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

LENIN ALEXANDER **FUNEZ MURILLO**

Plaintiff/Petitioner

v. Case No.: 3:26-cv-00065-WWB-MCR

KRISTI NOEM, *et al.*,

Defendants.
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**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO VERIFIED PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

Petitioner, Lenin Alexander Funez Murillo ("Murillo" or "Petitioner"), by and through undersigned counsel, respectfully submits this Reply to the Response filed by Federal Respondents (Doc. 13) and states as follows:

**PRELIMINARY STATEMENT**

Respondents' Response asks this Court to look away from the overwhelming weight of federal authority and the plain text of the Immigration and Nationality Act ("INA"). Multiple federal judges across the country have rejected the government's position that long-term residents of the United States who entered without inspection are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This Court should do the same.

Respondents raise three jurisdictional arguments—under § 1252(g), the zipper clause of § 1252(b)(9), and failure to exhaust—none of which withstands

scrutiny. They then argue on the merits that Murillo is properly detained under § 1225(b)(2) and that the *Maldonado Bautista* judgment should not apply. Each argument fails as a matter of law.

## RESPONSE TO FACTUAL BACKGROUND

Petitioner does not dispute that he entered the United States without inspection. However, Petitioner notes several material clarifications. First, Murillo entered the United States approximately thirteen years ago, on or around August 2012, when he was just thirteen years old. Doc. 1, ¶ 2. He has since established deep roots in this country, including becoming the father of a United States citizen child, D[redacted] who is approximately fifteen months old. Doc. 1, ¶ 6; p. 2.

Second, Respondents note that Murillo "accepted administrative voluntary departure" (Response at 3), but omit that ICE subsequently rescinded that voluntary departure and issued a Notice to Appear, placing Murillo in full removal proceedings. This is significant because it demonstrates that Murillo's detention posture changed materially after the voluntary departure was rescinded, and ICE allowed and elected to pursue removal proceedings under § 1229a—not expedited removal under § 1225.

Third, Murillo's state charges—excessive speeding, possession of cannabis under 20 grams, and driving without a license—are all misdemeanors. None of these offenses trigger mandatory detention under 8 U.S.C. §§ 1225(b)(2) or

1226(c). Murillo's criminal record all pertain to misdemeanors. He poses no flight risk or danger to the community.

## REPLY TO RESPONDENTS' ARGUMENTS

### A. Habeas Return on Detention

Respondents certify that Murillo is being detained under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). Response at 4. Petitioner disputes the propriety of this classification. As demonstrated below, § 1225(b)(2) does not apply to Murillo. Rather, his detention is properly governed by 8 U.S.C. § 1226(a), under which he is entitled to a bond hearing.

Notably, Respondents themselves concede that Murillo's removal proceedings are under § 1229a—not § 1225. Response at 15. This is an important admission. Section 1225(b)(2) was designed for aliens "seeking admission" at the border who are placed in proceedings upon arrival. It was not designed for individuals like Murillo, who have lived in the interior of the United States for over a decade before being encountered by ICE.

### B. This Court Has Jurisdiction

#### *1. Section 1252(g) Does Not Strip Jurisdiction*

Respondents argue that 8 U.S.C. § 1252(g) strips this Court's jurisdiction because Murillo's detention arises from ICE's decision to "commence proceedings." Response at 4–6. This argument fundamentally misconstrues both the statute and the binding precedent Respondents cite.

Section 1252(g) is a narrow provision. The Supreme Court has expressly held that it applies only to "three discrete actions": the decision to commence proceedings, the decision to adjudicate cases, and the decision to execute removal orders. *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999). The Court emphasized that § 1252(g) "applies only to those three specific actions," and does not serve as a "general jurisdictional limitation." *Id.* at 482, 487.

Murillo is not challenging ICE's decision to commence removal proceedings. He is challenging the *conditions* of his detention—specifically, whether he is being detained under the correct statutory authority and whether he is entitled to a bond hearing. This is a qualitatively different claim from challenging the initiation of proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (reaffirming that § 1252(g) must be limited to "just those three specific actions").

Respondents' reliance on *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), is misplaced. In *Gupta*, the Eleventh Circuit addressed claims by aliens who were challenging the initial apprehension and commencement of removal proceedings themselves—not, as here, the statutory basis for detention during those proceedings. Multiple district courts within this Circuit have distinguished *Gupta* in exactly this context and exercised habeas jurisdiction over § 1225 versus § 1226 challenges. *See, e.g., Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR (M.D. Fla. Jan. 12, 2026). As stated before, the Petitioner is not attacking ICE's decision to commence removal proceedings, adjudicate his case, or execute an order of removal. In fact, he is attacking ICE's

decision to treat him as an "applicant for admission" under § 1225(b)(2), which imposes mandatory detention. Petitioner's claim is that he is detained under § 1226(a) which allows a bond hearing before an immigration judge.

Furthermore, the Supreme Court has repeatedly recognized that *habeas corpus* under 28 U.S.C. § 2241 remains available to challenge the statutory basis of immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001); *Demore v. Kim*, 538 U.S. 510, 517 (2003). The Suspension Clause of the Constitution, U.S. Const. art. I, § 9, cl. 2, ensures that habeas review cannot be entirely foreclosed absent an adequate substitute. No such substitute exists here.

***2. The Zipper Clause Does Not Bar This Action***

Respondents next argue that 8 U.S.C. § 1252(b)(9)—the "zipper clause"—channels all claims through appellate review of a final order of removal. This argument likewise fails.

The zipper clause consolidates judicial review of final orders of removal into the courts of appeals. But Murillo is not challenging a final order of removal. He is challenging his *ongoing detention without a bond hearing*. The Supreme Court has recognized that detention challenges are distinct from challenges to removal orders. *See Jennings*, 583 U.S. at 294–95 (analyzing § 1252(b)(9) and holding that the zipper clause "does not present a jurisdictional bar" to challenges to the "statutory framework" for detention); *Demore*, 538 U.S. at 517 (exercising jurisdiction over habeas challenge to mandatory detention under § 1226(c)).

Requiring Murillo to wait until a final order of removal is entered before challenging his unlawful detention would render habeas review meaningless. By that time, the deprivation of liberty will have already occurred—potentially for months or years—with no remedy. This is precisely the type of harm that habeas corpus is designed to address. *See Boumediene v. Bush*, 553 U.S. 723, 783 (2008) ("[T]he costs of delay can no longer be borne by those who are held in custody."). Furthermore, 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)).

Here, the Petitioner does not have an order of removal. Nor is he seeking to challenge the decision to seek removal. He, instead, is challenging his continued detention classification under § 1225(b)(2).

The overwhelming majority of federal courts to have considered this question have exercised habeas jurisdiction over detention challenges under § 1225 versus § 1226, notwithstanding the zipper clause. Respondents' argument would effectively eliminate habeas review of immigration detention—a result Congress did not intend and the Constitution does not permit.

***3. Exhaustion Is Excused Because It Would Be Futile***

Respondents argue Murillo has failed to exhaust his administrative remedies by not requesting a bond hearing before an immigration judge ("IJ"). This argument ignores the practical reality created by the government's own policies.

Considering that the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is binding on all immigration judges - that decision holds that individuals who entered without inspection are "applicants for admission" subject to mandatory detention under § 1225(b)(2), and that IJs lack jurisdiction to conduct bond hearings for such individuals. *Id.* at 221. Immigration judges are bound by BIA precedent. 8 C.F.R. § 1003.1(g). Accordingly, any bond request by Murillo before an IJ would be denied as a matter of law. This is the textbook definition of futility.

Respondents cite *McGee v. Warden, FDC Miami*, 487 F. App'x 516 (11th Cir. 2012), for the proposition that futility does not excuse exhaustion. But *McGee* is an unpublished, non-binding opinion involving a distinct factual context. Moreover, the circumstances here are qualitatively different: the government's own binding precedent (*Hurtado*) categorically forecloses the very relief Murillo would seek. Requiring him to go through the motions of a hearing whose outcome is predetermined would serve no purpose other than delay and additional expense—compounding the deprivation of liberty that this Petition seeks to remedy.

Petitioner notes that Respondents themselves confirm the Immigration Court is relying on *Hurtado* to deny bond hearings to similarly situated individuals. Even the Chief Immigration Judge instructed all immigration judges to apply *Matter*

*of Yajure Hurtado.* The government cannot simultaneously impose a categorical bar on bond hearings through its own administrative rulings and then argue that Petitioner must exhaust those very remedies.

**C. Merits**

***1. Murillo Is Improperly Detained Under § 1225(b)(2)***

Respondents argue that § 1225(b)(2) mandates Murillo's detention because he entered the United States without inspection and has never been "admitted." While the statutory text must be the starting point, Respondents' reading ignores the structure of the INA, Supreme Court guidance, and the overwhelming weight of judicial authority.

**a. The Statutory Structure Distinguishes Between § 1225 and § 1226.**

The INA establishes two distinct statutory regimes for immigration detention. Section 1225 governs the inspection and detention of aliens "seeking admission" at or near the border or ports of entry. Section 1226 governs the arrest and detention of aliens already present in the interior of the United States. The Supreme Court recognized this structural distinction in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), describing § 1225 as applying to "certain aliens seeking admission" and § 1226 as applying to "certain aliens already in the country." *Id.* at 289.

Murillo has been living in the United States for over thirteen years. He was not encountered at or near the border or at a port of entry. He was not apprehended

upon entry. He was arrested in St. Johns County, Florida, following a routine traffic stop, over a decade after his entry to the country. These facts place him squarely within the interior-detention framework of § 1226, not the border-inspection framework of § 1225.

**b. The Government's Reading Produces Absurd Results.**

Respondents' interpretation would mean that anyone who entered the United States without inspection—regardless of how long ago—is permanently classified as an "applicant for admission" subject to mandatory detention without bond. This would encompass individuals who have lived in this country for decades, raised families, paid taxes, and built communities. Such a reading renders § 1226(a) largely superfluous for the millions of undocumented individuals in the United States who entered without inspection, a result that contradicts the canon against surplusage. *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." (internal quotation marks omitted)).

Furthermore, under the government's theory, an individual who crossed the border without inspection thirty years ago and has since become the parent of U.S. citizen children, held lawful employment, and paid taxes would be treated identically to someone apprehended at the border moments after crossing. The INA does not compel such an irrational result.

**c. The Overwhelming Weight of Authority Rejects Respondents' Position.**

Respondents candidly acknowledge that "the overwhelming number of recent decisions in this District and around the country have been adverse to ICE's position." This is a significant concession. Hundreds of federal judges have rejected the government's interpretation, such as the one in the instant case. The decisions cited by Respondents in support of their position—*Iraheta Morales* and *Andres Diaz Lopez*—are outliers that are contrary to the vast majority of judicial authority on this question.

The decisions in *Iraheta Morales v. Noem*, Case No. 0:23-cv-62598-AHS (S.D. Fla. Jan. 29, 2026), and *Andres Diaz Lopez v. Director of ERO, et al.*, Case No. 3:25-cv-1313-JEP-SJH (M.D. Fla. Jan. 26, 2026), should not apply to Petitioner, who has resided continuously in the United States for over thirteen years. The Supreme Court has drawn a clear distinction between noncitizens "seeking admission into the country" under 8 U.S.C. § 1225 and those "already in the country" under § 1226. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). A person with Petitioner's length of presence, family ties, and community roots cannot reasonably be classified as "seeking admission," and the overwhelming weight of federal authority confirms that such individuals are detained under § 1226(a) and entitled to individualized bond hearings. *See, e.g.*, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (certifying nationwide class and granting summary judgment);

*Landaverde-Garcia v. Noem*, No. 2:26-cv-8 (M.D. Fla. Jan. 23, 2026) (ordering bond hearing under § 1226(a)); *Barco Mercado v. Francis*, No. 25-cv-6582, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) (cataloguing hundreds of decisions for petitioners). Moreover, the Due Process Clause independently demands a hearing where, as here, a long-term resident faces indefinite detention—a circumstance the Supreme Court in *DHS v. Thuraissigiam*, 591 U.S. 103, 129–30 (2020), expressly declined to reach. *See also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). To the extent *Iraheta Morales* and *Diaz Lopez* hold otherwise, they are outliers that should not control Petitioner's case.

Courts in this District have repeatedly held that long-term residents who entered without inspection are detained under § 1226(a) and are entitled to bond hearings. *See, e.g., Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR (M.D. Fla. Jan. 12, 2026); *Padilla Orellana v. Warden*, No. 2:25-cv-1195-SPC-NPM (M.D. Fla. Jan. 6, 2026); *Garcia Raya v. ICE*, No. 2:25-cv-1109-KCD-DNF (M.D. Fla. Dec. 22, 2025); *Melgar v. Secretary*, No. 2:25-cv-1002-JES-DNF (M.D. Fla. Dec. 16, 2025).

**d. The Legislative History Supports Petitioner.**

Respondents cite the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to argue that Congress intended to eliminate the "entry doctrine." But this argument actually supports Petitioner. Congress replaced the "entry doctrine" with a distinction between

"admission" and "inadmissibility." The legislative history makes clear that this restructuring was designed to address the legal consequences of an alien's immigration status—not to create a permanent mandatory detention regime for every person who ever entered without inspection, regardless of when they are encountered.

**e. The Laken Riley Act Does Not Support Respondents' Position.**

Respondents argue that the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), supports their reading because it expanded mandatory detention categories under § 1226(c)(1)(E). But this argument cuts against Respondents. The Laken Riley Act specifically added certain individuals charged as inadmissible under § 1182(a)(6)(A)(i) or (a)(7) to the mandatory detention categories under § 1226(c). If, as Respondents contend, all individuals who entered without inspection were already subject to mandatory detention under § 1225(b)(2), there would be no need for Congress to expand § 1226(c) to cover them. The enactment of the Laken Riley Act thus confirms that Congress understood § 1225(b)(2) does not sweep as broadly as Respondents claim.

**2. *Maldonado Bautista* Supports Petitioner's Claims**

Respondents argue that the judgment in *Maldonado Bautista v. Noem*, No. 5:25-cv-1873-SSS-BFM (C.D. Cal. Dec. 18, 2025), should not be applied. While Petitioner acknowledges that a single district court's judgment is not binding on this Court, Respondents' arguments fail for several reasons.

First, Respondents argue that *Hurtado* remains binding because the *Maldonado Bautista* court declined to vacate it. But the *Maldonado Bautista* court did vacate the July 8, 2025 DHS policy "Interim Guidance Regarding Detention Authority for Applicants for Admission" as unlawful and entered a declaratory judgment that class members are detained under § 1226(a). The fact that *Hurtado* remains technically in force does not mean this Court must follow it. This Court has the independent obligation to interpret the INA, and *Hurtado* is an administrative ruling—not a judicial precedent binding on Article III courts. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (reaffirming the judiciary's independent obligation to interpret statutes).

Second, Respondents argue that *Maldonado Bautista* is not binding because it is a decision of another district court. Petitioner does not contend that the *Maldonado Bautista* judgment is binding on this Court in the traditional sense. However, *Maldonado Bautista* represents a carefully reasoned, nationwide class action judgment that is consistent with the holdings of hundreds of federal judges. Its persuasive authority is substantial.

Third, Respondents note that *Maldonado Bautista* is on appeal. The mere filing of an appeal does not automatically stay or diminish the judgment's effect. The government has not obtained a stay of the *Maldonado Bautista* judgment, and it remains in full force and effect.

Regardless of the precise preclusive effect of *Maldonado Bautista*, this Court should reach the same conclusion on an independent analysis of the statutory text.

The reasoning in *Maldonado Bautista* is persuasive and aligns with the overwhelming weight of authority.

## MURILLO'S MANDATORY DETENTION WITHOUT ACCESS TO BOND VIOLATES DUE PROCESS

Even if this Court were to conclude that § 1225(b)(2) applies to Murillo, his continued detention without any opportunity for a bond violates the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Civil detention is permissible only when it serves a regulatory purpose and is accompanied by adequate procedural safeguards. *Demore v. Kim*, 538 U.S. 510, 527 (2003). Mandatory detention without any individualized hearing—where the government need not demonstrate flight risk or danger to the community—fails to provide the process that is due. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Murillo has been detained since approximately November 20, 2025—nearly three months—without any opportunity for an individualized hearing. He is a long-term resident with deep community ties, a United States citizen child, no serious criminal history, and a viable claim for cancellation of removal. The government's categorical refusal to provide him with any hearing at which it must justify his continued detention cannot withstand constitutional scrutiny.

## CONCLUSION

**WHEREFORE**, Petitioner respectfully requests that this Court:

A. Reject Respondents' jurisdictional arguments and exercise jurisdiction over this habeas action;

B. Declare that Petitioner is detained under 8 U.S.C. § 1226(a) and is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2);

C. Order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within seven (7) days, at which the government shall bear the burden of proving by clear and convincing evidence that Petitioner presents a flight risk or danger to the community;

D. Order Petitioner's immediate release if Respondents fail to provide a constitutionally adequate bond hearing within the time prescribed by the Court;

E. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 12th day of February, 2026.

***/s/ Vilerka S. Bilbao***
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 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 parties in the case.

***/s/ Vilerka S. Bilbao***
Attorney