

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

Isidro Alberto RAPALO CASTELLON,

Petitioner,

v.

Warden of Florida Soft Side South;
Garrett RIPA, Field Office Director of
Enforcement and Removal Operations,
Miami Field Office, U.S. Immigration
and Customs Enforcement; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S.
Attorney General; EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW.

Respondents.

Case No. 2:26-CV-00732

REPLY TO RESPONSE IN OPPOSITION

As set forth in greater detail in his Petition for a Writ of Habeas Corpus (Petition),¹ Petitioner Isidro Alberto Rapalo Castellon (Petitioner) has lived in the United States for more than seventeen (17) years. He has minor criminal history and has a family, including a son and a fiancée, who rely on him. Because Petitioner is detained unlawfully, the Court should order his immediate release, or in the alternative, require Respondents to provide him with a prompt bond hearing pursuant to 8

¹ Doc. 1.

U.S.C. § 1226. As many courts have found, including in this District, Respondents' arguments in opposition are unpersuasive. At points, their purported opposition does not even address Petitioner's actual arguments or situation. Although Petitioner submits that the Response does not give cause to deny the Petition or otherwise undermine the authorities cited therein, Petitioner emphasizes five critical points in reply.

1. Respondents' Non-Responsive, Standardized Opposition Fails as a Matter of Law

With due respect to the great volume of litigation work that the Respondents have seen as a direct result of their practice of detaining people in violation of the constitution, Respondent's response in opposition is non-responsive and cannot rebut the constitutional violations alleged.

Respondents' opposition is not tailored to this Petitioner. Instead, they describe their filing as an "abbreviated brief" submitted to "preserve legal issues" and to conserve "judicial resources." (Doc. 8, p. 1.) A two sentence fact section is provided, and Respondents' scant briefing does not meaningfully apply law to Petitioner's individualized set of circumstances. Habeas corpus is an individualized inquiry into the legality of a particular person's detention. A generalized legal memorandum untethered to the manner of Petitioner's arrest and history cannot rebut the specific constitutional violations alleged here. *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 it in the initial brief, the argument is deemed waived and we need

not address it." (citation omitted)).

Furthermore, Respondents seek to "incorporate by reference" the majority of their legal arguments from a separate case. (Doc. 8, p. 5.) First, as Respondents acknowledge, incorporation by reference is against the Middle District of Florida Rules. *See* M.D. Fla. Local R. 3.01(h). Respondents cite "efficiency" as a justification for suspending application of the rules. (Doc. 8, p. 6.) However, Respondents bear the burden of justifying civil immigration detention here and making exceptions for a party who is overwhelmed due to the sheer number of constitutional violations and resulting litigation does not seem proper nor in the public interest. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws"). Second, as a more practical matter, Petitioner's counsel does not have access to the case document which Respondents seek to incorporate by reference, and so cannot adequately respond, and Respondents did not attach it as an exhibit to their response. The inability to fully examine Respondents' counterarguments is highly prejudicial for Petitioner's counsel, and another reason that incorporation by reference should not be allowed. Therefore, as Petitioner's counsel cannot ascertain exact Respondents' argument (or lack thereof), general counterarguments are provided here.

2. This Court Has Jurisdiction over Petitioner's Habeas Claim

Respondents cite § 1252(g), stating that the Court lacks jurisdiction to hear Petitioner's habeas claim, and seeks to incorporate by reference legal arguments from a separate case. (Doc. 8, p. 5.) Respondents further contend, "[s]ome decisions have even

started recognizing that there is no jurisdiction over this question to begin with:" but provide no legal authority to sustain this declaration. (Doc. 8, p. 4.)

It is well-settled that courts have habeas jurisdiction to consider "challenges to the lawfulness of immigration-related detention." *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). While it is true that courts do not have jurisdiction to hear claims by noncitizens challenging decisions specifically to "commence proceedings, adjudicate cases, or execute removal orders," 8 U.S.C. § 1252(g), this jurisdictional bar is quite narrow. *See Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). § 1252(g) does not "impose a general jurisdictional limitation." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Rather, it "bars challenges only to the three discrete actions enumerated." *Canal A*, 964 F.3d at 1257 (cleaned up). As the Eleventh Circuit has held, § 1252(g) "does not proscribe substantive review of the underlying legal bases" for an alien's detention. *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006).

In the instant case, Petitioner explicitly challenges the basis for his detention, not the decision to commence removal proceedings. (Doc. 1, p. 5, 18-20.) Therefore, as Petitioner's habeas is challenging the basis for his detention, the Court has jurisdiction to review this claim pursuant to Eleventh Circuit precedent. *See Madu*, 470 F.3d at 1368. The Government's added citation here to § 1252(b)(9), which bars review of orders of removal or decisions to seek removal, is likewise inapplicable because Petitioner challenges only his unlawful detention.

3. Petitioner Has Sufficiently Exhausted Administrative Remedies

A petitioner does not need to exhaust administrative remedies if “the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). The Board of Immigration Appeals (BIA) held that immigration judges have no authority to consider bond requests from noncitizens who entered the United States without inspection “because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). Thus, the BIA has already “predetermined” the issue. To require Petitioner to seek custody redetermination before a court bound by the holding in *Matter of Yajure Hurtado*, and any subsequent appeal to the BIA, the court that issued the *Hurtado* decision, would be futile. *Lara-Reyes v. Woodall*, No. 3:25-cv-1618 (M.D. Fla. Mar. 16, 2026) (“the BIA has already “predetermined” the issue and requiring [] [Petitioner] to make an administrative request for a bond hearing would be futile.”). District courts nationwide, including multiple judges within this District, have consistently reached the same conclusion, declining to dismiss analogous petitions on the basis of purported failure to exhaust administrative remedies. *See Patel v. Hardin*, No. 2:25-cv-870-JES-NPM, 2025 WL 3442706, at 3 (M.D. Fla. Dec. 1, 2025); *Mohammed v. Olson*, No. 1:25-CV-02404-TWP-MKK, 2025 WL 3541819, at 2 (S.D. Ind. Dec. 10, 2025) (rejecting the respondents’ argument that the petitioner must exhaust his administrative remedies by requesting a bond hearing; reasoning that “[b]ecause [the p]etitioner entered the country without inspection, if he were to move

for a bond hearing, an [immigration judge] would have to decline jurisdiction over the issue” based on binding BIA precedent); *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-2453, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025); (“Since the result of Petitioner’s custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado*, any prudential exhaustion requirements are excused for futility.”)

Respondents again attempt to incorporate arguments from a document unavailable to Petitioner’s counsel, and so for the sake of argument, Petitioner’s counsel assumes the exhaustion that Respondents are referring to would be seeking a bond hearing with the immigration judge and subsequently pursuing an appeal to the BIA. The Court has already ruled on this argument, finding, “Respondents’ arguments are contradictory—on the one hand, they insist [] [Petitioner] must exhaust his administrative remedies by appealing the denial of his request for a bond hearing, and on the other hand, they resolutely argue that he is statutorily required to be detained and is not entitled to the bond hearing he requested.” *See Gomez-Pena v. Secretary, Department of Homeland Security*, Case No. 3:25-cv-01287-MMH-MCR, 2026 WL 83980 (Doc. 13, p. 8 & n.3) (M.D. Fla. Jan. 12, 2025). Therefore, Petitioner’s request for a bond hearing would be futile.

4. Petitioner Is Detained Pursuant to § 1226(a)

First, Respondents attempt to argue that Petitioner and those similarly situated are present without admission and thus subject to the mandatory detention scheme under § 1225(b)(2)(A). (Doc. 8, p. 2.) Respondents additionally cite to

Buenrostro-Mendez v. Bondi, and Petitioner acknowledges the Eighth Circuit's recent decision in *Avila v. Bondi*, however, this legal interpretation is the minority around the country, and a circuit split is likely developing as cases are pending before several other circuits, including the Eleventh. Furthermore, as these cases are Fifth and Eighth Circuit, their value is limited to persuasive authority.

As set forth in greater detail in the Petition, § 1226 applies to noncitizens inside the country, including those who entered without inspection, while § 1225 is limited to noncitizens seeking admission at a border or port of entry. (Doc. 1, p. 10-16.) Respondents' arguments to the contrary are unavailing. As the overwhelming majority of courts that have considered this issue have determined, Respondents' reading of the statute is contrary to the plain meaning of the text, basic principles of statutory interpretation, and well-established federal precedent. *See, e.g., Cetino v. Hardin*, No. 2:25-cv-1037-JES-DNF, 2025 WL 3558138 (M.D. Fla. Dec. 12, 2025); *Guaiquiere v. Quinones*, Case no. 6:26-cv-169-RBD-RMN (M.D. Fla.); *See Gimenez Rivero v. Mina*, No. 6:26-cv-66, 2026 WL 199319 (M.D. Fla. Jan. 26, 2026).

In short, Respondents do not dispute that Petitioner entered the United States without inspection nearly twenty years ago and has been present and resided in the United States for more than seventeen years, nor do they not contest that Petitioner was arrested during a traffic stop by Respondent DHS in Miami. In other words, Petitioner was not "arriving" at a border nor "seeking admission" when he was arrested. Accordingly, Petitioner is being detained pursuant to § 1226, which requires an individualized bond hearing.

5. A Bond Hearing is not the Only Appropriate Remedy

In its response, Respondents contend that the “only appropriate remedy is to begin the process for a bond hearing[.]” (Doc. 8, p.6.) However, ordering a bond hearing under 8 U.S.C. § 1226(a), with all attendant burdens of proof, as the Court has done in previous cases is not an adequate remedy. The systematic transformation of the immigration court from a neutral adjudicatory body into an instrument of the administration's enforcement agenda has rendered it structurally incapable of providing Petitioner with the impartial tribunal and individualized assessment that 1226(a) and due process requires. Accordingly, the Court should exercise its equitable authority to order Petitioner's immediate release.

In the alternative, the Court should conduct its own bail hearing. At a minimum, if the Court declines to order release or conduct its own hearing, it should order a bond hearing before an immigration judge with explicit procedural safeguards and retain jurisdiction to review the determination to ensure compliance with due process. Such safeguards include ordering a bond hearing where the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk and providing that the habeas Court shall retain jurisdiction to review the immigration judge bond decision to ensure compliance with the Court's order and due process.

CONCLUSION

In conclusion, Petitioner respectfully urges the Court to reach the same conclusion as legion federal courts by likewise holding that Petitioner's continued

detention without a bond hearing violates the Immigration and Nationality Act and his right to due process. Because he continues to be unlawfully detained, Petitioner respectfully requests that this Court grant his Petition for a Writ of Habeas Corpus and order his release forthwith.

DATED: March 25, 2026

Respectfully submitted,

/s/ Calvin Azadi

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that, on March 25, 2025, he caused the foregoing Reply to be filed using the CM/ECF system, which will send notification of such filing to all counsel of record.

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