

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

FERMIN ROBLES TOMAS)

Petitioner,)

v.)

MATTHEW MORDANT, in his official)
capacity as Warden of the Florida Soft Side)
South, “Alligator Alcatraz”; GARRET)
RIPA, in his official capacity as Miami Field)
Office Director, Immigration and Customs)
Enforcement’s Enforcement and Removal)
Operations; TODD LYONS, in his official)
capacity as Acting Director of Immigration)
and Customs Enforcement; KRISTI NOEM,)
in her official capacity as Secretary of the)
Department of Homeland Security;)
PAMELA BONDI, in her official capacity)
as Attorney General, and EXECUTIVE)
OFFICE FOR IMMIGRATION REVIEW)

Respondents.)
_____)

Case No. 2:25-cv-1117-JES-DNF

PETITIONER’S REPLY

INTRODUCTION

Petitioner filed a Petition for Writ of Habeas Corpus and Request for Order to Show Cause on December 1, 2025. (Doc. 1). This Court issued an Order to Show Cause on December 3, 2025, which required Respondents to respond by December 23, 2025. (Doc. 5). Respondents filed a Response on December 22, 2025. (Doc 9). Petitioner is replying to Respondent's Response *See* Doc. 5; Doc. 9.

ARGUMENT

I. The Warden of Alligator Alcatraz is Not the Only Proper Respondent.

The *Rumsfeld v. Padilla* court expressly declined to decide whether the immediate custodian rule applies in the immigration context. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 n. 8 (2004). Immigration detention presents a distinct legal framework in which the Attorney General historically has exercised an “extraordinary and pervasive role,” including the authority to produce petitioners before the court, to serve as the ultimate decisionmaker on immigration matters, and to maintain control over proceedings leading to removal. *Henderson v. I.N.S.*, 157 F.3d 106, 126 (2d Cir.1998). Some of these powers have shifted to the Secretary of the Department of Homeland Security (“DHS”) following the Laken Riley Act, Pub. L. 119-1, 139 Stat. 3. (2025).

This case further raises substantial uncertainty as to who, in practice, has the authority to produce the petitioner. *See* Greg Allen, NPR, *'Who's running the*

show?' is a key question in 'Alligator Alcatraz' challenge, (Aug. 14, 2025), <https://www.npr.org/2025/08/14/nx-s1-5501628/alligator-alcatraz-court-desantis-trump-dhs>. If the facility at issue is deemed a contract facility, then the federal official responsible for overseeing detainees there, rather than the local facility administrator, functions as the immediate custodian. *See Masingene v. Martin, et al.*, 424 F. Supp.3d 1298, 1302 (S.D. Fla. Jan. 27, 2020). Given the unresolved questions surrounding operational control of Alligator Alcatraz, together with the evolving statutory roles of the Attorney General and the Secretary of DHS in immigration detention, it was necessary to include all Respondents in the petition to ensure that the Court can exercise authority over an official with the authority to provide effective relief.

Further, Respondents seek to amend the parties to this petition solely to insulate themselves from any obligation to provide relief ordered by this Court. *See* Doc. 9 at 7-9. They contend that the scheduling of bond hearings lies beyond their control, yet difficulty does not equate to lack of authority. Respondents have, in fact, timely scheduled bond hearings in comparable cases. *See Garcia Riquis v. Warden of Florida Soft Side South et al*, No 2:25-cv-01028-SPC-NPM, 2025 WL 3502525 (M.D. Fla. Dec. 5, 2025); *Hernandez Alvarez v. Morris*, No. 1:25-cv-24806-KMW (S.D. Fla. Oct. 27, 2025), ECF 10; *Cerro Perez v. Parra*, 1:25-cv-24820-KMW (S.D. Fla. Oct 27, 2025), ECF 10. Moreover, Respondents are

routinely presented with the choice of either scheduling a bond hearing or releasing the petitioner. Although they may prefer the former, the latter plainly remains within their control. *Id*; see also *Bravo Diaz v. Mordant, et al.*, No. 2:25-cv-1013-JES-DNF, (M.D. Fla. Dec. 16, 2025), ECF 10.

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

8 U.S.C. § 1252(g) bars jurisdiction “only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original); see also *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (“We did not interpret this language to sweep in any claim that technically can be said to ‘arise from’ the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.”). “When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. United States Citizenship and Immigr. Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020). Petitioner is not challenging the discretionary decision to commence removal proceedings; the issue of the present case is whether Petitioner is detained mandatorily under 8 U.S.C. § 1225(b)(2) or discretionarily under 8 U.S.C. § 1226(a). See *Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *3 (M.D. Fla. Dec. 1, 2025); *Vasquez Carcamo v. Noem*, No. 2:25- cv-

922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Hinojosa Garcia v. Noem*, No. 2:25-CV-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *see also Duvallon Boffill v. Field Off. Dir., Miami Field Off., U.S. Immigr. and Customs Enf't, et al*, No. 25-cv-25179, 2025 WL 3246868 at *3;4 (S.D. Fla. Nov. 20, 2025)

This claim is not barred by 8 U.S.C. §1252(b)(9) either given that Petitioner is not requesting a review of a removal order. *See Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation); *see also Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *3 (M.D. Fla. Dec. 1, 2025); *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025); *Hinojosa Garcia v. Noem*, No. 2:25- CV-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *see also Duvallon Boffill v. Field Off. Dir., Miami Field Off., U.S. Immigr. and Customs Enf't, et al*, No. 25-cv-25179, 2025 WL 3246868 at *4 (S.D. Fla. Nov. 20, 2025)

III. Seeking Administrative Relief Would be Futile.

Respondents' mention the lack of administrative exhaustion, however, the exhaustion requirement under 8 USC § 1251(d)(1) "is not jurisdictional," but prudential. *Kemokai v. U.S. Att'y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023)

(acknowledging the abrogation of prior Eleventh Circuit precedent interpreting § 1252(d)(1) as a jurisdictional bar by *Santos-Zacaria v. Garland*, 598 U.S. 411, 413 (2023)). Additionally, pursuing the administrative relief would be futile given the Board of Immigration Appeal’s Decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

In *Yajure Hurtado*, decided just in September, the BIA rejected the precise argument raised in this case. 29 I&N Dec. at 220 (“Under the plain reading of the INA, we affirm the [IJ’s] determination that he did not have authority over the bond request because aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”). Administrative “exhaustion is not required where . . . an administrative appeal would be futile.” *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (citing *Von Hoffberg v. Alexander*, 615 F.2d 633, 638 (5th Cir. 1980)). The result of any “bond appeal to the BIA is nearly a foregone conclusion under [*Yajure Hurtado*], any prudential exhaustion requirements are excused for futility.” *Puga v. Assistant Field Off. Dir., Krome North Serv. Processing Ctr.*, 25-cv-24535, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025); *see also Jefry Josue Del Cid Del Cid and Marlon Letona Marroquin Marroquin v. Pamela Bondi*, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025); *Guerrero Orellana v. Moniz*, --F.

Supp. 3d--, 2025 WL 2809996, at *4 n.2 (D. Mass. Oct. 3, 2025); *Inlago Tocagon v. Moniz*, --F. Supp. 3d--, 2025 WL 2778023, at *2 (D. Mass. Sep. 29, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 WL 2710211, at *5 (D. Nev. Sep. 23, 2025); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *9–10 (D. Nev. Sep. 17, 2025); *Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *3 (M.D. Fla. Dec. 1, 2025).

IV. Petitioner is Being Detained Pursuant to 8 USC § 1226.

There are three relevant statutes to authorize detention. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Third, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

In the present case, Petitioner has not been ordered removed and is not in expedited removal proceedings. Furthermore, § 1225(b) applies to people arriving

at U.S. ports of entry or who recently entered the United States. The statute is built around the idea that these individuals are subject to border inspections because they are “seeking admission” to the United States. For that reason, it makes little sense to apply § 1225 to someone who has been living inside the United States for 12 years, as Petitioner has, because such an individual is no longer in the posture of an arriving applicant for admission.

Petitioner has been present in the United States for 12 years before his apprehension by ICE, which makes “his detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond,” *Puga*, 2025 WL 2938369, at *3, not § 1225(b)(2), applicable to noncitizen “applicant[s] for admission” to the United States. § 1225(b)(2)(A).

It has been found by courts throughout the country that Respondents’ interpretation of the INA to expand the scope of 8 USC §1225 detention, “directly contravenes the statute, disregards decades of settled precedent,” and is erroneous. *Hernandez Alvarez v. Morris*, No. 1:25-cv-24806-KMW, (S.D. Fla. Oct. 27, 2025), ECF 6 at 5; *Cerro Perez v. Parra*, No. 1:25-cv-24820-KMW, (S.D. Fla. Oct 27, 2025), ECF 9 at 6, *Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-cv-24292 (S.D. Fla. Oct. 10, 2025), ECF 41 at 10; *see also Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sep. 9, 2025) (“Finally, the BIA’s decision to pivot from three decades of consistent statutory interpretation

and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.”); *see also Patel v. Hardin, et al*, No 2:25-cv-870-JES-NPM, 2025 WL 3442706 at *5 (M.D. Fla. Dec. 1, 2025); *Puga*, 2025 WL 2938369, at *3–6; *Merino v. Ripa*, No. 25-23845, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); *Lopez v. Hardin*, No. 25-cv830, 2025 WL 2732717, at *2 (M.D. Fla. Sep. 25, 2025); *Guerra v. Joyce*, No. 25-cv-00534, 2025 WL 2986316, at *3 (D. Me. Oct. 23, 2025); *Lomeu v. Soto*, 25-cv-16589, 2025 WL 2981296, at *7–8 (D.N.J. Oct. 23, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120, 2025 WL 2977650, at *5–6 (D. Colo. Oct. 22, 2025); *Aguiar v. Moniz*, No. 25-cv-12706, 2025 WL 2987656, at *3 (D. Mass. Oct. 22, 2025); *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042, at *7 (D. Md. Oct. 21, 2025); *Miguel v. Noem*, 25-11137, 2025 WL 2976480, at *6 (N.D. Ill. Oct. 21, 2025); *Pineda v. Simon*, No. 25-cv-01616, 2025 WL 2980729, at *2 (E.D. Va. Oct. 21, 2025); *H.G.V.U. v. Smith*, No. 25-cv-10931, 2025 WL 2962610, at *4–6 (N.D. Ill. Oct. 20, 2025); *Polo v. Chestnut*, No. 25-cv01342, 2025 WL 2959346, at *11 (E.D. Cal. Oct. 17, 2025); *Alvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at *4–6 (W.D. Mich. Oct. 17, 2025); *Buenrostro-Mendez v. Bondi*, No. 25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025).

CONCLUSION

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and Request for Order to Show Cause, this Court should grant the petition.

Respectfully submitted,

/s/ Kenia Garcia

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Dated: January 5, 2026

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Respectfully submitted,

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