

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

RAFAEL LUCAS HERNANDEZ,

Petitioner

VS.

PAMELA BONDI, et al.¹

Respondents.

[illegible]

Case No.: 3:26-cv-668-MMH-MCR

**PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE TO HABEAS
PETITION**

INTRODUCTION

The Government concedes that the questions of law presented in this case, and the challenges to the government’s policy and practice substantially overlap with *Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR, 2026 WL 83980 (M.D. Fla. Jan. 12, 2026) and *Hector Gutierrez Ortiz v. Kristi Noem*, No. 3:25-cv-1386-MMHMCR, 2025 WL 3653217 (M.D. Fla. Dec. 17, 2025), in which this Court already rejected the same arguments the Respondents now advance. Respondents nevertheless rely on out-of-circuit decisions from the Fifth and Eighth Circuits—*Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir.

¹ Secretary of Homeland Security Markwayne Mullin and Interim Attorney General Todd Blanche are automatically substituted for their predecessors under Rule 25(d) of the Federal Rules of Civil Procedure.

Feb. 6, 2026), and *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026). But unless and until the Eleventh Circuit holds otherwise, this Court's prior ruling in similar cases such as *Gomez-Pena*, *Gutierrez Ortiz*, and *Perez Bravo* should control. *Perez Bravo v. Field Office Dir. of Enf't & Removal Ops., Miami Field Off., ICE*, No. 3:26-cv-502-MMH-SJH, Doc. 7 (M.D. Fla. Apr. 21, 2026). Because this case is not materially distinguishable from *Perez Bravo* on whether Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), the Court should reach the same result and grant habeas relief. Moreover, Respondents concede that this Court has already rejected their legal position and offer no basis for reconsideration.

ARGUMENT

I. 8 U.S.C. § 1252(g) and §1252(b)(9) Do Not Bar Review of Petitioner's Claim.

Respondents argue that title 8 U.S.C. § 1252(g) bars review of Mr. Lucas Hernandez' claims. But this Court has already held in similar cases that § 1252(g) does not bar review of the precise question presented here. *Perez Bravo v. Field Office Dir. of Enf't & Removal Ops., Miami Field Off., ICE*, No. 3:26-cv-502-MMH-SJH, Doc. 7 (M.D. Fla. Apr. 21, 2026). The jurisdictional bar at 8 U.S.C. § 1252(g) is narrow – it applies only to three discrete actions: the decision to commence removal proceedings, the adjudication of removal proceedings, and the execution of removal orders. *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482–83 (1999). Mr. Lucas Hernandez is not challenging any of those actions.

Instead, he asks the Court to answer a legal question—whether he is subject to mandatory detention under Section 1225(b)(2) or discretionary detention under Section 1226(a). This case therefore presents a pure statutory detention-authority question. It does not challenge the decision to commence removal proceedings, the adjudication of removal proceedings, or the execution of any removal order, but instead concerns only whether Respondents are detaining Petitioner under the correct statutory provision. Therefore, section 1252(g) does not apply. Courts consistently distinguish between challenges to removal proceedings themselves and challenges to the statutory authority for detention pending those proceedings, the latter of which remains squarely within habeas jurisdiction. The Supreme Court has repeatedly confirmed that habeas jurisdiction remains available to challenge immigration detention itself. *See Jennings*, 583 U.S. at 294; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003). Classification under § 1225 vs § 1226 is a statutory detention question independent of removal initiation.

Next, Respondents argue that title 8 U.S.C. § 1252(b)(9) bars review of Mr. Lucas Hernandez’s claims. Section 1252, titled “Judicial Review of Orders of Removal,” outlines certain matters not subject to judicial review. *See* 8 U.S.C. § 1252. Subsection (b), titled “Requirements for Review of Orders of Removal,” channels review of “final orders of removal” to federal courts of appeals. 8 U.S.C. § 1252(b). There is no such order here, nor is Mr. Lucas Hernandez seeking review

of one. Mr. Lucas Hernandez is challenging Respondents' determination that he is subject to detention under § 1225(b), which they claim requires mandatory detention. Therefore, this Court should find that § 1252(b)(9) does not bar this Court from reviewing Mr. Lucas Hernandez' claims.

II. Any exhaustion requirement should be waived because Petitioner raises constitutional claims outside the jurisdiction of the immigration courts and because exhaustion would be futile.

Next, Respondents argue that Petitioner failed to exhaust his administrative remedies prior to seeking habeas relief. That argument fails because exhaustion in § 2241 proceedings is prudential, not jurisdictional. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015). Congress has imposed a statutory exhaustion requirement only for review of final orders of removal, not for challenges to the legality of immigration detention. *See* 8 U.S.C. § 1252(d)(1)

Courts therefore waive exhaustion “(1) where prejudice to the prisoner’s subsequent court action ‘may result, for example, from an unreasonable or indefinite timeframe for administrative action’; (2) where the administrative agency may not have the authority ‘to grant effective relief’; or (3) ‘where the administrative body is shown to be biased or has otherwise predetermined the issue before it.’” *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1297 (N.D. Ga. 2007) (citing *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)); *see also Woodford v. Ngo*, 548 U.S. 81, 103 (2006) (Breyer, J. concurring) (noting “well-established exceptions to exhaustion” that

include constitutional claims, futility, hardship to the petitioner, and where administrative remedies are inadequate or unavailable) (citations omitted)).

In this case, Petitioner's constitutional challenge to his detention is exempt from administrative exhaustion requirements because such challenge falls outside the jurisdiction of the BIA. *See Woodford*, 548 U.S. at 103 (Breyer, J. concurring) (constitutional claims are exempt from administrative exhaustion); *see also Khan v. Atty. Gen. of U.S.*, 448 F.3d 226, 236 n.8 (3d Cir. 2006) (internal quotation omitted) (“[D]ue process claims generally are exempt from the exhaustion requirement because the BIA does not have jurisdiction to adjudicate constitutional issues.”); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002). Because the agency cannot grant relief on these claims, exhaustion serves no purpose and should be excused. *McCarthy*, 503 U.S. at 147–48.

Exhaustion would also be futile. Exhaustion is futile where the agency has “predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). That is precisely the case here. The BIA has held that immigration judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2026). This decision is binding on immigration courts across the country. Accordingly, any request for relief before the immigration courts would necessarily be denied as a matter of binding agency precedent, rendering exhaustion futile.

Moreover, Respondents themselves assert that Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A), a provision under which immigration judges lack authority to conduct bond hearings. Because the administrative process offers no mechanism through which Petitioner could obtain the relief he seeks, exhaustion is not merely futile—it is unavailable as a matter of law.

Finally, the Supreme Court has emphasized that where a person is detained by executive authority, “the need for collateral review is most pressing.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008). Requiring exhaustion here would therefore serve no purpose and would only delay review of the legality of Petitioner’s ongoing detention. The Court should exercise its discretion to waive any exhaustion requirement and reach the merits.

III. Respondents’ attack on the APA claim is legally unsound.

Respondents argue that the APA is unavailable because habeas provides an adequate remedy and that *J.G.G. v. Trump* forecloses APA jurisdiction. That argument misreads both § 704 and the governing case law. If accepted, Respondents’ position would effectively immunize all detention-related agency decisions from APA review, a result flatly inconsistent with § 706 and longstanding Supreme Court precedent requiring reasoned, non-arbitrary executive action.

The availability of habeas does not bar APA jurisdiction because habeas cannot remedy the agency-law violations Petitioner alleges. Habeas addresses the

legality of custody; the APA addresses the legality of the executive decision-making process that produced that custody. Where, as here, a petitioner challenges both the fact of detention and the lawfulness of the agency action that caused it, § 704 does not bar APA review.

J.G.G. v. Trump is inapplicable because Petitioner does not seek to use the APA as a substitute for habeas or as a vehicle for release from custody. Rather, Petitioner invokes the APA to challenge DHS's arbitrary and unexplained custody reclassification. Habeas and the APA thus serve distinct and complementary functions in this case. APA review remains available where the petitioner challenges agency policy or interpretation underlying detention rather than custody alone.

CONCLUSION

For these reasons, and the reasons stated in the Petition, the Court should GRANT the Petition for Writ of Habeas Corpus and order Petitioner's immediate release or, in the alternative, a bond hearing.

Respectfully submitted,

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