

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

DANIEL ALEJANDRO ESCOBAR RODRIGUEZ)

) Case No. 2:26-cv-00166

Petitioner,

) Agency File: 

v.

MATTHEW MORDANT, in his official capacity as
Warden of Florida Soft Side South; GARRET RIPA,
in his Official capacity as Miami Field Office
Director, Immigration and Customs Enforcement's
Enforcement and Removal Operations; TODD
LYONS, in his official capacity as Acting Director
of Immigration and Customs Enforcement; KRISTI
NOEM, in her official capacity as Secretary of the
Department of Homeland Security; PAMELA
BONDI, in her official capacity as Attorney General,

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO HABEAS
PETITION**

INTRODUCTION

Petitioner is replying to Respondents' Response within the three days allotted by this Court. *See* Doc. 3. This Court retains jurisdiction over the present habeas petition pursuant to 28 U.S.C. § 2241 and the protections guaranteed by the Suspension Clause of the U.S. Constitution. Respondents' exhaustion argument fails. Administrative exhaustion is not a jurisdictional prerequisite in § 2241 habeas proceedings challenging immigration detention, and, in any event, Petitioner has either satisfied or is excused from any prudential exhaustion requirement. Petitioner sought a custody redetermination before the Immigration Court, but that request was denied for lack of jurisdiction pursuant to *Matter of Yajure Hurtado*. Having been left without any meaningful administrative mechanism to challenge his continued detention, Petitioner properly sought relief through this habeas action.

Furthermore, “under 8 U.S.C. § 1225(b)(1)(A)(iii)(II), a person who has been paroled without first having been placed in expedited removal cannot be designated for expedited removal.” *Espinoza v. Kaiser*, 2025 WL 2675785, at *5 (E.D. Cal. Sept. 18, 2025) (emphasis in original; citing *Coalition For Humane Immigrant Rights, v. Noem*, No. 25CV-872 (JMC), 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025)); *see also* *Munoz Materano v. Arteta*, No. 25-CV-6137, 2025 WL 2630826, at *11 (S.D.N.Y. Sept. 12, 2025) (adopting the holding in *Coalition*); *see also* *Pedro Yimi Cardin Alvarez*, WL 2898389, at * 13 (D. Ariz. Oct. 7, 2025).

ARGUMENT

I. Jurisdiction and Standing

Under 28 U.S.C. § 2241, federal district courts have the authority and jurisdiction to hear applications for habeas corpus by *any* person who claims to be held “in custody in violation of the Constitution or laws or treaties of the United States.” The “essence of habeas corpus is an attack by a person in custody upon the legality of that custody,” and thus to be within the “core of habeas corpus,” a petitioner must seek “either immediate release from that confinement or the shortening of its duration.” *Preiser v. Rodriguez*, 411 U.S. 475, 484, 489 (1973). Mr. Escobar is challenging his unlawful detention following the termination of his parole and § 1229a removal proceedings without any consideration of his case and circumstances. 8 U.S.C. § 1252(g) does not bar jurisdiction given that this is a challenge of the Government’s applied implementation of expedited removal under the INA, not the constitutionality of it. *See E.V., v. Raycraft*, No. 4:25-CV-2069, 2025 WL 2938594, at *6 (N.D. Ohio Oct. 16, 2025); *see Munoz Materano*, 2025 WL 2630826, at *10; *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *7 (W.D.N.Y. July 16, 2025) (holding that § 1252(e)(3) cannot bar jurisdiction when the petitioner argued the Government did not have the lawful authority to initiate the expedited removal process against him at that time, rather than arguing the constitutionality of expedited removal generally).

This court has already decided the issue of jurisdiction in *Ernesto Alfonso Perez v. Matthew Mordant et al*, No.2:25-cv-00947-SPCDNF (Dec. 2, 2025). In that case, the Court found that the Suspension Clause of the U.S. Constitution allows for this Court to exercise jurisdiction. The facts of Petitioner's claims in this case, are identical to those of *Alfonso Perez*.

Respondents argue that title 8 U.S.C. § 1252(g) bars review of Mr. Escobar's claims. But this Court already held in *Garcia v. Noem* that § 1252(g) does not bar review of the precise question presented here. *Garcia v. Noem*, et al., No. 2:25-cv-00879-SPC-NPM, Doc. 14 at 4-5, (M.D. Fla. Oct. 10, 2025). The jurisdictional bar at 8 U.S.C. § 1252(g) is narrow – it 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.* at 4-5 (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) and *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018)). Mr. Escobar is not challenging any of those actions. Instead, like the petitioner in *Garcia* “he asks the Court to answer a legal question—whether he is subject to mandatory detention under Section 1225(b)(2) or discretionary detention under Section 1226(a).” *Id.* at 4. Therefore, section 1252(g) does not apply.

Next, Respondents argue that title 8 U.S.C. § 1252(b)(9) bars review of Mr.

Escobar's claims. Section 1252, titled "Judicial Review of Orders of Removal," outlines certain matters not subject to judicial review. *See* 8 U.S.C. § 1252. Subsection (b), titled "Requirements for Review of Orders of Removal," channels review of "final orders of removal" to federal courts of appeals. *See* 8 U.S.C. § 1252(b). There is no such order here, nor is Mr. Escobar seeking review of one. Therefore, this Court should find that § 1252(b)(9) does not bar this Court from reviewing Mr. Escobar's claims.

Accordingly, an appeal to the BIA would not provide any avenue of relief for Mr. Escobar's unlawful detention, because the BIA has no jurisdiction to review ICE custody determinations arising outside the context of active removal proceedings. Habeas corpus is therefore not only appropriate, but the exclusive mechanism to challenge the legality of Mr. Escobar's present confinement.

The Supreme Court in *Boumediene v. Bush* provided three factors for district courts to consider when evaluating the reach and applicability of the Suspension Clause. 553 U.S. 723, 766 (2008). Those factors are: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Id.*

For the first factor, courts compare the process that a detainee has actually

been afforded with the “procedures and adversarial mechanisms that would eliminate the need for habeas corpus review.” *Id* at 767. As for the second factor, that the apprehension and detention took place within the United States weighs in favor of finding rights under the Suspension Clause. *Id* at 768. Concerning the third factor, if government objectives will be compromised if habeas corpus courts had jurisdiction to hear the detainees’ claims, that may weigh against application of the Suspension Clause, but that is not the case here. *See id* at 769-771.

Under the *Boumediene* factors, and the distinction between a migrant who is “at the threshold of initial entry” from one who is more established in this country, the Suspension Clause applies to Petitioner. For the first factor, although Petitioner is not a citizen, he has a much stronger status than the petitioner in *Boumediene*. Petitioner was not apprehended only 25 yards from the border and immediately ordered removed but instead he was paroled into the United States and has remained here for over three years. He was apprehended at the Miami Immigration Court and, upon information and belief, has not yet been ordered removed. During his over three years in the U.S., Petitioner applied for immigration relief, has received work authorization, and has developed significant ties to the community.

With respect to the second *Boumediene* factor, if the 8 U.S.C. § 1252 were to deprive the Court of jurisdiction to review Mr. Escobar's detention, then he would have *no* forum to challenge his detention. The absence of any meaningful review

mechanism, combined with the limited avenues for judicial oversight under the expedited removal framework, leaves Mr. Escobar with no access to a court with jurisdiction to review the legality of his detention outside of the Petition for Writ of Habeas Corpus.

Concerning the third factor, Respondents' Response does not express any arguments as to any practical obstacles that prevent Mr. Escobar from seeking the writ of habeas corpus. There is no evidence that Petitioner is dangerous or a flight risk. Notably, Respondents made the decision to parole Petitioner when he arrived, without having ties to the community or approved work authorization, and in the over three years since his entry into the country, Petitioner's ties to the United States have only increased. Petitioner also has complied with the law during his presence in the United States, as evidenced by his lack of criminal record and the fact that he was detained at the Miami Immigration Court, where he was trying to formalize his status.

II. Exhaustion of Administrative Remedies

Administrative exhaustion of remedies in a § 2241 proceeding is not a jurisdictional requirement. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015) (abrogating *Boz v. United States*, 248 F.3d 1299 (11th Cir. 2001)).

Further, there is no statutory exhaustion requirement where a noncitizen challenges the lawfulness of his detention. Cf. 8 U.S.C. § 1252(d)(1) (requiring

exhaustion only when seeking review of a final order of removal). Here, Petitioner does not challenge a removal order; rather, he challenges the legality of his ongoing detention and Respondents' asserted statutory authority to hold him without a bond hearing.

In any event, Petitioner has already pursued the only administrative avenue theoretically available. On January 7, 2026, Petitioner requested a custody redetermination before the Immigration Court following his arrest by ICE on December 4, 2025, after DHS moved to dismiss his pending § 240 removal proceedings. The Immigration Judge denied that request, expressly finding that the court lacked jurisdiction to conduct a bond hearing pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Having been told by the very tribunal responsible for custody determinations that no jurisdiction existed to consider his release, Petitioner had no meaningful administrative remedy remaining and properly sought relief through this Petition for Writ of Habeas Corpus.

"[W]here Congress has not clearly required exhaustion, "sound judicial discretion governs." *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1297 (N.D. Ga. 2007) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)). Courts routinely waive exhaustion where: (1) delay would cause prejudice or irreparable harm; (2) the agency lacks authority to grant effective relief; or (3) the agency has predetermined the issue. *Id.* at 1297 (citing *McCarthy*, 503 U.S. at 146-48). *See also Woodford v.*

Ngo, 548 U.S. 81, 103 (2006) (Breyer, J. concurring) (noting “well established exceptions to exhaustion” that include constitutional claims, futility, hardship to the petitioner, and where administrative remedies are inadequate or unavailable) (citations omitted)). Each of those factors is present here. Petitioner remains detained without a bond hearing despite prior compliance with all immigration proceedings; the Immigration Court has already determined it lacks authority to grant relief; and binding BIA precedent forecloses any meaningful administrative reconsideration.

In making its discretionary decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees). Petitioner’s continued confinement without an available custody hearing constitutes precisely the type of liberty deprivation warranting immediate judicial review.

Petitioner’s constitutional challenge to his detention is exempt from administrative exhaustion requirements. *See Woodford v. Ngo*, 548 U.S. 81, 103 (Breyer, J. concurring) (constitutional claims are exempt from administrative exhaustion); see also *Khan v. Atty. Gen. of U.S.*, 448 F.3d 226, 236 n.8 (3d Cir. 2006) (internal quotation omitted) (“[D]ue process claims generally are exempt from the exhaustion requirement because the BIA does not have jurisdiction to adjudicate

constitutional issues.”); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002) (“[T]he BIA does not have jurisdiction to adjudicate constitutional issues” (quoting *Vargas v. U.S. Dep’t of Immigration & Naturalization*, 831 F.2d 906, 908 (9th Cir. 1987))).

Finally, any suggestion that Petitioner should have sought discretionary humanitarian parole under 8 U.S.C. § 1182(d)(5)(A) does not constitute a meaningful administrative remedy. Parole determinations are informal, discretionary, and lack procedural safeguards, including hearings, records, or meaningful appellate review. Courts have recognized the unreliability of such processes and the absence of enforceable standards. *See, e.g., Rodriguez v. Robbins*, 804 F.3d 1060, 1081 (9th Cir. 2015); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082 (9th Cir. 2006). Moreover, recent DHS enforcement guidance has significantly curtailed parole grants, rendering such relief largely illusory. *See* DHS Memorandum: Guidance Regarding How to Exercise Enforcement Discretion (Jan. 23, 2025).

Accordingly, exhaustion is either satisfied or excused, and this Court should proceed to adjudicate the merits of Petitioner’s habeas claims.

III. Petitioner is Being Detained Pursuant to 8 USC § 1226, Which Affords Him the Right to Bond.

As to Respondents’ third and fourth arguments regarding exhaustion of remedies and detention under 8 U.S.C. § 1225, Petitioner incorporates by reference

the arguments in his initial habeas petition.

Respondents take internally inconsistent positions, asserting both that Petitioner—having unlawfully entered the United States—was properly detained under 8 U.S.C. § 1225(b), and that his subsequent release constituted “conditional parole” under § 1226(a)(2)(B). The Supreme Court has made clear, however, that §§ 1225 and 1226 establish distinct detention frameworks that are not interchangeable. *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents’ contention that an individual processed under § 235 may nevertheless be released under § 236 is therefore legally erroneous.

Because Petitioner’s release from custody could only have occurred pursuant to DHS’s parole authority under § 212(d)(5), Respondents’ claim that they retain discretion to revoke “conditional parole” under § 1226 is unfounded. Moreover, an individual who has been paroled into the United States without first being placed in expedited removal proceedings cannot later be designated for expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (excluding paroled noncitizens from the class eligible for expedited removal).

IV. Proper Respondent in Habeas Action.

Respondents also argue the only appropriate respondent in this habeas action is the individual with physical custody of Petitioner, i.e., the warden of Alligator Alcatraz, and not the Attorney General or other Respondents. But the Supreme Court

has expressly declined to resolve the very question Respondents assert is settled, refusing to decide whether habeas petitions challenging immigration detention must be directed to the Attorney General or the immediate physical custodian. *See Rumsfeld v. Padilla*, 542 U.S.426, 435 n.8 (2004). This footnote recognizes that immigration detention raises unique considerations and leaves this precise question open.

Federal courts—including those in this district—have routinely permitted habeas petitions to proceed with the Attorney General as a respondent in cases seeking release or bond hearings even when EOIR is not named as a party. *See, e.g., Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025) (ordering EOIR bond hearing; Attorney General remained a respondent); *Garcia v. Noem, et al.*, No. 2:25-cv-00879-SPC-NPM, Doc.14 at 12, (M.D. Fla. Oct. 10, 2025) (same); *Armentero v. INS*, 340 F.3d 1058, 1068–70 (9th Cir. 2003).

Respondents’ argument that the Attorney General must be excluded would render this Court powerless to award any relief at all—a result profoundly inconsistent with *Padilla*, which expressly contemplates exceptions to the immediate-custodian rule in non-core habeas contexts, and with the basic purpose of habeas corpus itself. The Court should reject Respondents’ attempt to create a remedial vacuum and should instead grant effective relief, whether through ordering

release or a prompt bond hearing.

CONCLUSION

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and Request for Order to Show Cause, this Court should find that it has jurisdiction over this case should GRANT the Petition for Writ of Habeas Corpus and order Petitioner's immediate release or, in the alternative, a bond hearing.

Respectfully submitted,

/s/ Gladys Carredegua Mayor

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