

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

OSCAR MERLIN LOPEZ,

Petitioner,

v.

SCOTTY RHODEN, et al.,

Respondents.

Civil No. 3:26-cv-00094-MMH-PDB

PETITIONER'S REPLY TO THE GOVERNMENT'S RESPONSE

Petitioner, through counsel, submits this Reply only to address the main arguments raised in the Government's Response. Petitioner incorporates the arguments presented in the Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief and files this Reply in further support thereof.

I. INTRODUCTION

Petitioner requests that this Court follow the persuasive line of Middle District of Florida decisions holding that noncitizens detained under circumstances such as Petitioner's are held under 8 U.S.C. § 1226, and grant his Petition. While the Government states that a circuit split has emerged, it acknowledges that it holds the minority view.

Petitioner requests that this Court follow the more persuasive majority authority and grant relief. Even if the Court finds the statutory issue unsettled, the Government does not overcome Petitioner's constitutional and administrative law challenges to prolonged detention without an individualized bond hearing.

To reiterate, Petitioner is requesting relief from the ongoing and indefinite detention that the Government has asserted over him without any individualized custody determination.

II. FACTUAL UPDATE

Petitioner generally agrees with Respondent's chronology of the facts, except where otherwise noted below. As an update, Petitioner provides the following information:

1. Petitioner's October 29, 2025 arrest was disposed as a traffic infraction and all fines were paid. See Exhibit "A" (Certified Case Disposition).
2. Petitioner's petition for a nonimmigrant visa as a victim of human trafficking ("T Visa") has been pending since February 13, 2026. See Exhibit "B" (Petition for T Visa with supporting documents) and Exhibit "C" (T Visa Filing Receipts).
3. Petitioner was unable to attend his biometrics appointment scheduled with USCIS on March 12, 2026 due to his ongoing detention.

Exhibit “D” (T Visa Biometrics Appointment Notice). On March 24, 2026, counsel spoke with USCIS Officer # [REDACTED] by telephone in response to service order item # [REDACTED] which was submitted via telephone as well by counsel to USCIS on March 10, 2026. Officer # [REDACTED] stated the appointment would be cancelled, as there is no way for ICE to take biometrics for them during detention because USCIS biometrics must be taken in person at ASC application centers. Per Officer # [REDACTED] Petitioner will be able to request a biometrics appointment once he is released from detention.

4. Petitioner’s merits hearing is set for tomorrow, April 2, 2026, where he will most likely present his claim for Asylum, Withholding of Removal, and Convention Against Torture claims, as filed on March 26, 2026. Exhibit “E” (Respondent’s¹ First Notice of Filing). Petitioner will also file a Motion to Terminate, Administratively Close, or Continue his proceedings based on applications for collateral relief including the pending petition for a T Visa with USCIS, and the pending habeas petition with this Court. If the motion(s) is denied along with the claim for Asylum, Withholding of Removal and Convention Against Torture and Petitioner is ordered removed, Petitioner will reserve appeal.

5. To date, Petitioner has been detained at Baker County Jail for 153 days. [ECF 12, Exhibit “G”].

¹ Petitioner is identified as Respondent in his removal proceedings with the EOIR Immigration Court.

III. THIS COURT HAS JURISDICTION OVER PETITIONER'S DETENTION CHALLENGE

A. 8 U.S.C. § 1252(g) does not bar review of Petitioner's challenge to the legality of his detention.

Petitioner challenges the legality of his present detention, and the denial of any individualized bond hearing. This is a collateral custody challenge, not a challenge to removability.

Petitioner is not challenging any discretionary decision to commence proceedings, adjudicate removability, or execute a removal order. See generally, 8 USC § 1252(g). As such, Section § 1252(g) does not strip this Court of jurisdiction.

The Supreme Court has made clear that civil immigration detention must be tied to a lawful purpose and must satisfy due process independently. See *Zadvydas v. Davis*, 533 U.S.678 (2001), and *Demore v. Kim*, 538 U.S. 510 (2003). Additionally, the Supreme Court has determined that habeas corpus is a proper forum for noncitizens to challenge the lawfulness of their detention. *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

In essence, Petitioner is challenging the substantive legality of his detention and thus is not precluded by § 1252(g). *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006). See also *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (finding that § 1252(g) does not bar “judicial

consideration of collateral challenges to the legality of a petitioner's detention").

B. 8 U.S.C. § 1252(b)(9) does not bar review of Petitioner's challenge to the legality of his detention.

Similarly, section 1252 (b)(9) does not bar review, as Petitioner is not requesting this Court to review the merits of his removal proceedings. See generally, 8 U.S.C. § 1252(b)(9).

Section 1252(b)(9) "only applies with respect to an order of removal." *Madu at* 1368, quoting *INS v. St. Cyr*, 533 U.S. 289, 313, 121 S.Ct. 2271, 2286, 150 L.Ed.2d 347 (2001). In this case, Petitioner is challenging the legality of his detention, not the legality of a removal order, therefore section 1252(b)(9) does not bar review.

IV. SINCE FURTHER ADMINISTRATIVE REVIEW WOULD BE FUTILE, THE REQUIREMENT FOR EXHAUSTION IS EXCUSED.

In circumstances where the agency's position is fixed, the Middle District of Florida has determined that exhaustion may be excused as futile. *Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR (M.D. Fla. Jan.12, 2026); *Gutierrez Ortiz v. Noem*, No. 3:25-cv-1386-MMH-MCR (M.D. Fla. Dec. 17, 2025).

In this case, the Immigration Judge denied bond on the grounds that he lacked jurisdiction under Board of Immigration Appeals (BIA) precedent. [ECF 1], *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). This is

the same position that the Government maintains in its response. [ECF 12]. Since the agency has already adopted a fixed legal position that immigration judges lack bond authority in these circumstances, further administrative review would be futile. Therefore, exhaustion should be excused.

V. THIS COURT SHOULD DECLINE TO FOLLOW RESPONDENTS' ACKNOWLEDGED MINORITY VIEW AND HOLD THAT PETITIONER'S DETENTION IS GOVERNED BY 8 U.S.C. § 1226.

Since neither the 11th Circuit nor the Supreme Court has decided on this issue, this Court has the discretion to make an independent decision in this case. While the Court is free to entertain decisions coming out of the various circuits, Petitioner agrees that those decisions are non-binding.

Petitioner's position is consistent with the *Gomez-Pena* and the *Ortiz* decisions. *Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR (Doc.13), 2026 WL 83980 (M.D. Fla. Jan. 12, 2026) and *Hector Gutierrez Ortiz v. Kristi Noem*, No. 3:25-cv-1386-MMH-MCR (Doc. 14), 2025 WL 3653217 (M.D. Fla. Dec. 17, 2025). Petitioner requests that this Court decline to follow the acknowledged minority view of Respondents and adopt Petitioner's arguments as set forth in the Petition for Writ of Habeas Corpus. [ECF 1].

VI. PETITIONER'S CONSTITUTIONAL AND APA CLAIMS REMAIN INTACT EVEN IF THE COURT DISAGREES ON THE STATUTORY QUESTION.

The non-binding statutory decisions coming out of the various circuits

do not address the constitutional or administrative law claims that arise from Petitioner's unlawful detention. For example, neither *Buenrostro-Mendez* nor *Yajure Hurtado* addressed the constitutional or administrative law claims that arise from his detention as addressed in Petitioner's habeas petition. [ECF 1].

The Supreme Court has made clear that civil immigration detention must be tied to a lawful purpose and must satisfy due process independently. See *Zadvydas v. Davis*, 533 U.S.678 (2001), and *Demore v. Kim*, 538 U.S. 510 (2003). In *Jennings*, the Supreme Court rejected an implied statutory bond-hearing requirement, but remanded the case back to the lower courts to consider the constitutional arguments at hand. *Jennings v. Rodriguez*, 583 U.S. 281 at 302-303 (2018).

Similarly, the Fifth Circuit court left the constitutional questions open in *Buenrostro-Mendez*, just as the Supreme Court did in *Jennings*. See *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir. Feb.6, 2026). Nevertheless, district courts within the Fifth Circuit continue to grant habeas petitions for immigration detainees on constitutional grounds. See *Hassen v. Noem*, 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026), *Clemente Ceballos v. Garite*, 3:26-cv-00312-DB (W.D. Tex. Feb 10, 2026).

Petitioner requests that this Court adopt the constitutional arguments as set forth in the Petition for Writ of Habeas Corpus. [ECF 1]. Categorically

detaining someone like this undermines the protections of due process and liberty interests and creates a high risk of erroneous deprivation. See generally, *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Federal courts in the Middle District of Florida have found that noncitizens have a protected liberty interest, regardless of citizenship status, when they are found in the interior of the United States. *Herrera v. Alcatraz*, No. 2:26-cv-458-SPC-DNF (M.D. Fla. Mar. 24, 2026); *Cuevas-Rodriguez v. Lyons*, No. 2:26-cv-387-SPC-DNF (M.D. Fla. Mar. 4, 2026). *Bojerski v. Secretary of the United States Department of Homeland Security*, No. 6:25-cv-2052-JSS-RMN (M.D. Fla. Feb. 26, 2026).

Here, Petitioner's detention in ICE custody is nearing six months. Petitioner risks being held in prolonged jail-like conditions indefinitely, even though he is not a danger to society or a flight risk and has every reason to pursue lawful status here in the United States. Exhibits "A", "B", "C", "D" and [ECF 1 with Exhibits].

Petitioner preserves his APA claims as set forth in the Petition. [ECF 1]. As already stated, if 8 U.S.C. 1226 governs his detention, then the agency's position is contrary to law and exceeds its statutory authority. Similarly, a categorical denial to provide individuals with custody determinations raises serious arbitrary and capricious concerns. [ECF 1].

VII. THE GOVERNMENT'S REMEDY MAY NOT PROVIDE SUFFICIENT RELIEF TO PETITIONER

The Government argues that the only proper remedy is a bond hearing rather than release. Petitioner agrees that, at minimum, the Court should order a prompt individualized bond hearing before a neutral decisionmaker within a short period of time, with the Government bearing the burden of justifying continued detention. If the Government does not provide such a hearing promptly, Petitioner maintains that immediate release is warranted.

Petitioner further requests that this Court consider ordering immediate release due to the current length of detention, the absence of any individualized finding of danger or flight risk, and the continuing deprivation of liberty without meaningful process.

VIII. CONCLUSION

For all these reasons, this Court can and should grant Petitioner's request for relief and order his immediate release from custody, or at minimum, provide him with a prompt, individualized bond hearing before a neutral decisionmaker, with the Government bearing the burden to justify continued detention with clear and convincing evidence.

Date: April 1, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 1, 2026, the foregoing was electronically filed with the Clerk of Court by causing a copy to be electronically filed via the CM/ECF system, which will send notice of the filing to all attorneys of record.

/s/ Elisabeth E. Ruiz
ELISABETH E. RUIZ
Attorney for Petitioner