

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Junior Jeovany Cristobal Gaspar,
(Alien No. )

Petitioner,

Case No. 2:26-cv-00070-SPC-NPM

v.

Field Office Director, Enforcement and
Removal Operations, Ft. Myers Field Office,
Immigration and Customs Enforcement;

Kristi NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY;

Pamela BONDI, U.S. Attorney General;
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW;

WARDEN of the Florida Soft Side South
Facility;

Respondents.

**PETITIONERS REPLY TO RESPONDENTS' RESPONSE TO THE PETITION FOR
WRIT OF HABEAS CORPUS**

I. Introduction

Respondents request this Court to deny the Petitioner's Petition for Writ of Habeas Corpus, arguing that Title 8 U.S.C. § 1252(g) bars review of petitioners claims, Title 8 U.S.C. § 1252(b)(9) bars review of petitioners claims, that Petitioner's habeas review is barred by failure to exhaust administrative remedies, and finally that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. Each argument has been addressed and rejected by this Court in materially indistinguishable cases, and Respondents identify no basis for a different result here.

As set forth below, exhaustion does not bar review because it is a prudential doctrine that is excused where, as here, the agency maintains that the requested relief is unavailable as a matter of law. The record further establishes that Respondents detained and released Petitioner pursuant to Immigration and Nationality Act (INA) § 236 (codified at 8 U.S.C. § 1226) and therefore may not invoke mandatory detention authority inconsistent with that statutory framework.

Additionally, this Court has recently rejected argument by the Respondent's that section § 1252(g) and (b)(9) strip this Court of Jurisdiction to review the Petitioner's Habeas claim. *Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPCNPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025). "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 Immigration Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020). Further, 8 U.S.C. § 1252(b)(9) only applies to claims seeking review of removal orders. *See Madu v. U.S. Attorney 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). The court maintains jurisdiction because this Habeas action is outside the scope of § 1252(g) and (b)(9). In sum, Petitioner currently challenges the legality of his *detention*, not the authority to, "commence proceedings, adjudicate cases, or execute removal orders against any alien." *See generally* 8 U.S.C. §1252(g).

Independently, Respondents' position would permit continued detention without any neutral custody determination, notwithstanding Respondents' prior conclusion that Petitioner was eligible for release after his initial detention. For these reasons the Petition for a Writ of Habeas Corpus should be granted.

II. Exhaustion Does Not Bar Habeas Review

Exhaustion of administrative remedies is not a statutory prerequisite to habeas review under 28 U.S.C. § 2241. It is a prudential doctrine that may be excused where administrative remedies are unavailable, futile, or incapable of providing meaningful relief. This Court has repeatedly exercised habeas jurisdiction in immigration detention cases challenging detention authority under §§ 1225 and 1226 notwithstanding the government's exhaustion arguments. Respondents have failed to provide any persuasive basis for this Court to depart from its prior rulings.

Respondents argue that Petitioner was required to seek a bond hearing before an immigration judge and pursue administrative appeal. At the same time, Respondents maintained that immigration judges lack authority to conduct bond hearings for individuals in Petitioner's position under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Where the agency has taken the position that the requested relief is unavailable as a matter of law, exhaustion is excused as futile. *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam); *Buenrostro-Mendez*, 2025 WL 2886346, at *4; *Lopez-Benitez v. Francis*, 795 F. Supp. 3d 475, 496–98 (S.D.N.Y. 2025).

The agency's institutional position confirms that pursuing administrative relief would serve no practical purpose. Public reporting reflects that Executive Office of Immigration Review (EOIR) leadership has instructed immigration judges to adhere to the agency's interpretation denying bond authority in these circumstances absent controlling relief. *See* Nate Raymond, *Top U.S. immigration judge says bond hearings should be denied despite court rulings*, Reuters (Jan. 16, 2026), <https://www.reuters.com/legal/government/top-us-immigration-judge-says-bond-hearings-should-be-denied-despite-court-2026-01-16/>. In these circumstances,

requiring Petitioner to pursue administrative remedies would merely prolong detention while the purely legal issue remains unchanged.

Accordingly, exhaustion does not bar review.

III. Petitioner Is Detained Under 8 U.S.C. § 1226 and Is Not Subject to Mandatory Detention

Unaccompanied Children (“UACs”) “are not subject to expedited removal, and are generally placed in formal removal proceedings under INA § 240, regardless of whether found in the United States or at the border.” Congressional Research Service, *Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*, Jul. 21, 2020, https://www.congress.gov/crs_external_products/LSB/PDF/LSB10150/LSB10150.17.pdf. As Mr. Cristobal Gaspar was designated a UAC, who arrived at the age of 17, he could not have been placed in §1225 proceedings, and accordingly was placed in §1229(a) proceedings. Given that the Respondent’s designated the Petitioner a UAC and placed him into proceedings under §1229a, the Petitioner’s detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond. *Puga v. Assistant Field Office Director, Krome North Service Processing Center*, No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at 3.

Nothing in the INA authorizes DHS to rescind a completed custody determination under § 1226 and retroactively subject a noncitizen to mandatory detention under § 1225. Once Respondents elected to proceed under § 1226 and exercised the discretion that statute confers, including discretionary custody determinations, detention remains governed by § 1226 unless and until removal proceedings conclude. Respondents identify no statutory provision permitting DHS to alternate between detention regimes to eliminate bond jurisdiction after it has been exercised.

Respondents' mandatory-detention theory also conflicts with their own actions. If § 1225(b)(2) applied to Petitioner, Respondents would have lacked authority to release him under § 1226 in the first instance. The INA does not permit DHS to characterize detention as discretionary when release is granted and mandatory when re-detention occurs.

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*, 25-24806 (S.D. Fla. Oct. 27, 2025), ECF 6 at 5; *Cerro Perez v. Parra*, 25-24820 (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 *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); *Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at *4 (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); *Rivera v. Moniz*, 25-cv-12833, 2025 WL 2977900, at *1—2 (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); *Matheus Araujo DA Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163, at *2 (D. Mass. 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); *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigr. Processing Ctr.*, No. 25-cv-01187, 2025 WL 2959274, at *3 (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); *Zamora v. Noem*, No. 25-12750, 2025 WL 2958879, at *1; Mass. Oct. 17, 2025); *Pacheco Mayen v. Raycraft*, 25-cv-13056, 2025 WL 2978529, at *6-9 (E.D. Mich. Oct. 17, 2025); *Diaz Sandoval v. Raycraft*, No. 25-cv-12987, 2025 WL 2977517, at *6-9 (E.D. Mich. Oct. 17, 2025); *Contreras-Cervantes v. Raycraft*, No. 25-cv-13073, 2025 WL 2952796, at *6-8 (E.D. Mich. Oct. 17, 2025); *Ochoa v. Noem*, No. 25-10865, 2025 WL 2938779, at *4—6 (N.D. Ill. Oct. 16, 2025); *Hernandez v. Crawford*, No. 25-cv-01565, 2025 WL 2940702, at *2 (E.D. Va. Oct. 16, 2025); *Pifia v. Stamper*, No. 25-cv-00509, 2025 WL 2939298, at *3 (D. Me. Oct. 16, 2025); *Sequen v. Albarran*, No. 25-cv-06487, 2025 WL 2935630, at *8 (N.D. Cal. Oct. 15, 2025); *Tevim v. Perry*, No. 25-cv-01615, 2025 WL 2950184, at *2-3 (E.D. Va. Oct. 15, 2025); *Singh v. Lyons*, 25-cv-01606, 2025 WL 2932635, at *2-3 (E.D. Va. Oct. 14, 2025); *Alejandro v. Olson*, 25-cv-02027, 2025 WL 2896348, at *7—9 (S.D. Ind. Oct. 11, 2025); *Chavez v. Kaiser*, No. 25-cv-06984, 2025 WL 2909526, at *5 (N.D. Cal. Oct. 9, 2025); *Donis v. Chestnut*, No. 25-01228, 2025 WL 287514, at *11 (E.D. Cal. Oct. 9, 2025); *Eliseo A.A. v. Olson*, No. 25-3381, 2025 WL 2886729, at *2—4 (D. Minn. Oct. 8, 2025); *Covarrubias v. Vergara*, No. 25-cv-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. 25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025);

S.D.B.B. v. Johnson, No. 25-cv-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Gonzalez v. Bostock*, 25-cv-01404, 2025 WL 2841574, at *3-4 (W.D. Wash. Oct. 7, 2025); *Hyppolite v. Noem*, No. 25-4304, 2025 WL 2829511, *12 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-5208, 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025); *Cordero Pelico v. Kaiser*, No. 25-cv-07826, 2025 WL 2822876, at *15 (N.D. Cal. Oct. 3, 2025); *Orellana v. Moniz*, 25-cv-12664, 2025 WL 2809996, at *5 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at *3 (D. Mass. Oct. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *5—6 (D. Minn. Oct. 1, 2025).

Because Petitioner is detained under § 1226, he is entitled to an individualized bond determination pursuant to 8 U.S.C. § 1226(a).

IV. *Matter of Yajure Hurtado* Does Not Bind This Court

Matter of Yajure Hurtado is not binding on this Court. While it may bind immigration judges, it does not bind a federal court adjudicating a habeas petition. Under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), courts owe no deference to the BIA's interpretation of the detention statutes. Courts, including this Court, have found *Matter of Yajure Hurtado* unpersuasive in materially indistinguishable cases. See *Patel v. Hardin*, No. 2:25-cv-870-JES-NPM, 2025 WL 3442706 (M.D. Fla. Dec. 1, 2025) and *Cetino v. Hardin*, 2:25-cv-1037-JES-DNF, 2025 WL 3558138 (M.D. Fla. Dec. 12, 2025). Respondents' disagreement with this prior Court's analysis provides no basis for reconsideration.

V. Due Process Provides an Independent Basis for Relief

Freedom from physical restraint lies at the core of the Fifth Amendment's Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil immigration detention is constitutionally permissible only so long as it bears a reasonable relation to its purpose and

includes adequate procedural safeguards. Where detention authority is discretionary, due process requires an individualized determination of whether continued detention is justified. *Demore v. Kim*, 538 U.S. 510, 531–33 (2003) (Kennedy, J., concurring).

Here, Respondents' position would permit prolonged detention without any neutral custody determination, notwithstanding Respondents' prior decision to detain and release Petitioner under § 1226. Under that theory, Petitioner may be re-detained and held without a bond hearing based solely on Respondents' unilateral recharacterization of detention authority, with no opportunity to contest flight risk or danger before an impartial adjudicator. That process is insufficient under the Fifth Amendment.

Due process is not satisfied where detention continues without any meaningful opportunity for individualized review. The Constitution requires more than the government's assertion that detention is authorized; it requires a procedure by which the necessity of detention may be tested. *See Zadvydas*, 533 U.S. at 690-91.

Providing Petitioner with a bond hearing before an immigration judge satisfies due process by ensuring that continued detention rests on an individualized assessment rather than categorical assumptions or unilateral assertions of detention authority. Because Respondents' position forecloses any such review, due process independently requires relief

VI. Conclusion

For the foregoing reasons, Respondents' Motions to Dismiss and for Summary Judgment should be denied. The Court should grant the Petition for a Writ of Habeas Corpus and order such relief as is necessary to remedy Petitioner's unlawful detention.

DATED this 18th of January, 2026.

/s/Themistoklis Aliferis
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Instrument was sent via ECF on January 26, 2026, to all counsel of record.

/s/Themistoklis Aliferis
Themistoklis E. Aliferis