

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LEONARDO JAVIER NORDELO LEZCANO,

Petitioner.

v.

WARDEN OF GLADES COUNTY
DETENTION CENTER, et al.

Respondents.

Civil Action No. 2:26-cv-766-KCD-DNF

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION

Petitioner, LEONARDO JAVIER NORDELO LEZCANO ("Petitioner"), by and through undersigned counsel, files this Reply to Respondents' Opposition to Petition for Writ of Habeas Corpus, *See* D.E. 7, and states as follows:

Petitioner restates all factual allegations and legal arguments within his Verified Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

Argument

I. Respondents' Argument That This Court Lacks Jurisdiction Under 8 U.S.C. § 1252(g) Fails.

Respondents first argue that this Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(g). *See* D.E. 7 at 3–4. Respondents' argument mischaracterizes the relief requested in the Petition.

Petitioner does not challenge the decision to commence removal proceedings, adjudicate removal proceedings, or execute a removal order.

Instead, Petitioner challenges the statutory and constitutional basis for his continued detention.

Federal courts retain jurisdiction under 28 U.S.C. § 2241 to review challenges to immigration detention that violates federal law or the Constitution.

Courts within this District, including this Court, have exercised jurisdiction over materially identical detention-classification challenges. As such, 8 U.S.C. § 1252(g) does not deprive this Court of jurisdiction in this matter.

II. Respondents Incorrectly Assert That Petitioner Is Subject to Mandatory Detention Under 8 U.S.C. § 1225(b).

Respondents next argue that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) because he entered the United States without inspection in October 2022. *See* D.E. 7 at 5. Respondents rely primarily on language in the record stating that Petitioner was: “processed as expedited removal with credible fear and released due to lack of bed space.” *See* D.E. 7 at 2.

That statement obfuscates the statutory journey of immigrants seeking protection from persecution and torture as enacted by Congress and misdirects the Court to the statutory authority governing Petitioner’s detention. Petitioner was initially placed in expedited removal but expressed a fear of return to Cuba due to his detention and torture by the Cuban government. Pursuant to the procedure established by 8 CFR § 208.30, he was given a credible fear interview, which he passed, and was therefore placed into removal proceedings under 8 USC § 1229a.

Respondents acknowledge that Petitioner is in fact in removal proceedings under 8 USC 1229a because Petitioner was later served with a Notice to Appear dated April 17, 2025, initiating removal proceedings. *See* D.E. 7 at 2. Since April 2025, Petitioner has remained detained pursuant to removal proceedings, not expedited removal. Accordingly, Respondents’ reliance on § 1225(b) is misplaced.

III. This Court Has Already Rejected Respondents' Interpretation Of § 1225(b).

Respondents argue that Petitioner remains an applicant for admission subject to mandatory detention under § 1225(b). *See* D.E. 7 at 5.

This Court has already addressed that argument. *Ruiz Rios v. Ripa*, No. 2:26-cv-00759-KCD-DNF, slip op. (M.D. Fla. Apr. 6, 2026) (Dudek, J.). As this Court recently explained, detention under § 1225 applies only where a noncitizen is both an applicant for admission and presently seeking admission.

The Court explained that, “[u]se of the present participle ‘seeking’ signals an affirmative, present-tense action.” *Ruiz Rios v. Ripa*, No. 2:26-cv-00759-KCD-DNF, slip op. at 3-4 (M.D. Fla. Apr. 6, 2026) (Dudek, J.). The Court further explained that an individual cannot actively “seek” entry into the United States while already living and working inside the country. *Id.* at 4. That reasoning applies directly here. Interpreting “seeking admission” to apply to all applicants for admission would improperly render the statutory phrase surplusage, a result this Court has already rejected. *Id.*

Petitioner entered the United States in October 2022, passed a credible fear interview, filed for asylum, resided in South Florida, and remained physically present in the United States prior to being detained in April 2025. At the time ICE detained Petitioner in April 2025, he was not “seeking admission” within the meaning of § 1225(b).

Instead, his detention falls within the discretionary detention framework of 8 U.S.C. § 1226(a). Because Petitioner was not “seeking admission” at the time ICE assumed custody of him in April 2025, his detention falls within the discretionary detention framework of 8 U.S.C. § 1226(a), the same statutory posture under which this Court has already granted habeas relief requiring a constitutionally adequate custody determination. *Id.*

IV. Respondents' Reliance On 8 U.S.C. § 1226(e) Does Not Bar Review of Petitioner's Habeas.

Respondents next argue that this Court lacks authority to review Petitioner's custody determination pursuant to 8 U.S.C. § 1226(e). *See* D.E. 7 at 6–7. Respondents' argument mischaracterizes the Petition as Petitioner does not seek review of a discretionary bond determination.

Instead, Petitioner challenges the statutory classification of his detention under 8 U.S.C. § 1225 rather than 8 U.S.C. § 1226 and the absence of a constitutionally adequate individualized custody determination. 8 U.S.C. § 1226(e) does not bar judicial review of constitutional or statutory challenges to immigration detention. Accordingly, Respondents' reliance on 8 U.S.C. § 1226(e) is misplaced.

V. Petitioner Has Not Had a Bond Hearing as Required Under 8 U.S.C. § 1226(a).

Respondents argue that Petitioner received a custody redetermination hearing and that the Immigration Judge denied bond after finding Petitioner to be a flight risk. *See* D.E. 7 at 2. Respondents omit the basis for that finding.

The Immigration Judge denied bond because Petitioner “presently had no relief available in his removal proceedings.” *See* D.E. 7 at 2. That is not a permissible custody factor.

Bond determinations must evaluate danger to the community and risk of flight. They may not be based on anticipated outcomes in removal proceedings, which is still ongoing as Petitioner is scheduled for an Individual Hearing before the Immigration Judge on June 2, 2026. *See* Notice of Hearing for Individual Hearing attached as Exhibit “A”.

At the time of the custody hearing, the Immigration Judge relied on the anticipated outcome of Petitioner's pending relief rather than the proper custody factors. *See* D.E. 1-3. The denial of

bond therefore rested on speculation regarding the merits of Petitioner's removal case rather than a lawful custody determination.

This outcome is despite the fact that there has been no ruling whatsoever regarding the merits of respondent's claim for asylum and protection under the torture convention, and the existence in the record of a psychological evaluation showing Respondent to be suffering from PTSD due to beatings in Cuban detentions. Ultimately, the Immigration Judge jumped to the conclusion that Petitioner has no relief available. The bond hearing was illusory.

Consequently, a bond hearing before the Immigration Judge is an inadequate remedy because it is unlikely to be a fair one. *Singh v. Hagan*, No. 1:26-cv-01109, slip op. at 9 (D. Colo. Apr. 1, 2026) (Internal cites omitted). This is because immigration judges "often cite little or no reasoning in determining that noncitizens are a flight-risk." *Singh v. Hagan*, No. 1:26-cv-01109, slip op. at 9-10 (D. Colo. Apr. 1, 2026) (Internal cites omitted).

Recently, the United States District Court of Colorado learned that an immigration judge declined to release a petitioner on bond for whom it had ordered a bond hearing in a summary decision that merely stated, without any citation to specific facts[, a]fter considering the totality of the circumstances and all relevant factors, the Court denies bond. *Singh v. Hagan*, No. 1:26-cv-01109, slip op. at 10 (D. Colo. Apr. 1, 2026) (Internal cites omitted).

Based on the observations of fellow judges across the country, the same Court was far from convinced this was an isolated incident. *Singh v. Hagan*, No. 1:26-cv-01109, slip op. at 10 (D. Colo. Apr. 1, 2026) (Internal cites omitted) (citing *Zheng v. Rokosky, et al.*, --- F. Supp. 3d ---, 2026 WL 800203, at *6 (D.N.J. Mar. 23, 2026) (ordering immediate release after "IJ erroneously stated that she lacked jurisdiction in direct defiance of [the] Court's Order, failed to provide any explanation whatsoever for her supposed alternative holding that Petitioner is a flight risk, and by

all appearances acted as a ‘mere rubber-stamp’ . . . for Respondents’ predetermined decision to deny bond”); *Montero-Martinez v. Mattos*, et al., 2026 WL 674497, at *1–2 (D. Nev. Mar. 9, 2026) (ordering release after petitioner’s due process rights were violated when his bond was “revoked based on materially false information” regarding his criminal record); *Miri v. Bondi*, 2026 WL 622302, at *9 (C.D. Cal. Mar. 5, 2026) (ordering release after finding IJ abused its discretion in denying bond where they “did not explain the reasons for denying Miri’s bond,” “did not describe which Martinez factors were considered, if any, or what evidence was relied on,” and “did not explain the reasons for denying Miri’s bond and the record does not establish that the [IJ] relied on the appropriate factors”); *Rodriguez v. Greene*, 2026 WL 574961, at *12 (N.D. Ohio Mar. 2, 2026) (finding due process violation where “the IJ’s decision . . . contain[ed] zero reference to any record or arguments put forth by either party,” denied bond “exclusively on jurisdictional grounds,” and held in the “alternative” that the petitioner was a danger to the community and a flight risk “without supplying any reasoning [as to] how the IJ came to such a conclusion”)).

Because Petitioner has not received a constitutionally adequate individualized bond hearing, continued detention is unlawful. As such, Petitioner seeks an Order granting his Habeas with immediate release from detention or a proper, legal, individualized bond hearing.

VI. Administrative Exhaustion Is Not Required and Would Have Been Futile.

Respondents argue that Petitioner failed to exhaust administrative remedies before filing the Petition. *See* D.E. 7 at 6.

28 U.S. Code § 2241 itself does not impose an exhaustion requirement,” *Santiago-Lugo v. Warden*, 785 F.3d 467, 471 (11th Cir. 2015), nor do the relevant sections of the INA require Petitioner to exhaust administrative remedies before filing petitions for habeas corpus. *See Paz Nativi v. Shanahan*, No. 16-CV-8496 (JPO), 2017 WL 281751, at *1-2 (S.D.N.Y. Jan. 23, 2017)

(“There is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus; however, such exhaustion is generally required as a prudential matter.”) (collecting cases). Nor is “a § 2241 petitioner’s failure to exhaust administrative remedies a jurisdictional defect.” *Santiago-Lugo*, 785 F.3d at 471. Instead, the exhaustion requirement as applied to a habeas like this one is judicially imposed and serves as a prudential consideration. *Id.* at 474-75.

In the alternative, exhaustion would be inadequate, futile, or would cause irreparable harm and Petitioner has already been in detention unlawfully for several months, after the IJ granted the bond. *See e.g., Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020) (declining to require exhaustion in light of Petitioner’s already prolonged detention).

Courts routinely decline to require exhaustion where administrative review would be futile. In this case, Petitioner has exhausted his remedy when he “sought review of their custody from IJs pursuant to the procedural protections they are afforded under § 1226(a) and successfully established by clear and convincing evidence that they should be released on bond.” *Herrera v. Knight*, 798 F. Supp. 3d 1184, 1197 (D. Nev. 2025) (finding that petitioners did exhaust their administrative remedies); *compare Sequeira-Balmaceda v. Reno*, 79 F. Supp. 2d 1378, 1382 (N.D. Ga. 2000) (finding petitioner failed to exhaust administrative remedies prior to Immigration Judge’s ruling on motion for bond).

Here, appealing the custody determination to the Board of Immigration Appeals would have been futile because the Immigration Judge’s ruling rested on a legal determination regarding the availability of relief in removal proceedings rather than a proper custody analysis.

Under those circumstances, exhaustion was not required prior to filing the Petition. Courts, including this Court, have exercised habeas jurisdiction in materially similar detention-

classification cases without requiring administrative exhaustion where the challenge concerns statutory detention authority rather than discretionary custody determinations.

VII. Respondents Mischaracterize Petitioner's Criminal History.

Respondents also assert that Petitioner "had been arrested on various charges in 2023 and 2024." *See* D.E. 7 at 2. This mischaracterization materially overstates the record. Respondents' mischaracterization risks creating the misleading impression that Petitioner has a significant criminal history when the record reflects only a single pending misdemeanor matter.

Petitioner has a pending misdemeanor matter reflected in the record, which remains unresolved because Petitioner has been continuously detained by ICE since April 2025 and cannot appear in state court while in immigration custody. Petitioner disclosed this case in his Petition.

Petitioner's remaining prior offenses consist of minor misdemeanor-level conduct that does not justify continued detention without a constitutionally adequate custody determination.

CONCLUSION

Based on the foregoing points and authorities, Petitioner respectfully requests that this Court grant his Petition for Writ of Habeas Corpus and order Respondents to immediately release Petitioner or provide him with a constitutionally adequate individualized custody determination under 8 U.S.C. § 1226(a), and such further relief as the Court deems just and proper.

Date: April 13, 2026

Respectfully submitted:

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