UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-cv-25567-JB

PAULINO GARCIA-GOMEZ,

ISIDRO GARCIA-GOMEZ

Petitioner,

v.

GARRETT RIPA, in his official capacity, et al;

Respondents.

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PETITIONER'S TRAVERSE

Petitioners respectfully submit this traverse in response to Respondent's return [ECF No. 6]. This case turns on whether Petitioners' present detention is governed by 8 U.S.C. §1225(b)(2), a mandatory detention provision, or 8 U.S.C. §1226(a), a discretionary detention provision that affords Petitioners the procedural right to a bond hearing. This traverse addresses that question, *inter alia*. Petitioners note at the outset that this is not a matter of first impression with regard to any of the substantive arguments raised by Respondents. *See Duvallon Boffill v. Miami ICE Field Office Director*, 25-cv-25179-JB (S.D.Fla. 2025). Petitioners also note that their immigration counsel has filed bond motions for them based on a change in law that unfortunately has not yielded any practical results. On November 20, 2025, the Court in the Central District of California granted partial summary judgment for four petitioners, holding that the government's expanded mandatory detention policy is inconsistent with the plain language of the Immigration and

Nationality Act ("INA"), and that those petitioners are properly subject to § 1226(a). *See Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025).* Five days later, on November 25, 2025, the Court certified a nationwide class of individuals who are being subject to the government's new no-bond policy—the Bond Eligible Class—and expressly "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (emphasis added). However, the government has been recalcitrant and represented elsewhere that the judgment is not binding on them: furthermore, the Executive Office of Immigration Review has failed to comply with this judgment, and habeas relief is still prudentially needed. *See* Exhibit "A." Petitioners request that the Court waive any exhaustion requirement, or, in the alternative, reserve judgment until after December 12, 2025 when Petitioners' bond hearings are scheduled to take place and at which time their requests will almost certainly be denied. If they do not receive an individualized bond hearing, the Court would unmistakably be in a position to see that the agency does not intend to abide by the dictates of a clear declaratory judgment that applies to Petitioners. Petitioners would immediately file a notice with the Court advising of the result of those hearings and request that habeas relief issue.

I. Introduction

Respondents assert that this Court lacks subject-matter jurisdiction because Petitioners did not exhaust available administrative remedies even though courts have already considered and rejected the government's identical exhaustion argument elsewhere. *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Fla. October 15, 2025); *see also Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982). As the Court noted, the BIA's published decision in *Matter of Yajure Hurtado,* an agency decision that is binding in all similar cases, makes clear that a noncitizen in Petitioner's

position would inevitably be subjected to mandatory detention without bond under 8 U.S.C. § 1225(b)(2). *Id.* Because neither an IJ nor the BIA can provide the relief sought, requiring exhaustion would be futile. *Id.* Other district courts have likewise excused exhaustion in light of *Matter of Yajure Hurtado*. *See, e.g., Inlago Tocagon v. Moniz*, No. 25-cv-12453, 2025 WL 2778023, at *2 (D. Mass. Sept. 29, 2025); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *9–10 (D. Nev. Sept. 17, 2025).

Respondents illogically stretches §1225(b)(2) far beyond its intended inspection context, disregard Congress's explicit distinction between "inspection" under Section 1225 and "arrest and custody" under Section 1226. Properly interpreted, Petitioner's detention falls under Section §1226(a), the statute that governs post-entry arrests within the United States and provides for discretionary bond consideration. The vast majority of federal district courts ruling on this issue have declined to grant deference to the Board of Immigration Appeals' agency decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025) and have independently found that 1226(a) applies. *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025); *Martinez v. Hyde,* 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez-Campos*, No. 2:25-CV12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubia v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

II. Statutory Framework

A. Exhaustion of Remedies is Futile

Administrative exhaustion should be deemed waived due to the irreparable injury Petitioner suffers every day he remains detained and separated from his family. He has four U.S. citizen daughters, from whom he has been separated for over a month and a half. *See Hamdi v. Rumsfeld*, 542 507, 529 (2004) ("[T]he interest in being free from physical detention by one's own government" is "the most elemental of liberty interests."); *see also Ferrara v. United States*, 370 F. Supp. 2d 351, 360 (D. Mass. 2005) ("Obviously, the loss of liberty is a . . . severe form of irreparable injury."). Irreparable injury is an independent basis for waiving additional exhaustion of administrative remedies. *See Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). What is more, courts have repeatedly waived the exhaustion requirement in similar cases involving the prospect of illegal or prolonged confinement. *Lopez Benitez v. Francis*, F. Supp. 3d, 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (waiving exhaustion for habeas petitioner erroneously categorized as subject to 1225(b)(2)(6)); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 U.S. Dist. LEXIS 156344, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), *report and recommendation adopted without objection*, 2025 U.S. Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025);) (same); *dos Santos v. Lyons*, 2025 U.S. Dist. LEXIS 157488, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same).

Also before the Court is a constitutional due process claim that cannot be redressed by the Board of Immigration Appeals. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) ("the inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion."). Requiring Petitioner to exhaust administrative remedies should not be allowed "it appears evident that a noncitizen like Petitioner, who has resided in the United States for years but has not been admitted or paroled, will be subject

to mandatory detention without bond under section 1225(b)(2)." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025). Administrative exhaustion is likewise futile here because the outcome of any bond hearing or BIA appeal is pre-ordained.

Respondents have not denied that on July 8, 2025, DOJ and DHS jointly sought to reinterpret the INA such that mandatory detention would drastically increase.[2] Respondents are arguing that Petitioners are not entitled to an individualized bond hearing. It would be entirely unavailing to pursue administrative review from an IJ or the BIA, sub-agencies of the DOJ, when the BIA has already issued a decision mandating the expansive application of 1225(b)(2)(A) mandatory detention in all IJ decisions.[3] Further, exhaustion of an additional administrative remedy is not required here because there is no statutory language mandating it. *Duong v. INS*, 118 F. Supp. 2d 1059 (S.D. Cal. 2000). A decision in the Middle District of Florida explained why requesting a bond hearing is futile:

> "Plaintiffs need not exhaust administrative remedies [by requesting a bond hearing] 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); *see also Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Requiring Hinojosa Garcia [the habeas petitioner] to make an administrative request for a bond hearing would be futile because the result is predetermined by *Yajure Hurtado*. District courts around the country have reached the same conclusion. Under these circumstances, the Court finds good cause to excuse exhaustion." *Hinojosa v. Noem*, 25-cv-00879-SPC-NPM (Oct. 29, 2025) at *6-7.

B. The Statutory Boundary Between Sections 1225 and 1226

Congress created two distinct detention regimes: Section 1225(b) covers *inspection-stage applicants for admission* – individuals encountered at or near a port of entry. Section 1226(a) governs *post-inspection* and *post-entry arrests* of non-citizens already present in the United States

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[2] https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[3] 59-1 ex A decision.pdf

pending removal proceedings. This division appears in both the statutory text and its implementing regulations. Section 1225(a)(3) provides that "all applicants for admission shall be inspected by immigration officers." §1225(b)(2)(A) then requires detention of such applicants who, upon examination, are not clearly admissible. By contrast, §1226(a) authorizes the Attorney General to arrest and detain "an alien pending a decision on whether the alien is to be removed." (and a decision is pending here). It is this latter provision that expressly allows continued detention, release on bond, or conditional parole.

C. Subject-Matter Jurisdiction Over Petitioner's Section 1226(a) Detention

Federal courts are "courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). 28 U.S.C. § 2241 is the primary federal habeas statute, which authorizes federal courts to hear "statutory and constitutional challenges to post-removal-period detention." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). 8 U.S.C. § 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g).

However, the Supreme Court has interpreted § 1252(g) narrowly, emphasizing that it does not create a general bar to judicial review or sweep in all claims "arising from" deportation proceedings; rather, courts must focus on whether the claim challenges one of the three covered actions themselves. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (explaining that § 1252(g) is a "discretion-protecting provision" intended to prevent the deconstruction or prolongation of removal proceedings and does not bar review of all claims

arising from deportation proceedings); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020); *Jennings*, 583 U.S. at 294.

In addition, the Eleventh Circuit has similarly distinguished between claims that directly challenge one of the three discrete actions listed in §1252(g), specifically commencing proceedings, adjudicating cases, or executing removal orders, and claims challenging the legality of detention. *See Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006). Specifically, in this district, the Court reaffirmed that principle, holding that § 1252(g) does not bar review of claims challenging only the substantive legality of detention rather than challenging the commencement or execution of removal proceedings. *See Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla. Sept. 9, 2025) ("In sum, the Court does not believe that § 1252(g) clearly bars review of this case to the extent Petitioner seeks only 'substantive review of the underlying legal bases' of his detention."). Consequently, claims that challenge the underlying legality of detention, rather than the Attorney General's discretion to commence or execute removal, are not barred by § 1252(g) and remain fully reviewable, including challenges under § 1226(a) and related habeas provisions.

The Government's reliance on § 1252 does not serve to divest this Court of jurisdiction. It relies on 8 U.S.C. § 1252(e)(3), a provision that narrowly governs systemic challenges to expedited removal procedures, yet no expedited removal proceedings are at issue here: Petitioner is detained under § 1226(a) following post-entry detention, and no one has claimed that any expedited removal procedure under 8 U.S.C. 1225(b)(1) is in play here. Similarly, the Government's reliance on § 1252(g) and § 1252(b)(9) is misplaced. Petitioner does not challenge the Government's discretion to commence proceedings, adjudicate cases, or execute removal orders, and the detention decision is unrelated to any of these discrete acts. Instead, Petitioner challenges the

underlying legal basis of his *detention* under § 1226(a); i.e., Petitioner does not challenge the initiation or execution of any removal proceedings; he challenges only the lawfulness of his detention while awaiting such proceedings. Likewise, § 1252(b)(9) restricts judicial review of final orders of removal, *yet Petitioners have no final order of removal and have never had one*. Nor are they challenging any aspect of their removal proceedings. They are challenging detention without a bond hearing. This case concerns the ongoing legality of detention under § 1226(a), which governs post-entry custody, provides for discretionary bond consideration, and is reviewable by the courts. Applying the Government's reading of § 1252 to these facts would improperly conflate judicial review of final removal orders with challenges to detention. § 1252(g) does not bar review of claims against the substantive legality of detention. *See Grigorian*, 2025 WL 2604573, at *6. ("In sum, the Court does not believe that § 1252(g) clearly bars review of this case to the extent Petitioner seeks only 'substantive review of the underlying legal bases' of his detention."). Accordingly, the Government's scattershot invocation of § 1252 is misplaced because it fails to demonstrate any applicable jurisdictional bar, and this Court retains full subject-matter jurisdiction to hear Petitioner's claims. *See Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025) (rejecting similar jurisdictional arguments to those presented by Respondent); *See Duvallon Boffill v. Field Office Director, et. al.*, 25-cv-25179-BECERRA (S.D.Fla November 20, 2025) (same); *Ocampo Fernandez v. Ripa*, 25-cv-24981-LEIBOWITZ (S.D.Fla November 25, 2025) (same). *See Hinojosa v. Noem*, 25-cv-00879-SPC-NPM (M.D.Fla. October 29, 2025) (same).

C. Structure and Legislative Intent

Reading §1225(b)(2) to include every noncitizen not formally "admitted" would render §1226(a) largely useless. Congress could not have intended a single subsection of Section 1225 to swallow virtually the entire framework of discretionary custody Congress preserved in Section

1226. The legislative history of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") confirms that Section 1225 was designed to consolidate inspection procedures *at or near the border or ports-of-entry*, while Section 1226 remained the detention authority for arrests *inside the country*. *See* Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-108, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579 (codified at 8 U.S.C. § 1225); H.R. Conf. Rep. No. 104-828, at 209-10 (1996) (explaining that § 302 "revises section 235 of the INA to consolidate the inspection and removal process at ports of entry," while § 303 "retains the Attorney General's discretionary authority to detain or release aliens pending removal proceedings under Section 236").

D. Section 1225(b)(2) Does Not Apply Per Near-Universal Consensus

The Government's argument that Petitioner is an "applicant for admission" subject to detention under 8 U.S.C. § 1225(b)(2) mischaracterizes both the statutory text and the relevant case law. While § 1225 defines an "applicant for admission" to include aliens present in the United States without admission, the provision does not automatically place every noncitizen into a category that precludes review of detention under § 1226(a). As the Supreme Court has emphasized, statutory interpretation must begin with the plain language, but context and application are equally critical. *See Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)).

Petitioners' circumstances fall squarely within the category of noncitizens present without admission, not arriving aliens at a port of entry. During Petitioner's arrest, they did not engage with the inspection regime applied to actual applicants for admission at a point of entry. *See* 8 U.S.C. § 1225(a)(1). Courts have repeatedly recognized that § 1225(b)(2) is designed to govern removal procedures for aliens being inspected at or near the border or ports-of-entry, but §1226(a) applies to arrests in the interior of the country. *See Lopez-Arevelo*, 2025 WL 2691828, at *6.

Courts considering the precise question at issue here have concluded that § 1226(a), not § 1225(b)(2), governs detention of noncitizens arrested inside the country. *See Barrera-Espinoza v. ICE*, No. 2:24-cv-01987, 2024 WL 8453112 (W.D. Wash. Dec. 12, 2024); *Pizarro Reyes v. Garland*, No. 1:25-cv-20317, 2025 WL 2927148 (S.D. Fla. May 7, 2025); *Rodriguez Vazquez v. Garland*, No. 2:25-cv-00412, 2025 WL 3510183 (W.D. Wash. June 4, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 4369132 (D. Mass. July 7, 2025); *Martinez v. Hyde,* 2025 WL 2084238 (D. Mass. July 24, 2025); *Lepe v. Bondi*, No. 3:25-cv-01602, 2025 WL 4520799 (S.D. Cal. Aug. 5, 2025); *Lopez-Campos*, No. 2:25-CV12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Hypolite v. Noem*, No. 1:25-cv-04304, 2025 WL 5893911 (E.D.N.Y. Sept. 29, 2025); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubia v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025); *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025)

III. Conclusion

For the foregoing reasons, Petitioners respectfully submit that their detention is governed by 8 U.S.C. § 1226(a), which provides for discretionary consideration with the procedural right to a bond hearing, and the statutory and constitutional claims raised here remain fully reviewable. The authorities cited by Respondents do not support their expansive reading of § 1225(b)(2), nor do they bar judicial review of Petitioner's detention. Accordingly, the Court should reject the Government's arguments, maintain jurisdiction over the Petition, and grant the relief requested by

Petitioners, namely, Petitioners respectfully request that the government either immediately provide an individualized bond hearing or release him.

Respectfully submitted, Dated: December 4, 2025

/s/ Felix A. Montanez

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