

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MEL VI SAMUEL PEREZ PEREZ,
Petitioner,
v.
KEVIN GUTHRIE et al.
Respondents.
Case No. 2:26-cv-730-SPC-NPM
PETITIONER'S REPLY
IN OPPOSITION TO
RESPONDENTS' RESPONSE

**PETITIONER'S REPLY IN OPPOSITION TO RESPONDENT'S RESPONSE TO
ORDER**

I. INTRODUCTION

Respondents argue that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) and is therefore not entitled to a bond hearing. They further assert that this Court lacks jurisdiction and that Petitioner failed to exhaust administrative remedies. These arguments are without merit. Petitioner's detention is unlawful, and he is entitled to a bond hearing as a matter of statutory interpretation and constitutional due process.

As the Government concedes, courts within this District have already addressed these issues and found habeas jurisdiction proper and detention unlawful under similar circumstances. *See Hernandez-Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025), and *Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895, at *6 (M.D. Fla. Oct. 31, 2025). There, the Court was satisfied of its jurisdiction and found that petitioners were being held in violation of their rights under the INA, entitling them to habeas relief.

Since these rulings, federal courts have split over whether classifying all noncitizens under § 1225, rather than § 1226, violates the INA or the Constitution. Compare *Cabanas v. Bondi*, with *Lopez-Campos v. Kaycraft*. The better-reasoned authority holds that § 1226 provides the appropriate framework, consistent with statutory text and Supreme Court guidance.

This conclusion is reinforced by *Duran v. Noem*, No. 2:26-cv-00250 (M.D. Fla. Feb. 24, 2026) where the court addressed materially indistinguishable facts and rejected the

Government's attempt to broadly classify interior detainees under § 1225 rather than § 1226.

II. HABEAS JURISDICTION IS NOT BARRED

Respondents' assertion that 8 U.S.C. §§ 1252(g) and 1252(b)(9) strip this Court of jurisdiction is contrary to controlling Supreme Court precedent.

The Supreme Court has repeatedly emphasized that 28 U.S.C. § 2241 remains available to challenge the legality of immigration detention. In *INS v. St. Cyr*, 533 U.S. 289, 298 (2001), the Court held that habeas jurisdiction survives absent a clear and unambiguous statement from Congress eliminating such review. The Court reaffirmed the "strong presumption in favor of judicial review" of executive detention.

Likewise, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court confirmed that 8 U.S.C. § 1252(b)(9) does not bar challenges to the legality or duration of detention. The Court explained that § 1252(b)(9) applies only to claims that arise from actions taken to remove a noncitizen, not to independent challenges to detention itself.

More recently, in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), the Court clarified that habeas review traditionally includes challenges to unlawful

executive detention and remains available to test the legality of custody, even in the immigration context.

Similarly, in *Nielsen v. Preap*, 586 U.S. 392 (2019), the Court recognized that individuals detained under the immigration statutes may seek habeas relief to challenge the statutory basis of their detention. The Court proceeded to decide the merits of such a challenge, implicitly confirming the availability of habeas jurisdiction.

In *Duran v. Noem*, the court likewise exercised jurisdiction under 28 U.S.C. § 2241 over a challenge to immigration detention, rejecting the Government's argument that §§ 1252(b)(9) and 1252(g) barred review. The court treated the petitioner's claim as a core habeas challenge to unlawful detention, confirming that such claims fall outside the jurisdiction-stripping provisions. Respondents' reliance on § 1252(g) is likewise misplaced. As the Supreme Court held in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999), § 1252(g) is a narrow provision that applies only to three discrete actions: the decision to commence

proceedings, adjudicate cases, or execute removal orders. It does not bar review of detention-related claims.

Here, Petitioner does not challenge any discretionary decision to commence removal proceedings or execute a removal order. Instead, he challenges the legality of his continued detention without a bond hearing. Such claims fall squarely within the core of habeas corpus review.

Accordingly, this Court retains jurisdiction under 28 U.S.C. § 2241.

III. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)

Respondents assert that Petitioner is subject to mandatory detention under § 1225(b) as an applicant for admission. However, the facts alleged do not support that conclusion.

Respondents concede that Petitioner entered the United States at an unknown time and place and was later apprehended within the interior of the United States.

As recognized in *Jennings v. Rodriguez*, “§ 1226 applies to aliens already present in the United States,” directly supporting Petitioner’s position.

These facts distinguish Petitioner from individuals apprehended at or near the border and undermine Respondents’ reliance on § 1225(b).

Courts, including those within this District, have recognized that individuals apprehended within the United States are properly detained under 8 U.S.C. § 1226, which provides for custody determinations and bond hearings.

The statutory text further supports this conclusion. Section 1225 applies only where a noncitizen is both an “applicant for admission” and presently “seeking admission.” The present principle “seeking” denotes an active attempt to gain entry, which cannot apply to someone already inside the United States. See *Kashranov v. Jamison*, No. 2:25-cv-5555-JDW, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025). Interpreting these phrases as identical would render one

superfluous, contrary to basic canons of statutory construction.

Although the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), adopted a contrary interpretation, that decision is not binding here and there are conflicts with other persuasive authority. The Seventh Circuit has indicated that the Government’s position is

unlikely to succeed. *See Castanon-Nava v. U.S. Dep't of Homeland Security*, 161 F.4th 1048, 1060–62 (7th Cir. 2025). This Court should follow the better-reasoned approach.

The court in *Duran v. Noem* further recognized that applying § 1225 to individuals apprehended within the interior would improperly erase the statutory distinction between §§ 1225 and 1226. Consistent with the statutory text and structure, the court treated § 1226 as the proper detention authority for noncitizens already present in the United States.

At minimum, the ambiguity regarding Petitioner's status must be resolved in favor of providing a bond hearing.

IV. THE GOVERNMENT'S RELIANCE ON BIA AUTHORITY IS MISPLACED

Respondents rely on *Matter of Yajure Hurtado* to argue that Immigration Judges lack authority to conduct bond hearings under § 1225(b). That reliance is misplaced.

Board of Immigration Appeals decisions are not binding on this Court, particularly where constitutional concerns are implicated. Moreover, a federal district court has already vacated that decision as contrary to law. Although Respondents note a partial stay, the decision's persuasive value is significantly diminished.

In any event, the Court need not resolve that issue because Petitioner is not properly subject to § 1225(b).

V. EXHAUSTION DOES NOT BAR RELIEF

Respondents argue that Petitioner failed to exhaust administrative remedies. This argument fails for multiple reasons.

Exhaustion is not required when the claim raises constitutional issues, administrative remedies are inadequate, or exhaustion would be futile.

Here, Respondents' own position is that Immigration Judges lack authority to grant bond under § 1225(b). Requiring Petitioner to seek relief from an adjudicator who lacks authority to provide it would be futile.

Accordingly, exhaustion does not bar this Court's review.

VI. DUE PROCESS REQUIRES A BOND HEARING

Even assuming *arguendo* that § 1225(b) applies, prolonged detention without an individualized hearing raises serious constitutional concern.

The Fifth Amendment's Due Process Clause requires that civil detention bear a reasonable relation to its purpose and includes adequate procedural safeguards. Detention without any opportunity for individualized review violates these principles.

Petitioner has been detained since February 4, 2026, without a bond hearing. At

minimum, due process requires:

- An individualized bond hearing;
- Before a neutral decision-maker; and
- With the government bearing the burden of proof.

VII. THE COURT HAS AUTHORITY TO ORDER RELIEF

Respondents argue that a bond hearing cannot be ordered because such hearings are conducted by the Executive Office for Immigration Review. This argument is unavailing.

Federal courts routinely order bond hearings as habeas relief. The fact that another agency conducts the hearing does not limit this Court's authority to remedy unlawful detention. Recent decisions confirm that courts may order either a prompt bond hearing or release.

In *Martinez v. Bondi*, No. 2:25-cv-1158-SPC-NPM (M.D. Fla.), the court ordered respondents to

either provide a bond hearing or release the petitioner. Likewise, in *Garcia v. Mordant*, No. 2:26-cv-636-JES-DNF (M.D. Fla.), the court, while acknowledging decisions such as *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), and *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026), rejected the Government's position and ordered a bond hearing or release within ten days. These cases confirm that effective habeas relief includes conditional release where a timely bond hearing cannot be provided.

Consistent with other Middle District cases, the court in *Duran v. Noem* recognized the district court's authority to grant effective habeas relief, including ordering a bond hearing or release where detention is not authorized by statute or violates due process.

VIII. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Reject Respondents' jurisdictional and statutory arguments;

2. Hold that Petitioner's detention is governed by 8 U.S.C. § 1226, or alternatively that due process requires review; and

3. Order that Petitioner be provided an immediate bond hearing before an Immigration Judge; and

4. Alternatively, if a prompt and constitutionally adequate bond hearing cannot be provided, order Petitioner's release, or require Respondents to provide such a hearing within a fixed period (e.g., ten days), consistent with *Garcia v. Mordant* and *Martinez v. Bondi*.

Dated this 27th day of March, 2026.

Respectfully submitted,

/s/Alice Carmen Burgos

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2026, I electronically filed the foregoing Petitioner's Reply in Opposition to Respondents' Response to Order pursuant to F.R.C.P. 41(a)(1)(A)(i) with the Clerk of the Court by using the CM/ECF system, which sent notice of such filing to all parties.

/s/ Alice Carmen Burgos

Alice Burgos

Attorney for Plaintiff