should be rejected in that ICE is typically considered the immediate custodian of the detained Petitioner, making it the proper respondent in a habeas action which challenges the legality of the detention. In addition, even if a bond hearing is requested, ICE retains custody and the responsibility for executing detention, meaning the court's authority over the bond does not fully absolve ICE of its role in the deprivation of Petitioner's liberty. ICE's argument that it is not a proper party to a habeas corpus petition because bond hearings are conducted by Immigration Courts rather than ICE is incorrect under established law in the Federal and Eleventh Circuit jurisdictions. Courts have consistently held that the proper respondent in immigration detention habeas cases is the federal official with immediate custody and authority over the detainee, which is typically ICE, regardless of whether bond hearings are conducted by immigration judges. The proper respondent in an immigrant detainee's habeas corpus action is the director of the ICE field office responsible for overseeing the facility where the detainee is detained, rather than the warden of the facility or the immigration judge who conducts bond hearings. *Masingene v. Martin*, 424 F.Supp.3d 1298 (2020). This is because the ICE field office is responsible for supervising federal immigrant detainees and possesses the authority to direct the detainee's release *Masingene v. Martin*, 424 F. Supp. 3d 1298 (2020). For purposes of habeas corpus petitions, federal immigration detainees are detained pursuant to the power and authority of the federal government, specifically ICE, and not the

warden of the non-federal facility where they are detained. *Masingene v. Martin*, 424 F. Supp. 3d 1298 (2020).

Courts recognize that ICE maintains custody and control over immigration detainees even when bond hearings are conducted by immigration judges. In habeas petitions challenging immigration detention, petitioners routinely name ICE officials as respondents, including the Director of the ICE field office, the Acting Director of ICE, the Acting Secretary of the Department of Homeland Security, and the Attorney General. *Masingene v. Martin*, 424 F. Supp. 3d 1298 (2020). These cases proceed with ICE as the proper respondent because ICE has the actual physical custody of the detainee and the authority to effectuate release. *Masingene v. Martin*, 424 F. Supp. 3d 1298 (2020).

The fact that immigration judges conduct bond hearings does not make ICE an improper party to habeas petitions. The immigration court's role in adjudicating bond eligibility is separate from ICE's role as the custodian of the detainee. *Oscar v. Ripe*, 751 F. Supp. 3d 1324 (2024). When noncitizens file habeas petitions seeking bond hearings or release from ICE custody, they properly name ICE officials as respondents because ICE maintains physical custody and has the authority to release them. *Oscar v. Ripe*, 751 F. Supp. 3d 1324 (2024). The habeas statute requires naming the person who has custody of the petitioner, which in immigration detention cases is ICE, not the immigration judge who may later conduct a bond hearing. *Masingene v. Martin*, 424 F. Supp. 3d 1298 (2020).

District courts consistently exercise jurisdiction over habeas petitions naming ICE as respondent, even when the relief sought includes bond hearings before immigration judges. *Lopez v. Director of Enforcement and Removal Operations*, --- F. Supp. 3d ---- (2026), *Arroyo v. Diaz*, --- F. Supp. 3d ---- (2026).

The proper remedy in habeas cases may include ordering ICE to provide a bond hearing, release the detainee, or other relief, demonstrating that ICE is the appropriate party to effectuate the court's orders. *Rivero v. Mina*, ---F. Supp.3d ---- (2026).

In summary, ICE's argument fails because the proper respondent in immigration detention habeas cases is determined by who has actual custody and authority to release the detainee, not by who conducts bond hearings, making ICE the correct party regardless of the Immigration Court's adjudicatory role.

Wherefore, Petitioner requests that the Court rejects this last argument by Respondents.

CONCLUSION

Petitioner respectfully requests that his Petition for Writ of Habeas Corpus be approved pursuant to 28 U.S.C. § 2241 (Doc. 1) be Granted and that Respondents must either provide Petitioner with a bond hearing under § 1226(a) or release him.

Dated this 6th day of April, 2026.

Respectfully submitted,

/s/ Juan J. Mendoza

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Petitioner's Reply has been submitted via priority mail to Garrett J. Ripa, Miramar Field Office, 2805 S.W. 145th Avenue, Miramar, FL 33027; Todd Blanche, Acting U.S. Attorney General, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530; U.S. Attorney, 400 North Tampa Street, Suite 3200, Tampa, FL 33602; Executive Office for Immigration Review, 3535 Lawton Road, Suite 200, Orlando, FL 32803; and Markwayne Mullin, Secretary of the U.S. Department of Homeland Security, Washington, DC 20528, on this 7th day of April, 2026.

/s/ Juan J. Mendoza
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