

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

YASIEL NIETO GUERRA,

Petitioner,

Case No. 2:26-cv-756-KCD-NPM

v.

KRISTI NOEM, SECRETARY OF THE U.S.
DEPARTMENT OF HOMELAND SECURITY;
PAMELA BONDI, ATTORNEY GENERAL OF THE UNITED STATES;
TODD M. LYONS, ACTING DIRECTOR OF
IMMIGRATION AND CUSTOMS ENFORCEMENT;
DIRECTOR OF THE FLORIDA SOFT SIDE SOUTH
(ALLIGATOR ALCATRAZ); GARRET RIPA, FIELD OFFICE
DIRECTOR FOR ENFORCEMENT AND REMOVAL
OPERATIONS, U.S. DEPARTMENT OF HOMELAND SECURITY;
IN THEIR OFFICIAL CAPACITIES,

Respondents.

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

Petitioner, Yasiel Nieto Guerra, by and through undersigned counsel, files this Reply to Respondents' Response to the Petition for Writ of Habeas Corpus and respectfully requests that the Court grant the Petition and order the appropriate relief.

SECTION 1252(G) DOES NOT BAR REVIEW OF DETENTION AUTHORITY

Respondents argue that Title 8 U.S.C. § 1252(g) bars review of Petitioner's claims, Petitioner disagree for the following reasons:

The Court's jurisdiction is preserved under established exceptions to § 1252(g)'s general bar on judicial review. Petitioner's habeas petition challenges the legality of his detention, not the underlying removal proceedings or removal order. Alvarez v. United States Immigration & Customs Enf't, 818 F.3d 1194 (11th Cir. 2016). Federal courts consistently recognize that § 2241 habeas proceedings remain available for constitutional and statutory challenges to detention, particularly where statutory review procedures are insufficiently protective. Alvarez v. United States Immigration & Customs Enf't, 818 F.3d 1194 (11th Cir. 2016).

The jurisdictional analysis must distinguish between challenges to removal orders, which are generally barred by § 1252(g), and challenges to detention authority, which remain cognizable under § 2241. Gonzalez-Alarcon v. Macias, 884 F.3d 1266 (10th Cir. 2018). Here, Petitioner specifically challenges his detention under both statutory and constitutional theories, arguing that he is improperly classified under § 1225(b) when § 1226(a) should apply, and that his prolonged detention without a bond hearing violates due process.

A. The Narrow Scope of Section 1252(g)

In Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 119 S. Ct. 936 (1999), the Supreme Court emphasized that § 1252(g) applies only to discrete listed actions and "was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial

discretion." United States v. Hovsepian, 359 F.3d 1144 (9th Cir. 2004). Courts have followed the Supreme Court's instruction to interpret § 1252(g) narrowly. United States v. Hovsepian, 359 F.3d 1144 (9th Cir. 2004).

Section 1252(g) bars review of three specific decisions: (1) to commence proceedings, (2) adjudicate cases, or (3) execute removal orders. Petitioner does not seek review of any of these prosecutorial decisions.

B. Petitioner Challenges Custody Authority, Not Prosecutorial Discretion

Petitioner's challenge focuses on the statutory basis for his detention and his constitutional right to a hearing, not on DHS's prosecutorial decisions. He argues that he cannot be classified as an arriving alien subject to mandatory detention under § 1225(b)(1)(B)(ii) because he has been residing in the United States for over four years since his 2021 entry. This challenge to the legal authority for detention is distinct from the prosecutorial decisions protected by § 1252(g). Courts regularly distinguish between challenges to detention procedures and challenges to removal decisions.

FEDERAL JURISDICTION EXISTS

Habeas Corpus Jurisdiction Under 28 U.S.C. § 2241

This Court has jurisdiction under 28 U.S.C. § 2241 to review challenges to the legality of immigration detention. The REAL ID Act's elimination of habeas jurisdiction applies to final orders of removal, not to collateral challenges to detention authority. Kamara v. AG of the United States, 420 F.3d 202 (3d Cir. 2005), J. E. F.M. v. Whitaker, 908 F.3d 1157 (9th Cir. 2018).

Petitioner is physically detained within this District, satisfying the custody requirement

for habeas jurisdiction.. His challenge to the statutory basis for detention falls squarely within the traditional scope of habeas corpus review.

EXHAUSTION IS EXCUSED AS FUTILE

Respondents also argue that Petitioner failed to exhaust his administrative remedies, Petitioner disagree for the following reasons:

Exhaustion is excused where administrative remedies would be futile. Here, the Government's position is that Petitioner is subject to mandatory detention under § 1225(b)(2)(A) with no possibility of bond. Under this theory, immigration judges lack authority to grant bond hearings to applicants for admission, making further administrative proceedings pointless. The Government cannot simultaneously argue that Petitioner is subject to mandatory detention without possibility of administrative relief and then fault him for failing to pursue that unavailable relief. The futility exception applies precisely to these circumstances where the agency's legal position forecloses the possibility of meaningful administrative review.

***MATTER OF YAJURE HURTADO*, 29 I&N DEC. 216 (B.I.A. 2025) AND SECTION 1225**

Respondents rely on the Board of Immigration Appeals (BIA) examination of the plain language of Section 1225 in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). However, *Matter of Yajure Hurtado* is an incorrect interpretation of the law and just mirrors the Department of Homeland Security (DHS) and Department of Justice (DOJ) Interim Guidance acknowledging a new interpretation of the Immigration and Nationality Act (INA) as to DHS's authority to detain noncitizens. *Matter of Yajure Hurtado* is functionally the equivalent to the DHS Interim Policy. On February 18, 2026 the United States District Court for the Central District of California in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. 2025) vacated *Matter of Yajure Hurtado*. Further Section

1225(b)(1) establishes the procedures for expedited removal. It allows immigration officers to remove noncitizens “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). As expedited removal affords substantially fewer protections to the noncitizen's rights, the INA limits its applicability in two ways. First, noncitizens may be eligible for expedited removal “only if they are inadmissible on the basis that they either lack proper entry documents or falsified or misrepresented their application for admission.” *Coalition for Humane Immigrant Rights v. Noem*, --- F. Supp. ---, ---, 2025 WL 2192986, at *5 (D.D.C. 2025) (citing 8 U.S.C. §§ 1225(b)(1)(A)(i) and 1182(a)(6)(C), (a)(7)). And “[a]mong that set, only two categories of noncitizens are eligible for expedited removal: (1) noncitizens ‘arriving in the United States,’ and (2) noncitizens who ‘ha[ve] not been admitted or paroled into the United States’ and cannot affirmatively show that they have been ‘physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.’ ” *Id.* (quoting 8 U.S.C. § 1225(b)(1)(A)(i)–(iii)). In the present case, DHS could have designated Petitioner for expedited removal when he entered the country in 2021, instead they released him under section 1226 (a), issued an NTA before the Immigration court and allow him to stay for almost four years before arresting him. As a result, Petitioner is not eligible for expedited removal, and Respondents’ authority to detained him stems from section 1226 (a). Therefore, Petitioner is entitled to a bond hearing under section 1226 (a).

RELIEF REQUESTED

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

Grant the Petition for Writ of Habeas Corpus.

Issue a Writ of Habeas Corpus, either (1) ordering her immediate release, (2) requiring an individualized custody redetermination hearing with an immigration judge

Grant such other and further relief as the Court deems just and proper.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 6, 2026, the foregoing response was electronically filed with the clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted

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