

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

**Miguel H. Candelario Gilberto,**

Petitioner,

v.

**Warden, Florida Soft Side South Detention  
Center, et al.,**

Respondents.

Case No. 2:26-cv-00122-SPC-DNF

**REPLY TO GOVERNMENT RESPONDENTS'**

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, Miguel H. Candelario Gilberto, through the undersigned counsel submits this reply to Respondents' response to his petition for writ of habeas corpus.

**I. INTRODUCTION**

Respondents<sup>1</sup> continue to detain Petitioner without a bond hearing due to their misinterpretation of the detention authorities of Sections 1225 and 1226 of the Immigration and Nationality Act (INA), and in violation of his rights under the Due Process Clause. Contrary to the Government's arguments in their response, 1) this Court does have jurisdiction to hear Petitioner's petition for a writ habeas corpus; 2) Petitioner is eligible for release on bond under § 1226(a) and as a member of the class certified in *Maldonado Bautista v. Santacruz*, No.

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<sup>1</sup> Respondent Warden of the Florida Soft Side South Detention Center has immediate custody over Petitioner. However, Respondents Kristi Noem, as Secretary of the Department of Homeland Security and Pamela Bondi, as the U.S. Attorney General, also exercise custody over Petitioner, as they oversee Immigration and Customs Enforcement and the Executive Office for Immigration Review, respectively, two agencies that are also responsible for Petitioner's continued mandatory detention without bond.

5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025); and 3) Petitioner's outright release is the appropriate remedy.

## **II. DISCUSSION**

### **A. The District Court Does Have Jurisdiction to Review Petitioner's Continued Detention Without Bond.**

Respondents argue that this Court lacks jurisdiction to hear Petitioner's request under 8 U.S.C. § 1252(g), § 1252(b)(9) and for failure to exhaust his remedies. *See* Government's Response, ECF No. 6 at 4.

Sections 1252(g) and 1252(b)(9) limit judicial review of decisions and actions to commence removal proceedings or to execute final removal orders. Respondents' jurisdictional arguments fail because Petitioner is only challenging his detention without bond, and not his removal proceedings or a final order of removal. This Court has dismissed these arguments in cases similar to Petitioner's, where noncitizens were being subjected to mandatory detention without the possibility of release on bond. *See, e.g., Hinojosa Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM, ECF No. 18, at \*2-5 (M.D. Fla. Oct. 31, 2025); *Gomez Rodriguez v. Secretary, United States Department of Homeland Security*, No. 2:25-cv-01115, ECF No. 10 (M.D. Fla. Dec. 31, 2025); *Miranda Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, ECF No. 8, at \*2 (M.D. Fla. Dec. 5, 2025);

Moreover, exhaustion is not mandatory here and would be futile after the Board of Immigration Appeal's precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), finding that all noncitizens, like Petitioner, who entered the United States without being admitted are subject to detention under § 1225(b) and are ineligible for bond hearings. *Id.*

**B. Petitioner is Eligible for Release on Bond Under § 1226(a).**

Respondents assert that Petitioner is detained under Section 1225(b)(2) of the INA. “Section 1225(b)(2) mandates the detention of applicants for admission ‘if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to admission.’” *Hinojosa Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM, ECF No. 18, at \*7-8 (M.D. Fla. Oct. 31, 2025) (quoting 28 USC § 1225(b)(2)). The statute clearly limits this mandatory detention to noncitizens who, unlike Petitioner, are “seeking admission.” Petitioner entered the U.S. in 2012 and has lived here ever since, therefore he was not “seeking admission” when he was detained last month. *See Cetino v. Glades Detention Facility*, 2:25-cv-01037, ECF No. 12 (M.D. Fla. Dec. 12, 2025); *Garcia Riquis v. Warden of Florida Soft Side South (Collier County)*, No. 2:25-cv-01028, ECF No. 8 (M.D. Fla. Dec. 5, 2025); *Patel v. Parra*, 2:25-cv-00870, ECF No. 22 (M.D. Fla. Dec. 1, 2025); *see also Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

**C. Respondents Continue to Violate Petitioner’s Due Process Rights, Therefore his Immediate Release is the Appropriate Remedy.**

Under 8 C.F.R. § 287.3(d), when a noncitizen is arrested without a warrant, DHS generally must make a determination within 48 hours as to whether they will be kept in custody or released. Despite being detained for nearly a month already, Petitioner maintains he has not received a Notice to Appear and there are no hearings scheduled for Petitioner in Immigration Court<sup>2</sup>.

In their response, the Respondents submitted no argument or evidence of Petitioner’s dangerousness or flight risk, or what interest the government has in keeping Petitioner detained.

<sup>2</sup> See EOIR Automated Case Information (<https://acis.eoir.justice.gov/>) (last accessed on February 5, 2026).

Petitioner has kept a clean record since arriving in the U.S. over 13 years ago. He lives with his lawful permanent resident wife and minor U.S. citizen son, and has a pending I-130 Petition for Alien Relative submitted on his behalf by his wife. Through Respondents' new blanket policy of mandatory detention for all noncitizens who entered the U.S. without inspection, Petitioner is being erroneously deprived of his interest in his freedom, and no government interest is being served by his continued detention. *See, e.g., Rosabal Blanco v. Bondi*, No. 2:26-cv-00051, ECF No. 9, at \*8 (M.D. Fla. Jan. 28, 2026) (ordering the release of a noncitizen who was re-detained years after entering the U.S. and a border patrol agent found him eligible for release pending his immigration hearing). As a result, Petitioner's immediate release is the appropriate remedy for Respondents' violation of Petitioner's Due Process rights. *Id.*

### III. CONCLUSION

Respondents ask the Court to endorse an interpretation of § 1225 that would dramatically expand mandatory detention, erase the bond framework Congress preserved in § 1226 and violate Petitioner's rights under the Due Process Clause. Courts in this District have rejected that interpretation and *Bautista* independently forecloses it as to this Petitioner. Therefore, this Court should grant the Petition for Writ of Habeas Corpus.

DATED: February 5, 2026

Respectfully submitted,

/s/Rolando Grillo

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**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing was electronically filed with the CM/ECF e-Filing Portal on February 5, 2026.

By: /s/ Rolando Grillo  
Rolando Grillo, Esq.