

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MAYERS DEIVISION**

ROSTISLAV MALIKOV,

Case No.: 2:26-cv-172-SPC-NPM

Petitioner,

v.

KRISTI NOEM,
Secretary of the Department
of Homeland Security, et al.

Respondents.

_____ /

**Petitioner's Opposition to Respondents' Response to petition for
Write of Habeas Corpus**

On February 7, 2026, Counsel for the Respondents filed Response to Petitioner for Write of Habeas Corpus (hereinafter, "Response") erroneously stating that:

- Petitioner's claim is bared for review by 8 U.S.C. §1252(g) and 8 U.S.C. § 1252(b)(9);
- Petitioner failed to exhaust administrative remedies, and Petitioner is properly detained under 8 U.S.C. § 1225.

As Counsel for Respondents correctly cited *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025) all issues have been argued by the Petitioner's Counsel as follows:

1. 8 U.S.C. §1252(g) doesn't bar Petitioner's claim for review by the Court because Rostislav Malikov **does not** challenge the respondents' decision to commence

removal proceedings against him, the decision to arrest and detain him, or the methods by which he is detained.

2. Rather, Rostislav Malikov, as in Vasquez Carcamo, *supra* challenges the Attorney General's treatment of him as an "alien seeking admission," whose detention is governed by Section 1225(a)(2) rather than Section 1226(a). *Cf. Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [Section 1252(g)] 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.") See ***Vasquez Carcamo v. Noem, Supra.***

3. Neither 8 U.S.C. § 1252(b)(9) bars Petitioner's claim for review by the Court because under ***Vasquez Carcamo v. Noem,:***

" Supreme Court and Eleventh Circuit precedent is clear. The zipper clause only applies to claims requesting review of a removal order. See *Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation)."

4. Rostislav Malikov is "not asking for review of an order of removal;" he is not "challenging the decision to detain [him] in the first place or to seek removal;" and he is "not even challenging any part of the process by which [his] removability will be determined." *Jennings*, 583 U.S. at 294, 138 S.Ct. 830. The zipper clause does not apply."

5. In DHS Response, the Counsel next argue the Court should dismiss this action because Rostislav Malikov has not exhausted available administrative remedies by requesting a bond hearing.
6. Petitioner asks the Court to excuse administrative exhaustion because it would be futile.
7. In Matter of Yajure Hurtado, the Board of Immigration Appeals (“BIA”) held that immigration judges have no authority to consider bond requests from noncitizens who entered the United States without inspection “because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” 29 I&N Dec. 216, 220 (B.I.A. 2025). Plaintiffs need not 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, 112 S.Ct. 1081, 117 L.Ed.2d 291 (1992); see also *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13, 120 S.Ct. 1084, 146 L.Ed.2d 1 (2000).
8. While DHS initially signaled it was detaining Rostislav Malikov under Section 1226(a) by issuing a Notice of Custody Determination, it has since cancelled the notice and argued Petitioner is subject to mandatory detention under Section 1225(b)(2). Requiring Mr. Malikov to make an administrative request for a bond hearing would be futile because the result is predetermined by Yajure Hurtado.

9. District courts around the country— including the presented Court, see *Hinojosa Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *3 (M.D. Fla. Oct. 31, 2025)—have reached the same conclusion.
10. Lastly, Malikov is not properly detained because his continuous detention violates the Fifth Amendment and the Administrative Procedure Act as stated in initial petition.
11. Moreover, Respondents have available option for Mr. Malikov as Supervised release with an ankle bracelet: legally grounded in the need to ensure compliance with immigration hearings while avoiding costly detention. Supervised release will be the least prejudicial and best remedy provided to Petitioner because his continuous detention for more than 200 days has served as "unreasonable punishment and harm" while legal statutorily and practicality are uncertain.
12. Hence, it is respectfully request the Petitioner be released from detention immediately with ankle bracelet supervised release, with bond obtained, or such other relief and the Court may order.

Respectfully submitted,

/s/Martin Druyan Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically served this 11th day of February 2026, via postal service and PACER to the parties listed below:

- Pamela Bondi, United States Attorney General;
- Kristi Noel Secretary of the Department of Homeland Security;
- Todd Lyons, the Senior Official performing the Duties of the Director of U.S. Immigration and Customs Enforcement;
- Marcos Charles, Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement;
- UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
- UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT

/s/ Sage Roman, LL.M.
Associate