

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

VLADIMIR RICARDO HERNANDEZ,

Petitioner,

v.

Case No. 3:26-cv-01050-JEP-PDB

GARRETT RIPA, et al.,

Respondents.

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

Petitioner, Vladimir Ricardo Hernandez, hereby submits this Reply to Respondents' Response to Petition for Writ of Habeas Corpus. Dkt. 7. Mr. Ricardo Hernandez challenges his mandatory detention under 8 U.S.C. § 1225 pursuant to new Department of Homeland Security (DHS) policy and precedent from the Board of Immigration Appeals, and asserts that he is instead entitled to immediate release, or in the alternative, to a bond hearing under 8 U.S.C. § 1226.

RELEVANT FACTS

It is undisputed that Petitioner is a national and citizen of Cuba who last entered the United States on or around July 30, 2019. Dkt. 7. It is also undisputed that on or around February 14, 2025, an Immigration Judge entered an order of removal. See *Id.* However, Respondents fail to acknowledge that the removal order was entered *in absentia*, and

because there is a pending motion to reopen based on lack of notice, the removal order is not final.

ARGUMENT

In their Response to Petitioner's Petition for Writ of Habeas Corpus, Respondents argue (1) Petitioner's detention is lawful under 8 U.S.C. § 1231, and (2) the Petitioner has failed to cooperate with removal. Dkt. 7. However, Respondents' arguments improperly assume that Petitioner is presently subject to a fully executable and constitutionally valid final order of removal, while ignoring the critical procedural posture of this case.

Petitioner has filed a Motion to Reopen and Rescind the *in-absentia* removal order pursuant to INA § 240(b)(5)(C)(ii), based on lack of notice, and that motion remains pending before the Immigration Court. See Id. Further, Respondents fail to acknowledge that notice-based motions to reopen carry an automatic stay of removal by operation of law. INA § 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii). The governing regulation expressly provides that "[t]he filing of a motion to reopen under paragraph (b)(4)(ii) of this section shall stay the removal of the alien pending disposition of the motion by the immigration judge." See Id. Thus, unlike ordinary post-final-order detention cases, Petitioner's removability remains actively challenged through a statutory rescission mechanism specifically created to remedy *in absentia* orders entered without proper notice.

Respondents also improperly characterize Petitioner's exercise of his statutory rights as "failure to cooperate" under INA § 1231(a)(1)(C). That argument is unsupported by both the facts and the law.

Petitioner did not abscond, conceal his whereabouts, or refuse travel documentation. To the contrary, Petitioner voluntarily appeared before USCIS for an adjustment-of-status interview while actively pursuing lawful permanent residence. See Dkt. 7 Ex. C. It was only during that interview that Petitioner first learned of the existence of the *in-absentia* removal order. See Id. Petitioner was immediately detained by ICE thereafter. See Id.

Moreover, immediately after learning of the order, Petitioner acted diligently and promptly filed his Motion to Reopen. See Id. Such conduct is entirely inconsistent with any intent to evade proceedings or obstruct removal.

To support their argument that Petitioner is subject to mandatory detention due to a final removal order, Respondents' reliance on *Zadvydas v. Davis*, 533 U.S. 678 (2001), is misplaced. *Zadvydas* applies to detention arising from a valid and executable final order of removal. That is not the procedural posture of this case.

Here, the underlying *in absentia* removal order is actively challenged and presently being litigated through a pending Motion to Reopen and Rescind based on lack of notice pursuant to INA § 240(b)(5)(C)(ii). See Dkt. 7 Ex. C. Petitioner directly contests whether the *in absentia* order was lawfully entered at all. Thus, unlike the petitioners in *Zadvydas*, Petitioner does not concede the validity of the removal order underlying his detention.

This distinction is constitutionally significant. An *in-absentia* order entered without proper notice violates due process and cannot automatically be treated as a conclusively valid final order for purposes of indefinite mandatory detention under INA § 241. Congress expressly recognized the importance of notice-based challenges by permitting such

motions to be filed “at any time.” INA § 240(b)(5)(C)(ii). Moreover, the filing of such motion automatically stays removal pending adjudication. INA § 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii).

Petitioner is not merely delaying execution of a concededly valid order. Rather, Petitioner asserts that the order was entered in violation of statutory notice requirements and the Fifth Amendment’s guarantee of due process because he never received notice of the hearing. See Dkt. 7 Ex. C.

Thus, Respondents cannot simultaneously argue that the order remains unquestionably final for detention purposes while the Immigration Court actively considers whether the order must be rescinded for lack of notice. At minimum, continued mandatory detention under INA § 1231 while the legality of the underlying removal order remains actively contested raises substantial constitutional concerns warranting habeas relief. Respondents have failed to establish that Petitioner’s continued detention under INA § 1231 is lawful, and the Petition for Writ of Habeas Corpus should be granted.

As to the issue of statutory interpretation involving 8 U.S.C. §§ 1225 and 1226. Petitioner asserts Respondents are unlawfully holding him under § 1225(b)(2), which mandates his detention, instead of under § 1226(a)’s discretionary detention scheme, where he could be eligible for release. (Dkt. 1, generally). As a result, his continued detention without a bond hearing is unconstitutional. *Id.*

This Court has already found that “applying § 1225(b)(2) to noncitizens years after they were apprehended at the border and released into the country does not comport with

the policy justification for treating noncitizens in the country differently than those seeking entry”. *Blanco Pacheco v. Mordant*, 2:26-cv-00236-SPC-NPM, 2026 WL 452450 (M.D. Fla. Feb. 18, 2026). Citing the Supreme Court, this Court noted 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.’” *Id.* citing *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); and *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.”).

This Court has already covered this ground and addressed the issues raised by Petitioner. In *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025) and *Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *6 (M.D. Fla. Oct. 31, 2025), the Court was satisfied of its jurisdiction and found that petitioners were being held in violation of their rights under the INA, entitling them to habeas relief.

The same result should apply here. It is undisputed that Petitioner has been in the United States since at least 2019. His detention is thus governed by § 1226. And as a noncitizen detained under § 1226, Petitioner is entitled to a bond hearing. See *Batista v.*

Noem, No. 2:25-cv-996-KCD-DNF, 2025 WL 3227482 (M.D. Fla. Nov. 19, 2025), citing Jennings v. Rodriguez, 583 U.S. 281, 306 (2018) (“Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.”).

CONCLUSION

For these reasons, and for the reasons stated in the Petition, the Court should GRANT the Petition for Writ of Habeas Corpus and order Petitioner’s immediate release.

Date: May 19, 2026

Respectfully submitted,

TOCADO’S LAW FIRM

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2026, I filed the foregoing Reply electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Date: May 19, 2026

Respectfully submitted,

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