THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

VALENTIN GONZALEZ HERNANDEZ, Petitioner vs. PAMELA BONDI, in her official capacity as Attorney General of the United States, et. al. Respondents.	Case No.: 2:25-cv-1082-SPC-NPM

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO HABEAS PETITION

INTRODUCTION

Petitioner filed a Petition for Writ of Habeas Corpus and Request for Order to Show Cause on November 21, 2025. (Doc. 1). This Court issued an Order to Show Cause on November 24, 2025, which required Respondents to respond on or before December 3, 2025. (Doc. 4). Respondents filed a Response on December 3, 2025. (Doc 6). Petitioner is replying to Respondent's Response. (Doc. 6).

ARGUMENT

I. 8 U.S.C. § 1252(g) and §1252(b)(9) Do Not Bar Review of Petitioner's Claim.

The Government concedes that the questions of law presented in this case, and the challenges to the government's policy and practice, "substantially overlap"

with *Garcia v. Noem*, et al., No. 2:25-cv-00879-SPC-NPM, Doc. 14 at 4-5, (M.D. Fla. Oct. 10, 2025), in which this Court already rejected the same arguments the Respondents now advance. Nevertheless, Mr. Gonzalez Hernandez addresses each contention briefly.

Respondents argue that title 8 U.S.C. § 1252(g) bars review of Mr. Gonzalez Hernandez's claims. But this Court already held in *Garcia v. Noem* that § 1252(g) does not bar review of the precise question presented here. *Garcia v. Noem*, et al., No. 2:25-cv-00879-SPC-NPM, Doc. 14 at 4-5, (M.D. Fla. Oct. 10, 2025). The jurisdictional bar at 8 U.S.C. § 1252(g) is narrow – it applies only "to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Id.* at 4-5 (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) and *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018)). Mr. Gonzalez Hernandez is not challenging any of those actions. Instead, like the petitioner in *Garcia* "he asks the Court to answer a legal question–whether he is subject to mandatory detention under Section 1225(b)(2) or discretionary detention under Section 1226(a)." *Id.* at 4. Therefore, section 1252(g) does not apply.

Next, Respondents argue that title 8 U.S.C. § 1252(b)(9) bars review of Mr. Gonzalez Hernandez's claims. Section 1252, titled "Judicial Review of Orders of Removal," outlines certain matters not subject to judicial review. *See* 8 U.S.C. §

1252. Subsection (b), titled "Requirements for Review of Orders of Removal," channels review of "final orders of removal" to federal courts of appeals. 8 U.S.C. § 1252(b). There is no such order here, nor is Mr. Gonzalez Hernandez seeking review of one. Therefore, this Court should find that § 1252(b)(9) does not bar this Court from reviewing Mr. Gonzalez Hernandez's claims.

II. Petitioner is Being Detained Pursuant to 8 USC § 1226, Which Affords Him the Right to Bond.

As to Respondents' third and fourth arguments regarding exhaustion of remedies and detention under 8 U.S.C. § 1225, Petitioner incorporates by reference the arguments in his initial habeas petition.

Respondents further argue that this case also bears similarities to a recent case decided by the U.S. District Court for the Middle District of Florida denying habeas relief where the petitioner was apprehended at the border. Respondents' reliance on *Duenas Garcia v. Immigration & Customs Enforcement Department of Homeland Security*, No. 2:25-CV-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025), is misplaced. That case is legally distinguishable because there is no indication that the petitioner there was processed in the same manner as Petitioner in this case.

Here, DHS itself made an initial and operative custody determination under 8 U.S.C. § 1226 by issuing a § 236 warrant and releasing Petitioner on an Order of Recognizance. Once the Government invoked § 1226 as the governing detention

statute, it became legally bound by that discretionary detention framework. DHS cannot retroactively discard its own custody determination and reclassify Petitioner as subject to § 1225 after release. The Board of Immigration Appeals has squarely rejected precisely this type of post-hoc statutory manipulation. *Matter of Q. Li*, 29 I&N Dec. 66 n.4 (BIA 2025) ("Once an alien is detained under section 235(b), DHS cannot convert the statutory authority governing her detention from section 235(b) to section 236(a) through the post-hoc issuance of a warrant. The Supreme Court has recognized that it would make 'little sense' to read section 235(b) and section 236(a) as authorizing DHS to 'detain an alien without a warrant at the border' but then requiring DHS 'to issue an arrest warrant in order to continue detaining the alien' once removal proceedings have commenced) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018)). Although *Q. Li* addressed the converse scenario, its holding rests on the broader principle that DHS is bound by its initial statutory election and may not manipulate detention authority after custody has commenced.

As the Supreme Court likewise recognized in *Jennings*, §§ 1225 and 1226 operate at distinct procedural stages and cannot be interchanged after custody has commenced. *See Jennings*, 583 U.S. at 302. Detention authority is fixed at the moment of initial custody, not rewritten after the fact to impose mandatory detention.

Moreover, if Respondents persist in arguing that Petitioner remained subject to § 1225 at all times despite DHS's documentation establishing the contrary, then

as a matter of law that release could only have occurred through parole under 8 U.S.C. § 1182(d)(5). In that event, Petitioner respectfully requests that this Court make that parole finding expressly and in writing. Such a finding is critical to ensure accurate classification of Petitioner's legal posture before the Immigration Court. DHS cannot simultaneously deny that Petitioner was paroled while relying on a legal theory that necessarily depends upon parole having occurred. If § 1225 governs, parole must be acknowledged; if parole is not acknowledged, § 1225 cannot govern.

Furthermore, as Petitioner argued in the habeas petition, by categorically revoking Petitioner's release, without considering his individualized facts and circumstances, Respondents have violated Petitioner's due process rights and the APA. Respondents have already evaluated Petitioner's individual facts and circumstances and concluded that he does not pose a flight risk or a danger to the community. (Doc. 1). There have been no changes in those circumstances that would justify revoking his release on his own recognizance. *Id.* The prior decision by Respondents to grant him release under the same conditions demonstrates that, based on an individualized assessment, they do not view him as a threat or likely to flee. Additionally, Petitioner complied with the requirements to report to ICE, which cannot reasonably be used to claim he is a flight risk. *Id.* ICE has not shown it considered any relevant facts when revoking Petitioner's prior release under 8 U.S.C. § 1226 and detaining him. Nor have the respondents offered any explanation,

satisfactory or otherwise, for that decision. As such, this Court should grant Petitioner's habeas.

III. Proper remedy in habeas action.

Finally, Respondents argue that outright release is inappropriate and that this Court cannot order a bond hearing because such hearings are conducted by EOIR—which, they claim, is not a proper party to this suit. According to Respondents, the only appropriate respondent in this habeas action is the individual with physical custody of Petitioner, Matthew Mordant, and not the Attorney General or EOIR. But the Supreme Court has expressly declined to resolve the very question Respondents assert is settled, refusing to decide whether habeas petitions challenging immigration detention must be directed to the Attorney General or the immediate physical custodian. *See Rumsfeld v. Padilla*, 542 U.S.426, 435 n.8 (2004). This footnote recognizes that immigration detention raises unique considerations and leaves this precise question open.

Moreover, Respondents' position leads to an untenable result. On one hand, they argue that outright release is inappropriate under § 1226. On the other, they insist that a bond hearing is likewise unavailable because EOIR, not ICE, conducts such hearings and is "not a proper party." Under Respondents' theory, then, no form of habeas relief is possible—Petitioner cannot be released, and the Court also cannot order the only alternative relief that protects due process: a bond hearing. That

cannot be correct. Habeas is designed to provide a meaningful remedy where detention violates federal law. *See Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("The habeas court must have the power to order conditional release to cure unlawful detention.").

Federal courts—including those in this district—have routinely permitted habeas petitions to proceed with the Attorney General as a respondent in cases seeking release or bond hearings even when EOIR is not named as a party. *See*, e.g., *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025) (ordering EOIR bond hearing; Attorney General remained a respondent); *Garcia v. Noem*, et al., No. 2:25-cv-00879-SPC-NPM, Doc. 14 at 12, (M.D. Fla. Oct. 10, 2025) (same); *Armentero v. INS*, 340 F.3d 1058, 1068–70 (9th Cir. 2003).

Respondents' argument that the Attorney General must be excluded would render this Court powerless to award any relief at all—a result profoundly inconsistent with *Padilla*, which expressly contemplates exceptions to the immediate-custodian rule in non-core habeas contexts, and with the basic purpose of habeas corpus itself. The Court should reject Respondents' attempt to create a remedial vacuum and should instead grant effective relief, whether through ordering release or a prompt bond hearing.

CONCLUSION

For these reasons, and the reasons stated in the Petition, the Court should GRANT the Petition for Writ of Habeas Corpus and order Petitioner's immediate release or, in the alternative, a bond hearing.

Respectfully submitted, Dated: December 5, 2025

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