

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT MEYERS DIVISION**

DUARTE CANTARERO, Denis
Dagoberto
Petitioner,

Case No.: 2:26-CV-189-SPC-NPM

v.

LYONS, Todd, in his official capacity as
Acting Director, U.S. Immigration and
Customs Enforcement

WARDEN, in their official capacity as
Warden, South Florida Detention Facility
("Alligator Alcatraz");

NOEM, Kristi, in her official capacity as
Secretary, U.S. Dept. of Homeland
Security;

RIPA, Garrett, in his official capacity as
Field Office Director of ICE/ERO Miami
Field Office;
Respondents

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO
PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner, Denis Dagoberto Duarte Cantarero, through undersigned counsel, respectfully submits this Reply to Respondents' February 10, 2026 Response. Doc. 9.

**I. The Government's Late-Filed NTA Does Not Cure the Unlawful
Detention**

Respondents assert that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and represent that a Notice to Appear ("NTA") was served "on or about February 10, 2026." Doc. 9 at 2. That representation confirms the defect in this case.

Petitioner was taken into ICE custody on January 7, 2026. Doc. 9 at 2. By the Respondents' own admission, no NTA was served until more than a month after this habeas

action was filed and after this Court ordered the Respondents to show cause, and on the date they were ordered to show cause to this Court.

Detention without initiation of proceedings, without service of an NTA, and without an identified statutory authority violates due process. A post hoc attempt to justify detention does not retroactively legalize prior unlawful custody.

II. Respondents' Transfer of Petitioner After Filing Does Not Defeat Jurisdiction

Respondents acknowledge that Petitioner is now detained at the Central Louisiana ICE Processing Center. (Doc. 9 at 2.) Petitioner was transferred out of Florida on February 10, 2026—the very day Respondents' response was due and after this habeas petition was already pending. That transfer does not divest this Court of jurisdiction.

It is well established that jurisdiction in a habeas action attaches at the time the petition is filed. A subsequent transfer of the petitioner does not defeat jurisdiction. *See Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Ex parte Endo*, 323 U.S. 283 (1944). At the time this petition was filed, Petitioner was detained within this District. This Court therefore retains jurisdiction over his habeas challenge notwithstanding the Government's post-filing transfer.

To permit the Government to defeat habeas review by transferring detainees after litigation has commenced would undermine the writ itself. The timing of the transfer (after the Court ordered Respondents to show cause) further underscores the need for careful judicial review.

III. Section 1225(b)(2) Does Not Apply to Long-Term Interior Arrests

Respondents contend that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because he is allegedly an applicant for admission. That argument has already been rejected in this Division.

In *Garcia v. Noem*, 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025), this Court squarely addressed the Government's position that noncitizens present in the United States without admission are categorically subject to § 1225(b)(2). The Court rejected that interpretation, holding that § 1225 does not automatically apply to individuals arrested in the interior and that detention authority must be analyzed under the proper statutory framework. *Garcia* further recognized that individuals arrested inside the United States are generally governed by § 1226, not § 1225, and ordered a bond hearing accordingly.

Petitioner has been physically present in the United States for approximately twenty years and was arrested within the interior. Under *Garcia*, Respondents' reliance on § 1225(b)(2) is misplaced.

IV. Sections 1252(g) and 1252(b)(9) Do Not Strip Habeas Jurisdiction

Respondents argue that this Court lacks jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9). *Garcia* again controls.

In *Garcia v. Noem*, 2025 WL 3041895, at *4–6, this Court held that § 1252(g) does not bar habeas review of detention authority. The statute applies only to three discrete discretionary actions—commencing proceedings, adjudicating cases, and executing removal orders—not to challenges to the statutory basis for detention.

Petitioner does not challenge the decision to commence removal proceedings. He challenges the legality of his custody. Under *Garcia*, that claim remains squarely within this Court's habeas jurisdiction. Similarly, § 1252(b)(9) does not eliminate jurisdiction over independent detention challenges that do not require adjudication of removability.

V. Exhaustion Does Not Bar Review

Respondents argue that Petitioner failed to exhaust administrative remedies. However, if, as Respondents claim, Petitioner is detained under § 1225(b)(2) and ineligible for bond, then no administrative bond remedy exists to exhaust.

Moreover, *Garcia* recognized that habeas courts retain authority to review the legality of detention notwithstanding administrative proceedings. Exhaustion is not required where remedies are unavailable or futile.

VI. Conditions of Confinement Are Relevant to Due Process Analysis

Respondents argue that release is unavailable for conditions-of-confinement claims. Petitioner does not seek release solely based on conditions. Rather, the alleged conditions demonstrate that detention has become punitive in purpose and effect.

Civil detention must be reasonably related to a legitimate governmental objective. When conditions become punitive, detention violates due process.

VII. The Pending T Visa Application is Relevant to Custody and Due Process

Respondents contend that this Court lacks jurisdiction to consider Petitioner's pending T visa application. Petitioner does not assert that a pending T visa automatically bars removal. Rather, the pending application is relevant to the custody analysis and to the Respondents' coercive conduct.

In *Doe v. United States*, 487 F. Supp. 3d 1237 (S.D. Fla. 2020), the Southern District of Florida recognized the heightened protections afforded to trafficking victims interacting with immigration enforcement. The court emphasized that statutory protections for trafficking victims reflect Congress's intent to shield such individuals from coercion and improper enforcement practices.

Petitioner is a trafficking victim with a pending T visa application. The existence of that humanitarian relief is directly relevant to:

1. The lawfulness and purpose of detention;
2. Whether detention is being used coercively; and
3. The flight-risk and custody analysis.

The Court retains jurisdiction to consider those factors in assessing the legality of detention.

VIII. Relief Requested

For the foregoing reasons, and consistent with this Court's reasoning in *Garcia v. Noem*, Petitioner respectfully requests that this Court:

- a. Reject Respondents' jurisdictional arguments;
- b. Hold that detention under 8 U.S.C. § 1225(e)(2) is unlawful as applied here;
- c. Grant the Petition for Writ of Habeas Corpus;
- d. Order Petitioner's immediate release, or alternatively,

- e. Order a prompt individualized bond hearing before a neutral decisionmaker with the Government bearing the burden of proof by clear and convincing evidence.

Respectfully Submitted,
Denis Dagoberto Duarte Cantarero
Through Counsel

/s/ Elizabeth Shaw

Elizabeth Shaw
Law Offices of Rachel L Rado, LLC
175 Portland St Fl 2
Boston, MA 02114
(t) 617-871-6030 | (f) 877-246-8795
(e) eshaw@rachelradolaw.com

Date: 2/11/2026

CERTIFICATE OF SERVICE

I certify that on this 11th day of February, 2026, I served the foregoing via CM/ECF upon the Office of the United States Attorney for the Middle District of Florida.

/s/ Elizabeth Shaw

Elizabeth Shaw
Law Offices of Rachel L Rado, LLC
175 Portland St Fl 2
Boston, MA 02114
(t) 617-871-6030 | (f) 877-246-8795
(e) eshaw@rachelradolaw.com

Date: 2/11/2026