

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-25859-CIV-WILLIAMS

MANAURY OLIVAREZ GEORGE)	
)	
Petitioner,)	
)	
v.)	PETITIONER'S REPLY
)	
WARDEN OF KROME; TODD M. LYONS, et al.,)	
)	
Respondents.)	

PETITIONER'S REPLY

Petitioner, by and through undersigned Counsel, in compliance with the Court's Order to Show Cause entered on December 15, 2025 [D.E. 7], provides this Reply to Respondents' Response to the Order to Show Cause, filed on December 18, 2025 [D.E. 9]. For the reasons set forth below, the Court should grant Petitioner's Amended Petition, filed on December 15, 2025 [D.E. 5].

EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Respondents argue that the Court should dismiss Petitioner's Amended Petition for lack of jurisdiction because Petitioner failed to exhaust administrative remedies. D.E. 9 at 6.
2. However, the exhaustion requirement under 8 U.S.C. § 1252(d)(1) "is not jurisdictional." *Kemokai v. U.S. Att'y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023).
3. Moreover, "administrative 'exhaustion is not required where[,] as here, 'an administrative appeal would be futile[.]'" *Boffill v. Field Office Dir., Mia. Field Office*, 2025 U.S.

Dist. LEXIS 228852, at *12 (S.D. Fla. Nov. 20, 2025) (citing *Linfors v. U.S.*, 673 F.2d 332, 334 (11th Cir. 1982)).

4. Exhaustion is futile where the agency has “predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140,148 (1992).

5. Here, exhaustion of administrative remedies would be futile.

6. As noted by Respondents, Petitioner has no recourse in immigration court. D.E. 9 at 7. The BIA has predetermined the issue and found that section 1225(b) mandates detention of arriving aliens pending removal proceedings, without exception. *See e.g., Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025) (“aliens arriving in the United States who are detained under section 235(b)(1) or (b)(2) are ineligible for release on bond.”).

7. Although Petitioner disputes his classification as an arriving alien, the immigration judge does not have the authority in custody proceedings to determine whether Petitioner is properly included in within that class. *See* 8 C.F.R. §1003.19(h)(2)(i)-(ii); *see also Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009) (“It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA].”).

8. Petitioner’s ability to dispute his classification as an arriving in his removal proceedings does not affect this Court’s jurisdiction to determine the constitutionality of Petitioner’s prolonged detention.

9. Therefore, since any request for a custody redetermination is futile, any prudential exhaustion requirement should be excused. *Puga v. Assistant Field Off. Dir., Krome North Serv. Processing Ctr.*, 2025 U.S. Dist. LEXIS 203222, at *2 (S.D. Fla. Oct. 15, 2025).

10. Accordingly, the Court has jurisdiction to review Petitioner’s Amended Petition.

SECTION 1252(g) DOES NOT APPLY TO PETITIONER'S AMENDED PETITION

11. Respondents also argue that 8 U.S.C. § 1252(g) strips this Court of subject matter jurisdiction to review Petitioner's claims. D.E. 9 at 8-9.

12. Section 1252(g) applies to "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 against any alien under this chapter." 8 U.S.C. § 1252(g).

13. This section does not include "any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83 (1999)).

14. Instead, section 1252(g) lists just three specific actions: "'actions commence proceedings, adjudicate cases, or execute removal orders.'" *See Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (citing *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 487); *see also Merino v. Ripa*, 2025 U.S. Dist. LEXIS 206662, at *6-7 (S.D. Fla. Oct. 15, 2025).

15. Petitioner is not challenging Respondents' decision to commence or adjudicate his removal proceedings. Instead, Petitioner challenges his unreasonably prolonged detention, which is not a claim barred by section 1252(g). *See, e.g., Madu v. U.S. Atty. Gen.*, 470 F.3d 1362 (11th Cir. 2006) (finding that 1252(g) did not apply to a constitutional challenge that detention and imminent deportation were denials of his substantive right to due process); *see also Boffill*, 2025 U.S. Dist. LEXIS 228852, at *10 ("section 1252(b)(9) 'does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.'") (citing *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)).

16. Therefore, section 1252(b)(9) does not divest the Court of its jurisdiction to consider Petitioner's Amended Petition.

17. Furthermore, Respondents argue jurisdiction rests exclusively with the relevant court of appeals on a petition for review. D.E. 9 at 9. However, 8 U.S.C. § 1252(a)(5) is inapplicable because Petitioner is not seeking review of a final order of removal. *See Madu*, 470 F. 3d at 1366.

18. Therefore, this Court has jurisdiction to consider Petitioner's claims.

RESPONDENT'S PROLONGED DETENTION

19. Respondents contend that, despite the indefinite length of Petitioner's detention, Petitioner is lawfully detained and his Amended Petition should be dismissed. D.E. 9 at 4-5.

20. Although the Supreme Court decided that section 1225(b) cannot be construed to incorporate an implicit limit to the length of detention, it did not preclude the lower courts from considering whether lengthy detention would violate a noncitizens constitutional due process right. *See Jennings v. Rodriguez*, 583 U.S. 281, 296-312 (2018).

21. As noted in the Amended Petition, numerous courts have reviewed petitions by noncitizens who are allegedly detained in violation of their due process rights, notwithstanding mandatory detention. *see e.g., Moore v. Nielsen*, 2019 U.S. Dist. LEXIS 228575, at *9 (N.D. Ala. May 3, 2019) (“[A]n appreciable number of district courts since *Jennings* have ruled that immigrants facing §§ 1225(b) and 1226(c) removal proceedings, regardless of their immigration status, enjoy due process rights against prolonged detention.”); *Vazquez Barrera v. Wolf*, 2020 U.S. Dist. LEXIS 67640, at *5 (S.D. Tex. Apr. 17, 2020) (finding that “mandatory detention statutes do not bar [the court’s] power to issue relief through a writ of habeas corpus”); *see also Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016) *vacated on other grounds*, 890 F.3d

952 (11th Cir. 2018); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir.2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003). These decisions recognize that due process limits the period that any noncitizen may be held in prolonged mandatory detention pending removal proceedings.

22. The Court should consider whether mandatory detention without a bond hearing under Petitioner's circumstances is so unreasonable or unjustified that it amounts to an arbitrary deprivation of liberty. *See e.g., Portuondo v. Field Office Dir. Miami Field Office*, 2020 U.S. Dist. LEXIS 266586, at *5-7 (S.D. Fla. May 7, 2020); *see also Sopo*, 825 F.3d at 1217 ("As instructed by *Zadvydas* and *Demore*, we begin with the core principle that 'the reasonableness of any given detention pursuant to § 1226(c) is a function of whether it is necessary to fulfill the purpose of the statute.'").

23. Here, the Court should find that Petitioner's detention is unreasonably prolonged taking into account that Petitioner pursued all avenues of relief timely and diligently, that any delays in Petitioner's removal proceedings were caused by DHS' incompliance with the deadlines set by the immigration judge and delays by the immigration court scheduling the hearings and issuing decisions, and the government's delay in filing the EOIR-26, and that Petitioner's detention has not foreseeable end in sight.

24. Respondents argue that Petitioner can request release under a humanitarian parole. D.E. 9 at 5-6.

25. The ability to apply for humanitarian parole under 8 U.S.C. § 1182(d)(5)(A) does not provide due process for noncitizens detained under section 1225(b). Parole does not provide a neutral forum to contest the necessity of ongoing detention. Instead, it is a purely discretionary

process, administered by a deportation officer. Neither the detained noncitizen nor counsel are provided an in-person hearing to contest facts leading to the parole decision. And no review of that decision is available. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (describing parole process).

26. Moreover, release on parole is only available for “urgent humanitarian reasons or significant public benefit,” 8 U.S.C. § 1182(d)(5)(A). Neither of those criteria evaluate the constitutionally permissible rationales for continued, prolonged detention during removal proceedings: whether the detained noncitizen is a flight risk or danger to her community. *See R.I.L.R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015) (“The Zadvydas Court clearly identified a pair of interests that can, under certain circumstances, suffice to justify the detention of noncitizens awaiting immigration proceedings: ‘preventing flight’ and ‘protecting the community’ from aliens found to be ‘specially dangerous.’”) (citing *Zadvydas v. Davis*, 533 U.S. 678, 690–92 (2001)).

27. Finally, parole was also available to inadmissible noncitizens who challenged prolonged detention under section 1226(c). Yet all courts to consider the issue ruled that section 1226(c) detention is nonetheless limited to a reasonable period by the Due Process Clause. The ability to apply for parole is therefore an inadequate substitute for due process.

28. Petitioner’s prolonged, indefinite detention under section 1225(b) violates the Fifth Amendment by depriving Petitioner of liberty without due process of law.

CLAIM FOR RELIEF

29. For these reasons, this Court should order Petitioner’s release or a bond hearing at which the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence.

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