UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

NILDO C. DE ALMEIDA,
Petitioner,

v.

PAMELA BONDI,
U.S. Attorney General, et al,
Respondents.

Case No.: 0:25-cv-62543-MD
Honorable Melissa Damian

PETITIONER'S REPLY TO THE GOVERNMENT'S RESPONSE TO THE COURT'S ORDER TO SHOW CASE

Introduction & Jurisdictional Issues

Mr. Nildo De Almeida, the Petitioner, respectfully submits his reply to the government's response to the Court's December 14, 2025 Order to Show Cause. Accordingly, the Petitioner shows unto Your Honor as follows.

As a starting point, the government does not take issue with the District Court's jurisdiction in this matter. Over the past several months, hundreds of decisions have been issued by District Courts across the land, soundly rejecting various jurisdictional challenges advanced by the government prior to merits determinations on similar cases.

Many of those decisions are cited in the Petitioner's habeas corpus petition, and in subsequent decisions cited below. The Petitioner is not endeavoring to assert any challenges connected with his pending removal proceedings, which are currently on appeal with the Board of Immigration Appeals. Contrarily, the Petitioner's habeas petition is a proper vehicle to challenge his current detention by the Department of Homeland Security (DHS), arbitrarily initiated by DHS on September 26, 2025.

In response to the government's assertion, under Point IV, that the Petitioner does not have standing to assert a claim under the Administrative Procedure Act (APA), the Petitioner merely points out that, according to the government's own admission, this habeas remedy is adequate and appropriate to address the legal and Constitutional issues asserted in the instant petition. The Petitioner is aware of decisions in the detention context invoking the APA but he is not exclusively relying on APA provisions to substantiate his claims.

To wit, a decision by District Judge Kelley Hodge, issued just yesterday, December 29, 2025, is instructive on this exact procedural issue. In *Salinas Jaigua v. Jamison*, 2025 WL 3757076 (E.D. Pa. 12/29/25), Judge Hodge clarified that, since she found that 8 U.S.C. 1226(a) is applicable and that the petitioner's detention not only circumvents but offends due process, the court would not address the APA claim. Judge Hodge proceeded to order the immediate release of a native of Ecuador

who had been granted parole and released into the United States upon his apprehension near the U.S. Mexico border, but re-detained on December 17, 2025.

With regard to the government's attempt to dismiss the petition against all the respondents, except for the "immediate custodian," we would call the court's attention to a decision issued yesterday in the Western District of Michigan: *Kenzhebaev v. Noem*, 2025 WL 3737975 (W.D. Mich. 12/29/29), in which Judge Jane Beckering rejected the government's contention that the Detroit ICE Field Office Director is the only proper respondent in its effort to dismiss the DHS Secretary from the action. Citing to *Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003), she determined that, in order to ensure that respondents maintain authority to enforce the court's grant of habeas relief in the event that the petitioner is transferred out of the Western District of Michigan, the court would not dismiss Secretary Noem as a respondent in the habeas proceedings. We likewise request that this court reject the government's entreaty to dismiss any necessary respondents from our action, particularly Secretary Noem.

Exhaustion of Administrative Remedies-Point III of Government's Response

The government's perfunctory attempt to convince this court that the Petitioner should first exhaust administrative remedies is a proposition which has been soundly rejected by multiple district courts that have lined up to support the Petitioner's position that his current detention by DHS is in violation of the statutes

and also constitutes a violation of his rights to substantive and procedural Due Process under the Fifth Amendment.

To wit, Immigration Judges are mandated to follow precedential decisions by the Board of Immigration Appeals. In *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), the Board ruled that the mandatory detention provision, 8 U.S.C. § 1225(b)(2), applies to individuals who entered the U.S. without inspection, so this precedential decision would foreclose the Petitioner from receiving the benefit of a bond hearing under 8 U.S.C. § 1226(a).

In addition, compelling an individual to pursue a cumbersome administrative process when deprivation of his or her liberty, resulting in irreparable injury on a daily basis, is involved is a further consideration which renders an administrative remedy to be both futile and insufficient to redress the individual's Constitutionally protected liberty interests. *E.g. Chipantiza Sisalema v. Francis*, 2025 WL 1927931 (SDNY 7/13/25), in which the court declared that an administrative hearing would not substitute ICE requirement to engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause. In light of the "glaring Constitutional violation" identified by Judge Analisa Torres, she ordered the immediate release of that petitioner.

In *Kenzhebaev v. Noem, supra*, as discussed above, the court comprehensively dealt with the Exhaustion issue, pointing out that no applicable statute or regulation mandated exhaustion by the petitioner in that case, who was advancing the same claims as the Petitioner. The court also declined to enforce the doctrine of prudential exhaustion and further concluded that, in the alternative, waiver of exhaustion was appropriate, based on futility and the reality that the delay involved in pursuing an administrative remedy would result in hardship to the petitioner.

The Petitioner also refers Your Honor to a similar decision issued yesterday, *Singh v. Albarran*, 2025 WL 3751819 (E.D. Cal. 12/29/25), which likewise rejected the government's argument that a petitioner should be required to exhaust an administrative remedy which would clearly involve an exercise in futility. As determined by Judge Kathleen Williams in *Perez v. Parra*, 1:25-cv-24820-KMW (SD FL 10/27/25) [discussed in more detail, below], any prudential exhaustion requirements are excused for futility, citing to *Puga v. Assistant Field Dir., Krome N. Processing Ctr.*, 2025 WL 2938369 (SD FL 10/15/25).

Additional Supplemental Decisions Supporting the Petitioner's Habeas Claim

The Petitioner commends the government for recognizing, in footnote 2 of its Response, that in *Perez v. Parra*, decided by Judge Kathleen Williams on October 27, 2025, the U.S. District Court for the Southern District of Florida has rejected

the government's legal position that 8 USC § 1225(b)(2) controls the Petitioner's detention. At pages 7 through 10 of her decision, Judge Williams refers to dozens of decisions throughout the United States supporting her ruling. Since then, we now have hundreds of additional rulings favoring the Petitioner's legal claims. Besides *Perez v. Parra*, we have subsequent decisions, similarly ruling, in both the Southern and Middle Districts of Florida, as well as for the Middle District of Georgia. None of these decisions questioned the court's jurisdiction.

Among the decisions selected for inclusion in Westlaw: *Acanda Ceballo v. Parra*, 2025 WL 3481908 (SD FL 12/4/25); Navarro *Perera v. Bondi*, 2025 WL 3515616 (MD FL 12/8/25); *Cetino v. Hardin*, 2025 WL 3558138 (MD FL 12/12/25); *D.L.D. C. v. Warden*, Stewart Detent. Ctr., 2025 WL 3455078 (MD GA 12/1/25); and *Patel v. Hardin*, 2025 WL 3442706 (MD FL 12/1/25).

Moreover, in a recent decision by the Seventh Circuit Court of Appeals, *Castañon-Nava v. U.S. Department of Homeland Security*, 2025 WL 3552514 (7th Cir. 12/11/25), involving litigation concerning warrantless immigration arrests by ICE, the court addressed the government's position on mandatory detention under 8 U.S.C. § 1225(b)(2)(A), as applied to individuals who entered the U.S. without inspection, and stated that the defendants' construction would render that statute's use of the phrase "seeking admission" superfluous, violating one of the cardinal rules of statutory construction.

In recent weeks, District Judges throughout the country have increasingly ordered immediate release of petitioners, as opposed to merely ordering the conduct of an 8 U.S.C. § 1226(a) [INA § 236(a)] bond hearing, given the recognition that the Department of Homeland Security has been relying solely upon its new interpretation of 8 USC § 1225(b)(2) to invoke mandatory detention of individuals who had previously been recognized as being eligible for bond hearings under § 1226. This remedy is particularly justified in the cases of those individuals who had been previously released under whichever mechanism ICE decided to utilize, such as Release on Recognizance, "Conditional parole," or so-called "humanitarian parole" under 8 U.S.C. § 1182(d)(5) [INA § 212(d)(5)].

This was the relief ordered in the decisions decided yesterday, December 29, and discussed above: *Kenzhebaev v. Noem, supra; Singh v. Albarran, supra. See also Guadarrama Ayala v. Henkey,* 2025 WL 3754138 (D. Idaho 12/29/25). And other recent case examples abound. In *Yao v. Almodovar*, 2025 WL 3653433 (SDNY 12/17/25), the court ordered the immediate release of a Chinese citizen previously released on his own recognizance near the border in 2023 and re-detained on December 2, 2025 at an ICE check-in. Inviting an Equal Access to Justice application, under 28 U.S.C. § 2414, The Judge held that Yao is the prevailing party and that ICE's position [regarding mandatory detention], which

has been rejected this year in 97% of the cases in which this issue has been litigated, is not substantially justified.

Then, in *Cornejo Guanuquiza v. Francis*, 2025 WL 3678121 (SDNY 12/18/25), Judge Ronnie Abrams ordered immediate release and declared that the government's position was not substantially justified since it does not, and has never had, a reasonable basis in statutory text, structure or history. The Court directed that petitioner's counsel to submit an application for EAJA fees.

In *R.P.L. v. Maldonado*, 2025 WL 3731864 (EDNY 12/26/25), Judge Hector Gonzalez orders the immediate release of a "small business owner, father, and husband, who has lived in the U.S. for decades," who was arrested and detained by ICE on September 18, 2025, his first encounter with immigration authorities. Rejecting the government's argument invoking 8 U.S.C. 1225(a) [INA 235(a)], Judge Gonzalez noted that out of at least 362 decisions on this issue, the petitioners have prevailed in 350 cases decided by over 160 different judges, sitting in about 50 different courts spread across the U.S. Further ruling that the detention violated Due Process, Judge Gonzalez concluded that the petitioner's detention during his first encounter with DHS is unlawful from its inception because ICE detained him under the wrong statute and without any notice or opportunity to be heard, much less [without adherence] to the procedures required 8 U.S.C. 1226(a). He

emphasized that this sort of unlawful detention entitles the petitioner to immediate release.

Even in cases where District Judges did not definitely decide which detention statute governed, release has been ordered in situations where the petitioner had been previously released by the DHS, only to be re-detained pursuant to DHS's newly implemented policy, as was upheld by the Board of Immigration Appeals in *Yajure Hurtado, supra*. Among those decisions, in *Ruiz Diaz v. Larose*, 2025 WL 3707051 (SD Cal. 12/22/25), the court ordered the immediate release of a Mexican citizen, who was released for removal proceedings, which were administratively closed in 2015. The petitioner was re-detained at an ICE check-in on October 9, 2025. The court ruled that the re-detention of this petitioner violated that petitioner's right to Due Process, citing to *Valencia Zapata v. Kaiser,* 2025 WL 2578207 (ND Cal. 9/5/25); and *Pinchi v. Noem,* 792 F.Supp.3d 1025 (ND Cal. 2025).

Then, in *Fajardo v. Robbins*, 2025 WL 3677635 (ED Cal. 12/18/25), the court ordered the immediate release of the petitioner, who had initially been released in 2023 on "humanitarian parole" under 8 U.S.C. § 1182(d)(5), only to be re-detained in November 2025. Agreeing with the petitioner that even if § 1225 applied to her situation, her re-detention violated her constitutional due process rights, so the court ordered the petitioner's immediate release and enjoined the

government respondents from re-detaining her, absent exigent circumstances, without first providing her with written notice and a pre-detention hearing before a neutral adjudicator. The court also referred to *Pinchi v. Noem, supra*. *See also Fernandez Lopez v. Wofford*, 2025 WL 2959319 (E.D. Cal. 10/17/25); and *Rodriguez Cabrera v. Mattos*, 2025 WL 3072687 (D. Nev. 11/3/25).

The Petitioner respectfully refers again to *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (ND Cal. 2025), in which the court declared that "although in some circumstances, the initial decision to detain or release an individual may be within the government's discretion, the government's decision to release an individual creates an implicit promise, upon which that individual may rely, that their liberty will be revoked only if they fail to live up to the conditions of release." *Pinchi* has 179 Citing References in Westlaw, as of December 30, 2025.

Conclusion

Given that Mr. De Almeida's current detention stems from an arbitrary and improper application of the relevant statutes, and violates his rights to Due Process, the Petitioner respectfully request that Your Honor order his immediate release from detention, and that any effort to re-detain him in the future be preceded by an pre-deprivation hearing before an impartial decision-maker.

RESPECTFULLY SUBMITTED on December 30, 2025.

Arturo R. Rios, Esq.
Attorney for Petitioner
LAW OFFICE OF
ARTURO R. RIOS, P.A.
2929 Fifth Avenue North
St. Petersburg, Florida 33713
Phone: (727) 321-8151
Fax: (727) 499-6872
Email Art@RiosLawFirm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December 2025, I electronically filed the foregoing Petitioner's Response with the Clerk of Court using the CM/ECF system, which in turn electronically served the same on the above-referenced Respondents.

Arturo R. Rios, Esq.
Attorney for Petitioner