

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

Luis Alberto Bejerano Amador,

Petitioner,

CASE NO.: 2:26-cv-619-JES-NPM

v.

Warden, Florida Soft Side South et al.,

Defendants.

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

INTRODUCTION

Petitioner challenges the constitutional and statutory validity of his present detention—not any removal order, not any discretionary immigration decision, but the lawfulness of his physical confinement. Federal Respondents filed a six-page abbreviated brief that concedes the legal questions here “substantially overlap” with *Patel v. Hardin*, No. 2:25-cv-870-JES-NPM, 2025 WL 3442706 (M.D. Fla. Dec. 1, 2025). ECF No. 7 at 4. Respondents “respectfully disagree” with *Patel* but offer no new authority from this Circuit to warrant a different result. Their brief incorporates by reference the same arguments this Court rejected, relies on a non-binding Fifth Circuit decision, and ignores critical facts in their own exhibits that undermine their statutory theory.

The Government’s own records confirm what the petition established: on May 14, 2022, ICE released Mr. Bejerano Amador on his own recognizance “in accordance with section 236 of the Immigration and Nationality Act,” which corresponds to 8 U.S.C. § 1226. Pet. Ex. D (Form I-220A, Order of Release on Recognizance). He lived in the community for nearly four years, filed an asylum application, completed biometrics, received employment authorization valid through April 14, 2030, and appeared at his removal hearings. The Government now seeks to reclassify him as a § 1225(b)(2) mandatory detainee—precisely the maneuver this Court rejected in *Patel*. Even if the Court were to accept the Government’s statutory position, the Fifth Amendment independently prohibits re-detention after years of supervised release without any individualized process. The Petition should be granted.

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER PETITIONER’S CLAIMS

Respondents recycle the jurisdictional arguments this Court addressed and rejected in *Patel*. They contend that 8 U.S.C. § 1252(g) and § 1252(b)(9) strip this Court of jurisdiction. ECF No. 7 at 5 (incorporating Respondents’ brief in *Patel*, Doc. 15 at 4–9). This Court rejected both arguments. *Patel*, 2025 WL 3442706, at *2–3.

Petitioner does not challenge the decision to commence proceedings, adjudicate his case, or execute a removal order—the three discrete actions to which § 1252(g) applies. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). He challenges the legality of his seizure and the statutory and constitutional basis for his continued detention. Pet. at 5. That is the historic core of habeas corpus, and § 1252(g) does not reach it.

Nor does § 1252(b)(9) apply. That provision channels claims “arising from” removal proceedings into the petition-for-review process. But challenges to the lawfulness of civil immigration detention do not “arise from” removal proceedings—they challenge executive custody independent of any removal determination. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). The Supreme Court has cautioned against reading § 1252(b)(9) to bar habeas challenges to detention. Respondents present nothing new. The analysis in *Patel* controls.

II. ADMINISTRATIVE EXHAUSTION IS FUTILE

Respondents argue that Mr. Bejerano Amador failed to exhaust administrative remedies. ECF No. 7 at 5. This Court already found exhaustion futile in *Patel* because the BIA’s decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), categorically stripped immigration judges of authority to conduct bond hearings for individuals who entered without inspection. 2025 WL 3442706, at *3

(“[R]equiring Patel to make an administrative request for a bond hearing would be futile because the result is predetermined.”).

Nothing has changed. Under *Yajure Hurtado*, the immigration court would be compelled to deny Mr. Bejerano Amador a bond hearing as a matter of law. Requiring him to pursue that predetermined denial serves no purpose. *See McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (exhaustion excused where “the administrative body is shown to be biased or has otherwise predetermined the issue before it”). The Court should excuse exhaustion for the same reasons it did in *Patel*.

Moreover, as Petitioner established in the Petition, his Fourth and Fifth Amendment claims are constitutional challenges that immigration courts lack authority to adjudicate. Pet. at 6 (citing *Shinholster v. Graham*, 527 F. Supp. 1318, 1322 (N.D. Fla. 1981)). Administrative exhaustion cannot be required where the administrative forum cannot grant the relief sought.

III. PETITIONER’S DETENTION IS GOVERNED BY § 1226, NOT § 1225

A. The Government’s Own Records Confirm § 1226 Applies.

The Government certifies Mr. Bejerano Amador’s detention under § 1225(b)(2). ECF No. 7 at 4. But the Government’s own exhibits—and the Petition’s exhibits—refute this classification. On May 14, 2022, ICE issued Petitioner Form I-220A, Order of Release on Recognizance, and released him from custody “in accordance with section 236 of the Immigration and Nationality Act.” Pet. Ex. D;

ECF No. 7 at 2–3. Section 236 of the INA corresponds to 8 U.S.C. § 1226. ICE itself determined at the outset that § 1226—not § 1225—governed Petitioner’s custody. That determination was correct.

After release, Mr. Bejerano Amador lived in the United States for nearly four years, complying with all conditions of his release. He filed an I-589 Application for Asylum and for Withholding of Removal, which USCIS received on June 15, 2022. Pet. Ex. E (Form I-797C, Receipt Notice). He completed biometrics processing on December 21, 2022. *Id.* (ASC Appointment Notice, stamped December 21, 2022). His asylum application remains pending with USCIS, with an interview as the next step. ECF No. 7 at 3. He received employment authorization under category C08, valid from April 15, 2025, through April 14, 2030. Pet. Ex. F (Employment Authorization Document). He attended his removal hearing on March 28, 2024, at the Miami Immigration Court, and the immigration judge scheduled his next hearing for April 12, 2027. ECF No. 7 at 2; Pet. Ex. C (NTA showing March 28, 2024, hearing date). None of these facts are disputed.

Mr. Bejerano Amador was not “seeking admission” when he was arrested on February 26, 2026. He was living in the community at his reported address, with the Government’s knowledge and authorization, holding valid employment authorization, and with active removal proceedings in which his next hearing was not scheduled until April 2027.

B. *Buenrostro-Mendez* Is Not Binding and Should Not Be Followed.

Respondents cite *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). ECF No. 7 at 5. That decision is not binding in this Circuit. It was a 2–1 split decision in which the dissent warned that the majority’s interpretation overturned decades of settled agency and judicial practice. *Buenrostro-Mendez*, 2026 WL 323330, at *16 (Douglas, J., dissenting). Multiple circuits are currently considering this issue, including the Eleventh Circuit in *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.), which remains pending. The question is unresolved outside the Fifth Circuit.

This Court has already conducted the statutory analysis and reached the opposite conclusion from the Fifth Circuit. In *Patel*, this Court held that § 1225 governs noncitizens “seeking admission” at the threshold of initial entry, while § 1226 provides the “default rule” for detaining noncitizens already in the United States. 2025 WL 3442706, at *4–5. The Court observed that the Government’s reading would render § 1226 “with no apparent application”—a result that violates the canon against surplusage. *Id.* at *5 (citing *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001)). Other judges in this Division have followed *Patel*. See *Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895, at *6 (M.D. Fla. Oct. 31, 2025); *Hernandez-Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025).

Courts within the Fifth Circuit itself have continued to grant habeas relief notwithstanding *Buenrostro-Mendez*, recognizing that the decision does not foreclose constitutional challenges. *See, e.g., Clemente Ceballos v. Garite*, No. 3:26-cv-00312-DB (W.D. Tex. Feb. 10, 2026) (granting habeas relief and noting *Buenrostro-Mendez* “does not change the case’s outcome on procedural due process grounds”). Respondents’ reliance on an out-of-circuit split decision does not warrant departure from this Court’s established precedent.

C. The Statutory Text and Supreme Court Precedent Confirm § 1226 Governs.

Congress used the present participle “seeking admission” in § 1225(b)(2)(A) to describe active, present-tense conduct. A noncitizen who has been in the United States for nearly four years, with pending removal proceedings and a valid EAD, is not “seeking admission.” The Supreme Court has “long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Moreover, “once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Mr. Bejerano Amador is entitled to the protections of § 1226(a), including a bond hearing.

D. Even Under § 1225, Due Process Requires Individualized Review Before Re-Detention.

Even if this Court were to accept Respondents' position that § 1225(b)(2) governs Mr. Bejerano Amador's detention—which it should not—the Fifth Amendment independently requires individualized process before the Government may re-detain a noncitizen who has been living in the community under supervised release for nearly four years. As Petitioner argued in the Petition, re-detention without notice, hearing, or individualized findings violates the Fifth Amendment. Pet. at 8–10. The mandatory detention framework of § 1225(b)(2), as applied to Mr. Bejerano Amador, violates procedural due process under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

First, the private interest at stake. Mr. Bejerano Amador's liberty interest is substantial. He is not a recent border arrival being processed for initial inspection. ICE released him on his own recognizance under § 1226 on May 14, 2022. Pet. Ex. D. During the nearly four years that followed, he filed an asylum application (Pet. Ex. E), received employment authorization valid through April 14, 2030 (Pet. Ex. F), attended his removal hearings, and resided at his reported address in compliance with all conditions of release. Pet. Ex. D (I-220A conditions). As the Petition established, this created a protected liberty interest. Pet. at 9 (citing *Esquivel Pacheco v. LaRose*, No. 3:25-CV-2421-JO-AHG, 2026 WL 242300, at *6 (S.D. Cal. Jan. 29, 2026); *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021, 1031 (N.D. Cal.

2025)). That interest does not evaporate because the Government later decides to reclassify a person's detention authority.

Second, the risk of erroneous deprivation. The Government provided Mr. Bejerano Amador no individualized hearing, no notice of the basis for his reclassification from § 1226 to § 1225, and no opportunity to contest his re-detention before an impartial decisionmaker. The Government's 2026 I-213 confirms he was arrested during a 287(g) enforcement operation ("Operation Sand Hill Sentinel"), taken into custody by a 287(g)-designated FHP trooper, and placed in immigration detention—all without any finding that he posed a flight risk or danger. Composite Ex. 1 at 13–14. Petitioner has no criminal history. *Id.* at 13; Pet. at 2. He appeared at his scheduled hearings. ECF No. 7 at 2. He held valid employment authorization. Pet. Ex. F. Without individualized process, the risk of erroneous deprivation of liberty is extreme. *See Moore v. Nielsen*, No. 418CV01722LSCHNJ, 2019 WL 2152582, at *13 (N.D. Ala. May 3, 2019) (risk of erroneous deprivation is high when the government deprives an individual of procedure before a neutral adjudicator).

Third, the Government's interest. The Government's interest in ensuring appearance at removal proceedings and protecting the community is served by the existing § 1226(a) bond framework, which provides for individualized assessment of flight risk and dangerousness. The Respondents' Response identifies no evidence that Mr. Bejerano Amador is a flight risk or a danger to the community. His four

years of compliance demonstrate the opposite. As courts have recognized, the Government's interest carries little weight when balanced against these constitutional protections. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1340 (M.D. Ga. 2020).

The *Mathews* balance weighs decisively in Petitioner's favor. Multiple courts have held that even if § 1225(b)(2) applies as a statutory matter, the Due Process Clause requires individualized review for noncitizens detained after prolonged presence in the interior. *See, e.g., Clemente Ceballos v. Garite*, No. 3:26-cv-00312-DB (W.D. Tex. Feb. 10, 2026); *Singh v. Baltazar*, No. 25-cv-03993-PAB, 2026 WL 352870, at *3–6 (D. Colo. Feb. 9, 2026). Respondents' mandatory-detention theory, applied to Mr. Bejerano Amador's circumstances, produces a result the Constitution does not permit.

IV. THE CIRCUMSTANCES OF PETITIONER'S ARREST SUPPORT HIS FOURTH AMENDMENT CLAIM

The Government's 2026 I-213 confirms that Mr. Bejerano Amador was arrested on February 26, 2026, during "a Florida Highway Patrol enforcement operation conducted in Central Florida under Operation Sand Hill Sentinel." Composite Ex. 1 at 13. A 287(g)-designated FHP trooper stopped Mr. Bejerano Amador's vehicle and "contacted ICE to verify alienage and amenability." *Id.* ICE directed the trooper to apprehend Petitioner, and he was taken into custody and transported to the Miramar Sub Office. *Id.* Mr. Bejerano Amador has no criminal

history. *Id.* The arrest occurred at 2805 SW 145th Avenue in Miramar, Florida—a residential area far from any international border. *Id.* at 14.

As the Petition established, this was an interior stop, not a checkpoint, and there is no indication of individualized suspicion of wrongdoing at the time of the stop. Pet. at 7–8. A vehicle stop by a 287(g) officer that immediately triggers verification of “alienage and amenability”—for a person with no criminal history, during a named immigration enforcement operation—raises substantial questions about whether the stop was supported by the reasonable suspicion the Fourth Amendment requires. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (officers may not stop vehicles to inquire about immigration status without reasonable suspicion); *Rodriguez v. United States*, 575 U.S. 348, 354–55 (2015) (traffic stop may not be extended beyond its original purpose absent reasonable suspicion). Because Mr. Bejerano Amador’s detention flows directly from this seizure, its lawfulness is a proper subject for habeas review. Pet. at 8.

V. A BOND HEARING OR RELEASE IS APPROPRIATE RELIEF

Respondents argue that outright release is inappropriate and that bond hearings are conducted by EOIR, not ICE. ECF No. 7 at 5–6. This misapprehends the relief sought. Petitioner asks this Court to order a bond hearing before an immigration judge—the same relief this Court granted in *Patel* and *Garcia*. This Court has the authority under 28 U.S.C. § 2241 to order the custodian to ensure

Petitioner receives a bond hearing. *See Garcia v. Noem*, 2025 WL 3041895, at *6. Respondents' citation to *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004), is inapposite—the Warden of Florida Soft Side South is the immediate custodian and the proper respondent, and Petitioner does not need to name EOIR to obtain this relief.

The facts strongly favor release or bond. Mr. Bejerano Amador has no criminal record. Composite Ex. 1 at 13. He appeared at his scheduled removal hearings. ECF No. 7 at 2. He has a pending asylum application with an interview as the next step. ECF No. 7 at 3; Pet. Ex. E. He held valid employment authorization. Pet. Ex. F. He has family ties in this country, including a cousin in Miami who served as his U.S. point of contact. Pet. Ex. C (I-213 at 3). The Government's Response identifies no evidence that he is a flight risk or a danger—because there is none.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus, declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a), and order a bond hearing before an immigration judge, or in the alternative, order Petitioner's immediate release.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 23, 2026, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted,

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