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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Diana Carolina Lora-Osorio,
Petitioner,

Case No.: 3:26-cv-1020

v.

RESPONSE TO
RESPONDENT'S REPLY

Facility Administrator, Flagler County Jail; Garrett J. Ripa, Field Office Director, ICE Jacksonville Field Office; Todd Lyons, Director of U.S. Immigration and Customs Enforcement; Markwayne Mullin, Secretary of the U.S. Department of Homeland Security; and Todd Blanche, Acting Attorney General of the United States,
Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT
OF HABEAS CORPUS

INTRODUCTION

The government's Response to the Petition for Writ of Habeas Corpus does not justify the continued detention of Diana Carolina Lora-Osorio without a bond hearing. Rather than defend the detention under the statutory basis reflected in the record, the government now introduces a new legal theory — that Ms. Lora-Osorio is mandatorily detained under 8 U.S.C. §

1225(b)(1)(B)(ii) — a theory it never communicated to her immigration judge, to her, or to this Court when the Petition was filed. And the primary authority the government cites for its legal framework, the Eleventh Circuit's recent decision in *Hernandez Alvarez v. Warden, FDC Miami*, Nos. 25-14065 & 25-14075 (11th Cir. May 6, 2026), does not help the government. Its actual holding directly supports Petitioner.

This Court has jurisdiction. Ms. Lora-Ororio is not subject to mandatory detention under § 1225(b)(1)(B)(ii). Even if she were, the Constitution demands an individualized bond hearing after more than 100 days of confinement with an asylum hearing not scheduled until August 2028.

I. THIS COURT HAS JURISDICTION.

The government argues that 8 U.S.C. § 1252(g) strips this Court of jurisdiction because the decision to detain Ms. Lora-Ororio arose from the commencement of removal proceedings. That argument misreads both § 1252(g) and controlling precedent.

Section 1252(g) reaches only three discrete categories of executive action: the Attorney General's decisions "to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Supreme Court has cautioned against expanding § 1252(g) beyond those three actions, and the Eleventh Circuit has instructed that "courts must focus on the action being challenged." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020).

Ms. Lora-Ororio does not challenge the government's decision to commence removal proceedings. She challenges the statutory authority and constitutional permissibility of her mandatory detention without any individualized hearing. That is a distinct claim. Federal courts

retain habeas jurisdiction under 28 U.S.C. § 2241 to consider whether executive detention complies with the Constitution and federal statute. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001). The Supreme Court exercised precisely that jurisdiction in *Demore v. Kim*, 538 U.S. 510 (2004), *Zadvydas* itself, and *Jennings v. Rodriguez*, 583 U.S. 281 (2018) — all mandatory detention habeas cases that proceeded to the merits without any § 1252(g) threshold dismissal. If § 1252(g) stripped all habeas jurisdiction over detention claims arising in the context of removal proceedings, those cases would have been dismissed at the threshold. They were not.

The government's reliance on *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), and *Alvarez v. U.S. Immigr. & Customs Enft*, 818 F.3d 1194 (11th Cir. 2016), is misplaced. Those cases addressed challenges to the methods ICE used in detaining individuals as part of the physical act of commencing proceedings. *Gupta*, 709 F.3d at 1065. They did not hold that § 1252(g) bars a court from determining whether the statutory authority invoked to mandatorily detain someone without bond actually applies to that person — which is the precise question here.

II. THE ELEVENTH CIRCUIT'S OWN DECISION IN HERNANDEZ ALVAREZ UNDERMINES THE GOVERNMENT'S POSITION.

The government cites *Hernandez Alvarez v. Warden, FDC Miami*, Nos. 25-14065 & 25-14075 (11th Cir. May 6, 2026), for a general descriptive passage about § 1225's structure, but conspicuously ignores its holding. That holding is binding on this Court and cuts directly against the government's position.

A. What Hernandez Alvarez Actually Held.

In *Hernandez Alvarez*, the Eleventh Circuit considered whether two Mexican nationals who had lived in Florida for years after entering without inspection could be mandatorily detained under 8 U.S.C. § 1225(b)(2)(A) without a bond hearing. The government had invoked a 2025 policy under *Matter of Yajure Hurtado* requiring mandatory detention of essentially all unadmitted aliens encountered in the interior. The Eleventh Circuit rejected that position and affirmed the district court's order granting bond hearings.

The court's central structural holding is that § 1225 is a border and inspection statute, while § 1226 is the default detention framework for aliens in the interior. Specifically, the court held that "§ 1225 applies to arriving aliens seeking entry at the border, whereas § 1226 applies to aliens unlawfully in the interior" and that the government's contrary reading would "vitiate[] this longstanding distinction." Slip op. at 15. The court went further and held that "reading § 1225(b)(2)(A) to apply to all unadmitted aliens present in the country would shift the center of gravity for detention authority under the INA, transforming an ancillary catchall provision into the statute's chief detention mechanism." *Id.*

B. Hernandez Alvarez's Structural Holding Applies Here.

The government in this case relies on a different subsection — § 1225(b)(1)(B)(ii), the credible fear provision — rather than the § 1225(b)(2)(A) provision at issue in *Hernandez Alvarez*. But the structural principle that the Eleventh Circuit announced is not limited to § 1225(b)(2)(A). The court's holding that § 1225 governs border and inspection proceedings while § 1226 governs detention in the interior applies with full force to Ms. Lora-Osorio.

Ms. Lora-Osorio has not been at the border since March 2024. She entered, was processed through expedited removal, received a positive credible fear determination, was issued a Notice

to Appear under § 240, was released on the Alternative to Detention program, lived in the Tampa/Bradenton area for nearly two years, and is now detained in Flagler County. She is in the interior. Under the structural framework that Hernandez Alvarez confirmed is the law of this Circuit, her detention is governed by § 1226(a), not § 1225.

Moreover, the Hernandez Alvarez court relied heavily on *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018), treating its description of § 1225 as a border/inspection statute and § 1226 as governing interior detention as "highly persuasive" Supreme Court authority. The government now asks this Court to ignore that structural framework in favor of an administrative AG decision, *Matter of M-S-*, discussed below. That approach is incompatible with Hernandez Alvarez.

III. MS. LORA-OSORIO IS NOT SUBJECT TO MANDATORY DETENTION UNDER § 1225(b)(1)(B)(ii).

A. ICE's Own Conduct Negates Mandatory Detention.

For nearly two years — from March 14, 2024, when her NTA was issued, through January 29, 2026, when she was rearrested — ICE released Ms. Lora-Osorio on the Alternative to Detention program and treated her as fully eligible for release pending her removal proceedings. Doc. 9, Ex. 1 (I-213) at 2. ICE did not invoke § 1225(b)(1)(B)(ii) mandatory detention during that period. A government agency cannot voluntarily treat a person as releasable for two years and then claim retroactively that mandatory detention was required all along. The government's conduct is the strongest possible evidence that § 1225(b)(1)(B)(ii) does not, in fact, mandate Ms. Lora-Osorio's detention.

B. The Issuance of the NTA Transferred Ms. Lora-Osorio Out of the § 1225(b)(1) Framework.

Section 1225(b)(1)(B)(ii) is part of the expedited removal framework. It provides that if an asylum officer determines that an alien has a credible fear of persecution, "the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). But this provision operates within the expedited removal process. Once USCIS made a positive credible fear determination and DHS issued an NTA transferring Ms. Lora-Osorio to full removal proceedings under § 240 of the INA — which it did on March 14, 2024 — she exited the § 1225(b)(1) expedited removal framework.

This conclusion is confirmed by the form of charging document she received. As one court recently observed, when DHS issues a Notice to Appear (Form I-862) rather than a Notice and Order of Expedited Removal (Form I-860), DHS is treating the alien as subject to § 240 removal proceedings, not § 1225(b)(1) expedited removal. See, e.g., *Vasquez-Rosario*, 2026 WL 196505, at *6. Ms. Lora-Osorio was issued an I-862 (the NTA), not an I-860. The government's current detention theory is inconsistent with the charging document it chose to issue her.

As *Hernandez Alvarez* confirmed, once an alien is in § 240 proceedings in the interior, § 1226(a) governs her detention — which authorizes, but does not mandate, detention and expressly permits release on bond or conditional supervision. See 8 U.S.C. § 1226(a)(2). Ms. Lora-Osorio is entitled to a bond hearing before an immigration judge.

C. Matter of M-S- Does Not Compel a Different Result.

The government relies on *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), for the proposition that aliens transferred from expedited removal to § 240 proceedings after a positive credible fear

finding are ineligible for bond. Matter of M-S- is an administrative Attorney General decision, not a judicial holding, and it is inconsistent with the Eleventh Circuit's structural framework in Hernandez Alvarez. A circuit court's published statutory holding takes precedence over an administrative AG opinion.

Beyond its precedential weight, Matter of M-S- is constitutionally suspect because it mandates indefinite detention without any individualized hearing for an entire class of asylum seekers who have never been found to be flight risks or dangers to the community. As discussed below, even accepting Matter of M-S- for argument's sake, Ms. Lora-Osorio's specific circumstances require an individualized bond hearing under the Due Process Clause.

IV. EVEN UNDER § 1225(b)(1)(B)(ii), PROLONGED DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS.

Even accepting the government's statutory theory *arguendo*, the Fifth Amendment's Due Process Clause requires an individualized bond hearing given the duration, circumstances, and projected length of Ms. Lora-Osorio's detention.

The Supreme Court has recognized that "[f]reedom from imprisonment — from government custody, detention, and other forms of physical restraint — lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. While *Demore v. Kim* upheld mandatory detention under § 1226(c), it did so only because of the "brief" and "limited" nature of such detention. 538 U.S. at 529. The Court expressly noted that the typical case involves detention of less than the "brief" period — a fraction of the detention Ms. Lora-Osorio has

already endured. *Id.* at 530. Where mandatory detention becomes prolonged and where proceedings will not conclude for years, due process requires more.

Ms. Lora-Osorio presents precisely the profile that makes a bond hearing both warranted and meaningful:

- **Duration:** She has been detained for more than 100 days as of this filing, with no bond hearing, no individualized review, and no finding that she poses a flight risk or danger to the community.
- **Projected Length:** Her asylum hearing is not scheduled until August 3, 2028 — more than two years from now. Mandatory detention through the completion of proceedings would mean over 900 days of confinement without any individualized hearing.
- **Prior Compliance:** She complied fully with the Alternative to Detention program for nearly two full years without a single failure to appear. This is direct evidence that she is not a flight risk.
- **U.S. Citizen Child:** She has a United States citizen child. Her detention separates her from that child and from her community ties.
- **No Conviction:** The battery charge that triggered her re-detention remains pending with no conviction. A mere arrest is not a finding of dangerousness.

Detention for over 100 days — with an asylum hearing more than two years away, no conviction, a U.S. citizen child, and a two-year record of compliance — cannot be squared with due process absent an individualized hearing. See *Ly v. Hansen*, 351 F.3d 263, 271–72 (6th Cir. 2003) (due process requires bond hearing when detention becomes unreasonable given length and projected

duration); *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011) (same). At a bond hearing, the government would bear the burden of demonstrating by clear and convincing evidence that Ms. Lora-Osorio poses a danger to the community or a risk of flight. That burden — which the government has never been required to meet — is what due process demands.

CONCLUSION

The government's Response shifts the statutory basis for Ms. Lora-Osorio's detention midstream, relies on an administrative AG decision that conflicts with binding Eleventh Circuit precedent, and ignores that its own cited authority — *Hernandez Alvarez* — confirms that § 1226(a), not § 1225, governs her detention in the interior. The Court has jurisdiction, Ms. Lora-Osorio is entitled to a bond hearing as a statutory matter, and the Due Process Clause demands no less after more than 100 days of detention with an asylum hearing not scheduled until 2028.

Petitioner respectfully requests that this Court GRANT the Petition and ORDER that Ms. Lora-Osorio receive an individualized bond hearing before an immigration judge within seven (7) days of the Court's order, at which the government shall bear the burden of demonstrating by clear and convincing evidence that she poses a danger to the community or a risk of flight.

Respectfully submitted,

/s/ Anny Leon

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send notice of filing and a downloadable copy of the filed document to all counsel of record.

/s/ Anny Leon

Anny Leon, Esquire