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

YUNIERKY BURGOS BONACHEA,

Petitioner,

v.

**KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security; PAMELA BONDI, in her official
Capacity as Attorney General of the United
States; TODD M. LYONS, in his official
capacity As Acting Director and
Senior Official Performing the Duties of
the Director of U.S. Immigration and
Customs Enforcement; GARRETT J. RIPA,
in his official capacity as Field Officer
Director of the Miami Field Office
and Customs Enforcement; Enforcement
and Removal Operations; and KEVIN
GUTHRIE, in his official capacity as the
director of the Florida Division of Emergency
Management, director of Florida Soft-Side
South Facility, Alligator Alcatraz; WARDEN
of Alligator Alcatraz.**

Respondents.

Case No. 2:26-cv-00653-KCD-NPM

REPLY TO RESPONSE TO PETITON FOR WRIT OF HABEAS CORPUS

Petitioner, **YUNIERKY BURGOS BONACHEA**, by and through undersigned counsel, Corona Law Firm P.A., hereby files this reply to Respondents' response to Petition for Writ of Habeas Corpus and states as follows:

I. INTRODUCTION

Respondent presents an abbreviated response that focuses on three major arguments as to why this Court should deny the Petition of which this Court has already extensively analyzed despite the alleged reasoning in an effort to "conserve judicial resources." Respondents contend that title 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9) bar this Court from reviewing Petitioner's claims, that Petitioner failed to exhaust his administrative remedies, and that he was properly detained under 8 U.S.C. § 1225. Respondents' response does not address Petitioner's argument that termination of his release without notice, opportunity to be heard, or consideration of individualized circumstances violates his Fifth Amendment's Due Process Clause, the Administrative Procedure Act, the Suspension clause of the United States Constitution and the *Accardi* Doctrine. *See generally, United States v. Evans*, 292 F. App'x 761, 762 (11th Cir. 2008) ("When a party fails to provide arguments on the merits of an issue, and makes only passing reference to in its initial brief, the argument is deemed waived and we need not address"). Further, the abbreviated response refers to legal arguments presented in *Hernandez-Lopez v. Hadin, et al.*, No. 2:25-cv-830-KCD-NPM (M.D. Fla. Oct. 29, 2025). (ECF No. 9 at 4-5)¹.

Petitioner in this case has been in the United States since August 6, 2022 and was released on an Order of Recognizance on August 7, 2022. *See* Exhibit B, Order of Release of Recognizance. While Petitioner was waiting for the decision on his timely filed appeal, he was detained on a

¹ Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief, yet Respondents do not address this in their response or seek to have that requirement suspended in this case.

pretextual stop on February 14, 2026, and has been detained in Alligator Alcatraz since then. *See* Exhibit F, Filing Receipt for Appeal. The Respondents' response is silent as to the reasons for termination of Petitioner's release and re-detention and regarding facts alleging changed circumstances after the decision was made to release him on his own recognizance but is suddenly ineligible now. Respondent's Exhibit A, specifically, Form I-831 merely suggests that the agents performed a vehicle stop after record checks on the vehicle showed that the registered owner is an illegal Alien. *See* Respondents' Exhibit A, Form I-831 Continuation page of I-213; ECF No. 9-1. This further demonstrates no "reason" for termination of Petitioner's release exist since Petitioner was (1) not subject to a search warrant; (2) no indication of Petitioner committing any traffic violations since the stop was preformed merely because the record reflected that the owner of vehicle had no status; and (3) Respondent's Form I-831 states that "CBP systems revealed no criminal history." *See Id.* Respondents have not demonstrated that Petitioner violated any of the conditions on the Order of Release of Recognizance. Simply stated, there are no justifiable reasons in Respondents response nor in their own exhibits that put Petitioner on notice that his Order of Release of Recognizance was being revoked or justify termination of Petitioner's Order of Release of Recognizance.

Further, exhaustion of administrative remedies serves no purpose since the conclusion of the administrative process can be readily presumed and would not provide for an adequate remedy given the BIA's recent decision in *Matter of Yajure Hurtado*. *See Garcia v. Noem*, 2025 U.S. Dist. LEXIS 214695 at *7 (M.D. Fla. Oct. 31, 2025) (finding good cause to excuse exhaustion as futile since result is predetermined by *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)); *Alvarez Puga*, No. 25-24535-CIV-ALTANOAGA (S.D. Fla. Oct. 15, 2025). Next, the government contends that Petitioner is subject to mandatory detention under §1225(b)(2), because he was present in the

United States without being admitted or paroled relying mainly on *Buenrostro-Mendez v. Bondi*, No. 25-20496,25-40701, __F. 4th__,2026 WL 323330 (5th Cir. Feb 6 2026). The Fifth Circuit's decision in *Buenrostro-Mendez* is not binding here. While it appears that Petitioner was initially apprehended close to the border and close in time to his arrival in the United States, from the moment that he stepped foot in the United States, the Department of Homeland Security has classified him falling under 8 U.S.C. §1226. The strongest indication of this is that Petitioner was released on an Order of Recognizance on August 7, 2022, by an Immigration Officer who evaluated whether Petitioner was a flight risk and whether Petitioner would be a danger to the community prior to entering such decision. *See* Exhibit B, Order of Release of Recognizance. This classification is also reflected in Petitioner's Notice of Custody Determination. *See* Exhibit A, Notice of Custody Determination; Respondents' Exhibit A Notice of Custody Determination at 8.

Respondents briefly contend that the Executive Office for Immigration Review should be the proper party and not ICE. (ECF No. 9). Most interestingly, Respondents, Kevin Guthrie and Warden, Alligator Alcatraz, have separately filed a Motion to Dismiss contending that they are not the proper Respondents in this case. (ECF No. 10). However, A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 U.S.C. 2243. In this case, all Respondents named are proper Respondents since the Petition includes the "immediate custodian" who can unlock the cell door and produce the body, and includes those with "legal" custody. *See generally, Jimenez v. Mordant*, 2026 U.S. Dist. LEXIS 65111 *, *5 (M.D. Fla. March 25, 2026); *Villavicencio Calderon v. Sessions*, 330 F. Supp 3d 994 (S.D.N.Y. 2018); *Masingene v. Martin*, 424 F. Supp. 3d 1298, 1301 (S.D. Fla. 2020) (courts have recognized that immigration detainees can bring habeas claims against certain federal officials); *Arenas v. Noem*, 2026 U.S. Dist. LEXIS 56052, *2 (M.D. Fla. March 18, 2026) (noting that immediate custodian is also proper respondent).

In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004), that the immediate custodian is the proper respondent. In this case, all of the Respondents named as Defendants are proper parties to this suit.

II. ARGUMENT

A. THIS COURT IS NOT BARRED FROM HABEAS REVIEW UNDER SECTION 8 U.S.C. § 1252(g) OR SECTION 8 U.S.C. § 1252(b)(9).

As this Court has previously determined, the jurisdictional bar under 8 U.S.C. §1252(g) is narrow. The bar applies to three discrete actions that the Attorney General may take to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In these situations, the Court is directed to focus on the action being challenged. *Garcia v. Noem*, 2025 U.S. Dist. LEXIS at *3; *Canal A Media Holding, LLC v. United States Citizenship and Immigr.. Servs.*, 964 F. 3d 1250, 1258 (11th Cir. 2020). In this case, Petitioner is challenging his re-detention as improperly characterized under section 1225(b)(2) instead of section 1226(a). Petitioner is not challenging any Orders on bond, any removal orders, or actions to commence proceedings. Petitioner has been in proceedings since 2022, there are no proceedings commencing. As such, the narrow jurisdictional bar as outlined in 8 U.S.C. §1252(g) is inapplicable here. *See generally Grigorian v. Bondi*, 2025 U.S. Dist. LEXIS 175489 (S.D. Fla. Sept. 9, 2025).

Second, Respondents attempt to invoke the INA's zipper clause as an action arising from its choice to commence removal proceedings. The zipper clause applies to claims requesting review of a removal order. *Garcia*, 2025 U.S. Dist. LEXIS 214695, at *6; *Madu v. United States AG*, 470 F. 3d 1362, 1365 (11th Cir. 2006) (holding the INA does not divest the district court of jurisdiction over a §2241 challenge to detention of the petitioner pending deportation). This Court has

previously noted that “[b]y invoking the zipper clause, the respondents apparently adopt the ‘throw spaghetti at the wall and see what sticks’ approach” and Petitioner agrees. *Garcia*, 2025 U.S. Dist. LEXIS 214695, at *5. Petitioner is not seeking review of a removal order by this Court, he is seeking review of that non-final removal order with the Board of Immigration Appeals (hereinafter “BIA”). See Exhibit F, Receipt of Notice of Appeal. Respondents also rely on cases that are not binding in relation to this Court’s jurisdiction and are factually different from the case at hand. (ECF No. 9); see generally *Lopez v. Dir. Of Enf’t & Removal Operations*, 2026 U.S. Dist. 22613 (M.D. Fla. Jan. 26, 2026) (petitioner entered without inspection but was not detained upon entry and given a release of recognizance); *Iraheta Morales v. Noem*, 2026 U.S. Dist. LEXIS 21488 (S.D. Fla. Jan. 29, 2026) (petitioner entered in 2004, was not detained, given a Notice to appear, or placed in proceedings until September 5, 2025). Since the zipper clause does not apply and this Court is not barred from review under section 8 U.S.C. §1252(b)(9), this Court has jurisdiction to review Petitioner’s claims for relief.

B. PETITIONER HAS EXHAUSTED HIS ADMINISTRATIVE REMEDIES.

Respondent’s incorporated contention that Petitioner should have to exhaust administrative remedies before seeking habeas relief fails in this case. Several Courts have determined that “Plaintiffs need not exhaust administrative remedies if ‘the administrative body is shown to be biased or has otherwise predetermined the issue before it.’” *Garcia*, 2025 U.S. Dist. LEXIS at *7; *Policarpo v. Parra*, 2025 U.S. Dist. LEXIS 264048 (S.D. Fla. December 22, 2025); *McCarthy v. Madigan*, 503 U.S. 140 (1992); *Shalala v. III. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Further, “exhaustion is not required where there is no genuine opportunity for adequate relief exists . . . or an administrative appeal would be futile[.]” *Linfors v. Unite States*, 673 F. 2d 332, 334 (11th Cir. 1982) (alterations added; citations omitted).

In this case requiring Petitioner to exhaust administrative remedies would be futile as the result has been predetermined by *Matter of Yajure Hurtado*. Any attempt of requesting bond or appeal of the decision on the bond premised on “lack of jurisdiction” would have served Petitioner no purpose in seeking release. Moreover, several districts have excused the exhaustion requirement in light of *Matter of Yajure Hurtado*. *Carcamo v. Noem*, 2025 U.S. Dist. LEXIS 219450, at *3 (M.D. Fla. Nov. 7, 2025); *Boffill v. Field Off. Dir., Mia. Field Off.*, 2025 U.S. Dist. LEXIS 228852, at *5 (S.D. Fla. Nov. 20, 2025); *Puga v. Assistant Field Off. Dir.*, 2025 U.S. Dist. LEXIS 203222, at *2 (S.D. Fla. Oct. 15, 2025); *Duvalon Boffill, et al.*, Case No. 25-25179-CIV-BECERRA (Nov. 20, 2025) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and the other Petitioner’s detention is governed by 8 U.S.C. § 1226(a)). As such, it is Petitioner’s position that this Court should not require Petitioner to exhaust his remedies when the result has been predetermined.

C. DHS HAS DETAINED PETITIONER UNDER 8 U.S.C. § 1226(A).

Respondents argue that Petitioner is subject to mandatory detention since Petitioner’s entry to the United States renders him an “applicant for admission” under 8 U.S.C. section §1225 (b)(2)(A). Section 1226 authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.] *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1225 covers applicants for admission who are noncitizens present in the United States who have not been admitted. *Alvarez*, 2025 U.S. Dist. LEXIS 203222 (S.D. Fla. Oct. 15, 2025) quoting *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025). In support, Respondents rely on the Fifth Circuit’s Decision in *Buenrostro-Mendez*, that recognizes that presence without admission renders an individual like Petitioner to be both an applicant for admission and seeking admission under 8 U.S.C. §1225(b)(5).

A simple cursory review of Petitioner's documentation reveal that DHS always had the intention and did in fact detain Petitioner under § 1226(a). Petitioner was previously released on an Order of Recognizance in August 2022. Further, the Petitioner's Notice of Custody Determination states that "pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations" it was determined that, pending a final determination in Petitioner's case, he would be released on his own recognizance. *See* Exhibit A, Notice of Custody Redetermination. This provision is codified as section 8 U.S.C. §1226. Moreover, DHS issued a Notice to Appear, dated August 7, 2022, where the allegation state that Petitioner was "not then admitted or paroled" after inspection by the Immigration officer. *See* Respondent's Exhibit A, ECF No. 9-1. From the date of Petitioner's entry, DHS has designated Petitioner under 8 U.S.C. 1226(a).

Further, reliance on the Fifth Circuit's Decision is not binding on this Court and the vast majority of the Judges in this District have concluded that individuals, such as Petitioner, are in fact governed by § 1226(a). *See, e.g., Denis Fernandez-Guerrera v. ICE*, No. 2:26-cv-722-KCD-DNF (M.D. Fla. Apr. 6, 2026); *Oscar Daniel Ruiz Rios v. Garrett J. Ripa, et. al*, No. 2:26-cv-759-KCD-DNF (M.D. Fla. Apr. 6, 2026); *Perez Morales v. Noem*, No. 2:26-cv-00248_SPF-DNF (M.D. Fla. Feb. 19, 2026); *Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM; *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM (M.D. Fla. Nov. 7, 2025). Respondent's reliance on *Morales v. Noem*, 2026 LEXIS U.S. Dist. LEXIS 21488 (S.D. Fla. Jan. 29, 2026), is factually different. The respondent in *Morales* entered without inspection in 2004 and was never detected until his arrest on or about September 5, 2025. *Id.* at *3. The decision noted that "if aliens who evaded immigration authorities for some unspecified length of time cease to be 'applicants for admission' subject to sections 1225's mandatory detention and removal scheme but were instead

subject to discretionary removal . . . then aliens who would be incentivized to surreptitiously and unlawfully enter the country to obtain more robust rights. . .” *Id. at *20-21*. In this case, Petitioner entered the United States, was initially detained, and later an Immigration Officer released Petitioner on an Order of Release of Recognizance in August 2022. No reasons have been provided as to support Petitioner’s re-detention or as to his ineligibility *now* to seek bond. This is factually distinguishable from *Morales* since Petitioner in this case was detained and released on bond after an Immigration Judge’s determination. As such, Petitioner should be entitled to an individualized bond hearing as he has been detained under section 1226(a).

III. CONCLUSION

For the reasons mentioned above and in his Petition for *Habeas*, Petitioner respectfully requests that this Court grant his Petition, Order Petitioner’s immediate release per the same terms on his Order of Release of Recognizance or, in the alternative, Petitioner requests a bond hearing with the burden on the government to show by clear and convincing evidence that Petitioner is a flight risk and/or danger to persons or property and that no alternatives to detention exist to mitigate that risk.

CERTIFICATE OF SERVICE

I hereby certify that on April 10th, 2026, I filed the foregoing Reply to Respondent's response to Petition for Writ of Habeas Corpus electronically through the CM/ECF system which caused all parties or counsel to be served electronically means as more fully reflected on the Notice of Electronic filing.

Dated this 10th day of April, 2026.

/s/Carolina Corona

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