UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:26-cv-20269-GAYLES

RONIEL PILOTO-BUENO,

Petitioner,

v.
FIELD OFFICE DIRECTOR,
Miami Field Office, *et al.*,

Respondents.
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PETITIONER'S TRAVERSE

The Petitioner hereby submits his Traverse in Response to the Respondent's Return [ECF No. 7], and in support of his Petition for Writ of Habeas Corpus [ECF No. 1]. Respondents present various arguments regarding exhaustion and jurisdiction, in addition to responding to the merits of the Petitioner's arguments. [ECF No. 7]. The Petitioner responds in turn.

ARGUMENT

A. Section 1225(b)(2)(A) cannot apply as the basis for Petitioner's detention because he was not actively seeking admission at the time of his second apprehension by ICE.

The government asserts that the Petitioner is both an "applicant for admission [as defined in 8 U.S.C. § 1225(a)(1)] and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ." [ECF No. 7]. In support of this claim, the government relies upon *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.*

The Petitioner contends that while he is statutorily defined as an "applicant for admission" under 8 U.S.C. § 1225(a)(1), he was not "seeking admission" at the time of his most recent arrest by ICE on November 2025—after having been initially released from DHS custody and having resided in the United States for over three years—and is therefore outside the gambit of

1225(b)(2)(A)'s mandatory detention provision. Therefore, his continued mandatory detention is not authorized by § 1225(b)(2)(A), but is controlled by § 1226, and he is entitled to a full custody redetermination hearing on the merits before an IJ. *Boffill v. Field Office Director*, Case No. 25-cv-25179-JB, 2025 WL 3246868, at *7 (Nov. 20, 2025) ("As the Supreme Court stated in *Jennings*, section 1226 'creates a default rule' that 'applies to aliens already present in the United States.' ") (citing to *Jennings v. Rodriguez*, 583 U.S. 281 (2018)).

"Whether Petitioner is detained under section 1225(b)(2) or section 1226(a) is an issue of statutory interpretation that hinges on the meaning of 'seeking admission.'" *Puga*, 2025 WL 2938369, at *4 (S.D. Fla. Oct. 15, 2025). "The Court thus applies traditional tools of statutory construction, beginning with the plain meaning of the statutes, to decipher the meaning of that phrase." *Id.* "To begin, the phrase "seeking admission" is ambiguous in the context of the INA." *Id.* "Section 1225 defines an 'applicant for admission' as '[a]n alien present in the United States who has not been admitted or who arrives in the United States[.]' *Id.* (citing § 1225(a)(1)). "And 'admission' and 'admitted' are defined as 'the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.' *Id.* (citing § 1101(a)(13)).

"But the INA does not define '*seeking* admission.'" *Id.* (emphasis original). "Some courts have noted that the phrase "implies action — something that is currently occurring, and... would most logically occur at the border upon inspection." *Id.* (citations omitted). "And in the context of the title of section 1225, which references 'arriving' aliens, § 1225; and its function — establishing an *inspection* scheme for when to allow aliens into the country — the language appears susceptible to multiple interpretations." *Id.* (citations omitted, emphasis original.). "Next, the Court turns to the structure of sections 1225 and 1226, as well as their legislative history — which each support Petitioner's interpretation. *Id.* "Whereas [section] 1225 governs removal

proceedings for 'arriving aliens,' [section] 1226(a) serves as a catchall." *Id.* (citation omitted). "As the Supreme Court noted in *Jennings*, section 1226 'creates a default rule' that 'applies to aliens already present in the United States.'" *Id.* (citing *Jennings*, 583 U.S. at 303). "The inclusion of a 'catchall' provision in section 1226, particularly following the more specific provision in section 1225, is 'likely no coincidence, but rather a way for Congress to capture noncitizens who fall outside of the specified categories.'" *Id.* (citations omitted).

"Additionally, a recent amendment to section 1226 would be rendered meaningless under Respondents' interpretation of section 1225." *Id.*, at *5. The Court explained that the Laken Riley Act[1] added section 1226(c)(1)(E) which mandates detention for noncitizens who are inadmissible under § 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled). *Puga*, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025). "If Respondents' interpretation of section 1225 is correct — that the mandatory detention provision in section 1225(b)(2)(A) applies to **all** noncitizens present in the United States who have not been admitted — then Congress would have had no reason to enact section 1226(c)(1)(E)." *Id.* (emphasis added). In response to the government's reliance on *Yujure Hurtado* in that case, the Court continued:

> "Respondents' reliance on the BIA's decision in *Matter of Yajure Hurtado* — rejecting the argument that a noncitizen who entered the United States without inspection and has resided here for years is not 'seeking admission' under section 1225(b)(2)(A) — is also misplaced. The Court need not defer to the BIA's interpretation of law simply because the statute is ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("[C]ourts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." (alteration added)).
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> As explained, the statutory text, context, and scheme of section 1225 do not support a finding that a noncitizen is 'seeking admission' when he never sought to do so. Additionally, numerous courts that have examined the interpretation of section 1225 articulated by Respondents — particularly following the BIA's decision in *Matter of Yajure Hurtado* — have rejected their construction and adopted

[1] Laken Riley Act ("LRA"), Pub. L. No. 119-1, section 2, 139 statute 3, 3 (2025).

> Petitioner's. ... For these reasons, the Court finds that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a)."

Puga, at *5.[2]

From the onset of Petitioner's case both CBP and DHS proceeded under section 1226. Specifically, CBP's Order of Release on Recognizance states that Petitioner was being released on his own recognizance "[i]n accordance with Section 236 of the Immigration and Nationality Act" [ECF No. 1-3, p. 22] codified at section 1226. Additionally, the NTA that DHS issued to Petitioner did not label him as an "arriving alien." [ECF No. 1-3, p. 19]. Instead, the NTA charged him as "present in the United States without admission or parole." *Id.* This classification places him squarely within section 1226. See *Boffill*, 2025 WL 3246868 at *6.

B. Petitioner is not required to exhaust administrative remedies in habeas proceedings.

The government argues that the Court cannot grant the Petitioner's Writ of Habeas Corpus and order the IJ to consider his custody redetermination request because he did not request a bond in the first instance from the Immigration Judge, and has thus failed to exhaust his administrative remedies. [ECF No. 7, p. 10]. This argument is incorrect. See *Cerro Perez v. Parra*, Case No. 1:25-cv-24820-KMW at *2 (Oct. 27, 2025) ("As an initial matter, Respondents contend that the Court should dismiss the Petition because Petitioner has not requested a bond redetermination hearing before an immigration judge. (DE 8 at 8). The exhaustion requirement under 8 U.S.C. §1252(d)(1), however, 'is not jurisdictional,' but rather prudential.") (citing *Kemokai v. U.S. Att'y Gen.*, 83 F.4th 886, 891 (CA11 2023).

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[2] Accord *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); accord *Garcia v. Noem*, Case No. 2:25-CV-00879-SPC-NPM, 2025 WL 3043895 (M.D. Fla. Oct. 31, 2025).

No exhaustion is statutorily required for the Petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo* v. *Warden*, 785 F. 3d 467, 474 (CA11 2015)." Exhaustion in the habeas context is at most a "non-jurisdictional," *id.*, at 475, "judicially-created . . . doctrine," *Haitian Refugee Ctr., Inc.* v. *Nelson*, 872 F.2d 1555, 1561 (CA11 1989) (*HRC* v. *Nelson*), aff'd sub nom. *McNary* v. *Haitian Refugee Ctr., Inc.*, 498 U. S. 479 (1991), subject to various exceptions. See *Jaimes* v. *United States*, 168 Fed. Appx. 356, 359, n. 4 (CA11 2006) ("judicially-created exhaustion requirements may be waived by the courts for discretionary reasons") (quoting *Gallo Cattle Co.* v. *U. S. Dep't of Agric.*, 159 F. 3d 1194, 1197 (CA9 1998)); *Richardson* v. *Reno*, 162 F. 3d 1338, 1374 (CA11 1998) (*Richardson I*), cert. granted, judgment vacated on other grounds, 526 U.S. 1142 (1999) ("judicially developed exhaustion requirements might be waived for discretionary reasons by courts").[3] For example, "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim.' " *Boz* v. *United States*, 248 F. 3d 1299, 1300 (CA11 2001), abrogation on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (quoting *HRC* v. *Nelson*, 872 F. 2d, at 1561).

First, no statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's constitutional claim seeks to remedy. "Because the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted." *Warsame* v. *U. S. Att'y Gen.*, 796 Fed. Appx. 993, 1006 (CA11 2020); accord *HRC* v. *Nelson*, 872 F. 2d, at 1561 (exhaustion had

[3] In a revised opinion following remand, the Eleventh Circuit "readopt[ed] and reaffirm[ed] the reasoning in *Richardson I* except to the extent it relied on INA § 242(g) to support its holding." *Richardson* v. *Reno*, 180 F. 3d 1311, 1313 (CA11 1999) (*Richardson II*).

"no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the INS). The Petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene* v. *Bush*, 553 U. S. 723, 783 (2008).

Second, the Petitioner's statutory claim challenging the agency's precedent of *Yajure Hurtado* (and therefore the agency's application of § 1225(b)(2) to him) is not subject to prudential exhaustion. In addition to the rule that prudential exhaustion is not required " 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz*, 248 F. 3d, at 1300 (citation omitted), the same is also true where "the nature of [a] challenge [to agency] procedures is such that relief at the administrative review level would [be] unlikely," *HRC* v. *Nelson*, 872 F. 2d, at 1561. This analysis is conducted by balancing the nature of a claim against "[t]he policies advanced by allowing the administrative process to run its full course" to determine whether such policies "are not thwarted by judicial intervention in [a] case." *Haitian Refugee Ctr.* v. *Smith*, 676 F. 2d 1023, 1034 (CA5 Unit B 1982) (*HRC* v. *Smith*) (precedential under *Stein* v. *Reynolds Sec., Inc.*, 667 F. 2d 33, 34 (CA11 1982), disapproved of on other grounds by *Jean v. Nelson*, 727 F. 2d 957, 976, n. 27 (CA11 1984) (en banc).

As noted by precedent, "the Supreme Court [has] deemed it insignificant that [an] agency . . . possess[es] the power to change the content of its procedures and thus could . . . pretermit[t] the necessity for judicial intervention." *HRC* v. *Smith*, 676 F. 2d, at 1034 (citing *Mathews* v. *Eldridge*, 424 U. S. 319 (1976)). As "[t]he [Supreme] Court commented: 'It is unrealistic to expect that the [agency head] would consider substantial changes in the current administrative review system at the behest of a single [regulated party] raising a [legal] challenge in an adjudicatory context.' " *Id.*, (quoting *Mathews*, 424 U. S., at 330). In the immigration context,

"[an] assumption that the INS or the BIA would ... substantially revis[e] the procedures established for [a specific] program is equally naive." *Id.*

Here, the Petitioner isn't required to exhaust administrative remedies 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). "Since the result of Petitioner's custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado*, any prudential exhaustion requirements are excused for futility." *Puga*, 2025 WL 2938369, at *2.

C. Petitioner's claims are not barred by 8 U.S.C. § 1225(g).

The Respondents contends that 8 U.S.C. § 1252(g) strips this Court to review the legality of the Petitioner's continued mandatory detention. But, that provision does not "cove[r] the universe of deportation claims." *Reno* v. *Am.-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 482 (1999). "In fact, what § 1252(g) says is much narrower." *Id.* "The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders' ." *Id.* (emphasis in original). "There are of course many other decisions or actions that may be part of the deportation process ... ." *Id.* "It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.*

As the Supreme Court, the Eleventh Circuit, and Courts in this District have continually made clear, § 1252(g) does not strip district courts of jurisdiction to consider habeas challenges over the "extent of the Attorney General's [ICE's] authority" to detain non-citizens. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (dismissing in a parenthetical any notion that § 1252(g) would bar review of the government's detention authority); *I.N.S. v. St. Cyr*, 533 U.S. 289, 311 n.34

(2001) (dismissing in a footnote any notion that § 1252(g) would bar habeas review of unlawful detention); *Madu*, 470 F.3d at 1368 ("While this provision bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions. . . Here, Madu does not challenge the INS's exercise of discretion. Rather, he brings a constitutional challenge to his detention and impending removal. ... Accordingly, section 1252(g) does not apply."); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *3 (S.D. Fla. Sept. 9, 2025) ("The Eleventh Circuit has nevertheless distinguished between situations where an alien's claims are founded directly on a decision or action to commence proceedings, adjudicate cases, or execute removal orders, from those where an alien challenges the "underlying legal bases" of those decisions or actions.") (citations omitted); see also *Canal A. Media*, 964 F. 3d at 1257–58 ("When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.")

The government mischaracterizes the Petitioner's argument by citing *Alvarez v. ICE*, a *Bivens* action challenging the manner in which ICE commenced removal proceedings and ICE's initial discretionary decision to detain the alien in order to commence those proceedings. 818 F.3d 1194, 1203 (CA11 2016). The factual and legal scenario presented in this case differs from *Alvarez*. Petitioner is not challenging the initial discretionary decision to detain him, the commencement of his removal proceedings, or the execution of a (non-existent) removal order. Instead, he challenges the legality of his continued mandatory detention under *Yajure Hurtado,* without being able to seek a custody redetermination hearing before an immigration judge. Because Petitioner's habeas petition constitutes a challenge to the "underlying legal bas[i]s" of his continued detention, *Madu*, 470 F.3d at 1368, without a full custody re-determination hearing before an Immigration Judge, § 1252(g) does not deprive this Court of jurisdiction to consider his habeas claim.

D. 8 U.S.C. § 1252(b)(9) does not strip the Court of jurisdiction to review the Petitioner's habeas claims because he is not seeking review of a removal order.

Because the petitioner is not seeking review of an order of removal, the channeling provisions at 8 U.S.C. §1252(b)(9) are inapplicable. *Madu v. U.S. Att'y Gen.*, 470 F. 3d 1362, 1366 (CA11 2006). Section 1252(b)(9) does not strip this Court of jurisdiction because the Petitioner's claim of unlawful detention does not "aris[e] from any action taken or proceeding brought to remove an alien from the United States." § 1252(b)(9). "Moreover, while the REAL ID Act amended § 1252(b)(9) by adding an explicit bar on habeas jurisdiction **over certain claims**, the Act did not expand the scope of (b)(9) by making it applicable to cases other than those involving 'review of an order of removal.' Because section 1252(b)(9) applies only 'with respect to review of an order of removal,' and this case does not involve review of an order of removal, we find that section 1252(b)(9) does not apply to this case." *Madu,* 470 F.3d at 1367[4] (emphasis added); see also *Canal A. Media Holding, LLC* v. *USCIS*, 964 F. 3d 1250, 1257 (CA11 2020) ("The zipper clause is not intended to cut off claims that have a tangential relationship with pending removal proceedings. ... The zipper clause promotes judicial economy by consolidating "challenges to any action related to removal proceedings ... with the review of a final order of removal.") (citation omitted). The same applies here.

The Petitioner is not challenging any action or decision involving the "review of an order of removal." *Madu*, 470 F.3d at 1367. Instead, he is only challenging his designation and

[4] Although the Respondent contends that the REAL ID Act precluded all habeas corpus relief in the district courts under § 2241 [ECF No. 7, p. 7], Section 106(c) of the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231, 311, provided for the transfer of pending habeas cases "**challenging a final administrative order of removal**" to the court appeals "in which a petition for review could have properly filed under . . . (8 U.S.C. 1252), as amended by this section." Such challenges to final administrative orders of removal via habeas in district court were commonplace before the REAL ID Act channeled such final order review to the § 1252 Petition for Review Process.

subjection to continued mandatory detention under 8 U.S.C. § 1225(b)(2). [ECF No. 1]. Such a challenge has nothing to do with the review of a removal order, because if the Court grants the Petitioner's habeas, and he is released on bond, his removal proceedings before the immigration court will continue in a non-detained setting. This reading corresponds with the jurisprudence from the Supreme Court. In *Jennings*, while finding that § 1252(b)(9) did not bar petitioner's habeas claims, the Court held that the "arising from" language in that section should not be read in an "extreme way." 138 S. Ct., 839-41, 840. Without "attempt[ing] to provide a comprehensive interpretation," the Court found it "enough to note that [the claimants] are not asking for review of an order of removal; they are not challenging the *decision* to detain them *in the first place or to seek removal*; and they are not even challenging any part of the *process by which their removability will be determined*." *Id.*, at 841 (emphasis added); see also *Nielsen v. Preap*, 586 U.S. 392, 402, (2019). The same is true here and § 1252(b)(9) does not bar Petitioner's unlawful detention claim.

Conclusion

For the reasons stated herein, the Court should grant the Petitioner's Writ of Habeas Corpus [ECF No. 1], and Order that he be provided a custody redetermination hearing before the Immigration Judge within a reasonable time as determined by the Court.

Dated: February 4, 2026

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