

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

Antonio Jose PEROZO-GUTIERREZ

Petitioner,

No. 2:26-cv-654-SPC-DNF

v.

Kristi Noem, et. al

Respondents.

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

Petitioner Antonio Jose PEROZO-GUTIERREZ, through undersigned counsel, respectfully submits this Reply to Respondents' Response to Petition for a Writ of Habeas Corpus.

I. Introduction

Respondents' Response should be rejected. The core dispute before this Court is whether Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2) or 8 U.S.C. § 1226(a). The distinction matters because § 1225(b)(2) mandates detention, while noncitizens detained under § 1226(a) have the right to a bond hearing before an immigration judge. See *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.").

This Court has already addressed that dispute repeatedly and rejected the government's arguments. As this Court recently explained in materially indistinguishable cases, it has jurisdiction because these detention challenges fall outside the scope of §§ 1252(g) and 1252(b)(9),

exhaustion is excused because it would be futile, and the detention of noncitizens already present in the United States is governed by § 1226(a), not § 1225(b)(2). See *Fernandez-Estrada v. Noem*, No. 2:26-cv-00566-SPC-NPM, 2026 U.S. Dist. LEXIS 51839, at *1–4 (M.D. Fla. Mar. 13, 2026); *Sanchez-Tapias v. Noem*, No. 2:26-cv-00309-SPC-DNF, 2026 U.S. Dist. LEXIS 39272, at *1–3 (M.D. Fla. Feb. 26, 2026); *Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 U.S. Dist. LEXIS 214695, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 U.S. Dist. LEXIS 219450, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025).

Respondents try to sidestep those cases by characterizing this matter as merely a challenge to an unfavorable bond ruling. But that is not what this case is about. Petitioner challenges the government’s assertion that he is subject to mandatory detention under § 1225, the immigration judge’s resulting conclusion that the court lacked jurisdiction to entertain bond, and the denial of meaningful statutory process to which Petitioner is entitled under § 1226(a). Those are legal questions squarely within this Court’s habeas jurisdiction.

Petitioner entered the United States in December 2021, was apprehended and released, lived in the United States for years maintaining lawful TPS status, and was later re-detained in Florida in December 2025. Respondents nevertheless insist that he remains perpetually subject to § 1225(b)(2), as if he were still “seeking admission” years after release into the interior of the country. That is not the better reading of the INA, and it is not the reading this Court has adopted.

II. Argument

A. This Court retains jurisdiction because Petitioner challenges the legal basis for detention and the denial of meaningful process, not merely a discretionary bond decision.

Respondents first argue that because Petitioner received a bond hearing, this Court lacks jurisdiction under 8 U.S.C. § 1226(e) to review what they characterize as an unfavorable bond determination. That argument misstates both the nature of the immigration judge's ruling and the claims presented in the Petition.

Petitioner does not seek review of a discretionary weighing of bond factors. Rather, Petitioner challenges the government's position that he is detained under § 1225(b)(2), the immigration judge's conclusion that he lacked jurisdiction to provide bond because of that detention framework, and the resulting deprivation of any meaningful opportunity to obtain release. Although the immigration judge also stated that Petitioner had not met his burden under *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006), the dispositive legal premise of the proceeding was that, under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the court lacked jurisdiction to entertain bond in the first place. That is not an ordinary discretionary determination insulated from review by § 1226(e); it is a legal ruling about detention authority and the availability of bond process.

Section 1226(e) does not bar judicial review of constitutional claims or questions of law. *See Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018). Petitioner's claims fall squarely within those categories. He asks this Court to determine whether Respondents are detaining him under the correct statutory provision and whether the process afforded to him satisfies due process. Those are legal and constitutional questions that this Court may decide.

Respondents' argument also suffers from an internal contradiction. On the one hand, they insist Petitioner is detained under § 1225(b)(2), which they say mandates detention and deprives the immigration court of bond jurisdiction. On the other hand, they invoke § 1226(e), a limitation on review of discretionary judgments under § 1226, as though this case involved a routine § 1226 bond denial. It cannot be both. If Respondents truly maintain that Petitioner is not detained under § 1226 at all, they cannot rely on § 1226(e) to shield from review the legal determination that no bond authority exists. And if § 1226 applies, then Petitioner is entitled to the protections that accompany detention under that provision. Either way, Respondents' jurisdictional argument fails.

B. Petitioner's Detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1226(b)(2).

As this Court has repeatedly explained, "[t]he core dispute before this Court is whether 8 U.S.C. § 1225(b)(2) or § 1226(a) of the Immigration and Nationality Act applies." *Ortiz-Navidad v. Sec'y, Dep't of Homeland Sec.*, No. 2:26-cv-354-JES-DNF, 2026 U.S. Dist. LEXIS 50784, at *1–2 (M.D. Fla. Mar. 12, 2026). "The distinction matters because § 1225(b)(2) mandates detention throughout removal proceedings, whereas noncitizens detained under § 1226(a) have the right to a bond hearing before an immigration judge." *Id.*

The Supreme Court has long recognized, "our immigration laws have 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). "In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Id.* (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); see also *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("once an alien enters the country, the legal

circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States”).

That is exactly the distinction this Court relied upon in *Ortiz-Navidad* and *Perez*. In those cases, the Court explained that noncitizens already in the country are treated differently than those seeking entry, and concluded that Respondents’ detention authority stemmed from § 1226(a), not § 1225(b)(2). *Ortiz-Navidad*, 2026 U.S. Dist. LEXIS 50784, at *2–5; *Perez v. Warden, Fla. Soft Side S. Det. Facility*, No. 2:26-cv-478-JES-NPM, 2026 U.S. Dist. LEXIS 51854, at *2–5 (M.D. Fla. Mar. 13, 2026).

The same reasoning applies here. Petitioner entered the United States in December 2021, was apprehended and then released, lived in the United States for years, pursued relief, and was only later re-detained in Florida in December 2025. He was not apprehended while presently “seeking admission” at a port of entry. He was a noncitizen already in the country, and his detention therefore falls under § 1226(a).

Judge Dudek’s reasoning in *Rodriguez v. Harden* is particularly helpful here. There, the Court explained that § 1225 applies where a person is both an “applicant for admission” and “seeking admission,” and that the present participle “seeking” signals an affirmative, present-tense action. No. 2:26-cv-85-KCD-NPM, 2026 U.S. Dist. LEXIS 37002, at *3–4 (M.D. Fla. Feb. 24, 2026). As this Court recognized, “[y]ou cannot actively ‘seek’ physical entry into a country if you are already living and working inside it.” *Id.* at *4. That reasoning applies with equal force here. Petitioner cannot plausibly be characterized as still “seeking admission” years after he was released into the United States and while he was living here prior to his re-detention.

Nor can Respondents’ interpretation be reconciled with the overall statutory scheme. As *Rodriguez* explained, if § 1225 already mandated detention of all non-admitted noncitizens present

in the United States, Congress's amendments to § 1226, including recent amendments mandating detention for specified categories of noncitizens already in the country, would be largely superfluous. *Id.* at *4–5. This Court should again reject that reading.

C. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), do not control this Court.

Respondents lean on *Matter of Yajure Hurtado*, *supra*, and the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*. Neither compels the result they seek.

As this Court has already recognized, *Buenrostro-Mendez* is “not binding precedent in this Court.” *Ortiz-Navidad*, 2026 U.S. Dist. LEXIS 50784, at *4; *Perez*, 2026 U.S. Dist. LEXIS 51854, at *4–5. And this Court has already made clear that it “respectfully disagrees with the Fifth Circuit's analysis and finds the analysis in *Castanon-Nava* and the dissent in *Buenrostro-Mendez* to be more persuasive on the statutory interpretation issue.” *Ortiz-Navidad*, 2026 U.S. Dist. LEXIS 50784, at *4; *Perez*, 2026 U.S. Dist. LEXIS 51854, at *5.

Likewise, *Matter of Yajure Hurtado*, *supra*, is an agency decision, not a binding decision on this Court. The question before this Court remains what relevant language in the INA means, and this Court has already answered that question in favor of applying § 1226(a) to materially similar petitioners. That reasoning applies equally here.

D. Sections 1252(g) and 1252(b)(9) do not strip this Court of jurisdiction.

Respondents next contend that §§ 1252(g) and 1252(b)(9) bar review. This Court has already rejected those same arguments in the same context. In *Fernandez-Estrada* and *Sanchez-Tapias*, the Court reiterated that, as explained in *Hinojosa Garcia* and *Vasquez Carcamo*, it has jurisdiction because the action falls outside the scope of §§ 1252(g) and 1252(b)(9). *Fernandez-Estrada*, 2026 U.S. Dist. LEXIS 51839, at *3; *Sanchez-Tapias*, 2026 U.S. Dist. LEXIS 39272, at *2–3.

That is because Petitioner does not challenge the commencement of removal proceedings, the adjudication of removability, or the execution of a final order of removal. He challenges his present physical detention and the government's refusal to provide the statutory meaningful bond process required by § 1226(a). That type of claim remains cognizable in habeas.

E. Exhaustion is excused because a BIA appeal would be futile.

Respondents also argue that Petitioner failed to exhaust because he reserved appeal from the immigration judge's order. But this Court has already held that exhaustion is excused in these circumstances because it would be futile. *Fernandez-Estrada*, 2026 U.S. Dist. LEXIS 51839, at *3; *Sanchez-Tapias*, 2026 U.S. Dist. LEXIS 39272, at *2–3.

That conclusion is especially appropriate here. The IJ's jurisdictional ruling rested on *Matter of Yajure Hurtado*, *supra*, which is binding agency precedent. Requiring Petitioner to present the same argument to the same agency hierarchy that has already resolved the issue against him would serve no practical purpose. The government cannot force Petitioner to remain detained while he performs a futile administrative exercise.

F. The alternative *Matter of Guerra*, *supra*, finding does not cure the legal defect.

Respondents will likely emphasize that, unlike some other petitioners, Antonio's IJ order also contains alternative language stating that he "has not met his burden in establishing he is a suitable bail risk" under *Matter of Guerra*, *supra*. But that does not save Respondents' position.

First, the order expressly states that the court "lacks jurisdiction" under *Matter of Yajure Hurtado*, *supra*. Once the immigration judge concluded he lacked jurisdiction because Petitioner was subject to mandatory detention under § 1225, the proceeding was not the type of meaningful § 1226 bond process required by statute. A hearing conducted under the premise that bond

authority does not exist is not transformed into a valid § 1226 proceeding merely because the order also contains an alternative adverse remark.

Second, the relief Petitioner seeks is not review of the IJ's discretionary weighing of bond factors. It is the statutory process to which he is entitled under § 1226(a): a real bond hearing before a neutral decisionmaker acting under the correct legal framework. As *Fernandez-Estrada*, *Ortiz-Navidad*, *Sanchez-Tapias*, and *Perez* all make clear, when Respondents unlawfully subject a petitioner to mandatory detention under § 1225 rather than § 1226, the remedy is a proper § 1226 bond hearing or release.

Third, this Court has already required that, where a bond hearing is ordered, it must be **meaningful**. In *Fernandez-Estrada*, the Court required an individualized bond hearing within ten days, consideration of all properly submitted evidence, application of the *Guerra* factors, and at least 48 hours' notice to counsel. 2026 U.S. Dist. LEXIS 51839, at *3–4. That reinforces the point that what matters is not whether the words “Guerra” appear somewhere in an IJ order, but whether Petitioner has actually received the statutory process required under § 1226(a).

He has not.

G. The proper remedy is a prompt § 1226 bond hearing or release.

This Court's recent orders supply the appropriate remedy. In *Fernandez-Estrada*, *Ortiz-Navidad*, *Sanchez-Tapias*, and *Perez*, the Court ordered Respondents to either provide a meaningful bond hearing within ten days or release the petitioner. *Fernandez-Estrada*, 2026 U.S. Dist. LEXIS 51839, at *3–4; *Ortiz-Navidad*, 2026 U.S. Dist. LEXIS 50784, at *5–6; *Sanchez-Tapias*, 2026 U.S. Dist. LEXIS 39272, at *3; *Perez*, 2026 U.S. Dist. LEXIS 51854, at *5–6.

The same relief is warranted here. As this Court has made clear, “subjecting [the petitioner] to mandatory detention under § 1225(b)(2) is unlawful.” *Fernandez-Estrada*, 2026 U.S. Dist.

LEXIS 51839, at *4; *Sanchez-Tapias*, 2026 U.S. Dist. LEXIS 39272, at *3. And if Respondents contend that EOIR is not a party and they cannot ensure that a timely hearing occurs, this Court has already rejected that practical objection. If Respondents are “unable to ensure that [Petitioner] timely receives the meaningful and thorough bond hearing to which he is entitled under § 1226(a), they must release him.” *Ortiz-Navidad*, 2026 U.S. Dist. LEXIS 50784, at *5; *Perez*, 2026 U.S. Dist. LEXIS 51854, at *5.

Petitioner respectfully requests that the Court follow that same approach here and order Respondents to either provide Petitioner with the statutory process required under § 1226(a), including a prompt individualized and meaningful bond hearing, or release him under reasonable conditions of supervision.

III. Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition and release him, under reasonable conditions of supervision if necessary, and grant such further relief as the Court deems just and proper, or alternatively, order Respondents to provide Petitioner with a prompt individualized and meaningful bond hearing consistent with 8 U.S.C. § 1226(a).

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Respectfully submitted,

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