UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Jahyr Rodriguez Rosas,

Petitioner,

No. 2:25-cv-01062-JES-NPM

v.

Secretary Kristi Noem, et al.,

Respondents.
_____/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jahyr Rosas challenges his detention by U.S. Immigration and Customs Enforcement, arguing his detention is continuing detention is unlawful, and he is entitled to a bond hearing under 8 U.S.C. § 1226. While reserving all rights, including the right to appeal, Respondents submit an abbreviated brief in lieu of an exhaustive memorandum to preserve the Respondents' arguments and to conserve judicial resources. Should the Court prefer a more exhaustive discussion, Respondents request leave to submit additional briefing.[1]

[1] The only appropriate respondent to a habeas case is the official with physical custody of Rodriguez. 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) ("[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."). Accordingly, the only proper respondent in this case is the Warden of Florida Soft-Sided Facility South in his official capacity. *See e.g.*, *Vandersnick v. Sec'y, Fla. Dep't of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021).

FACTS

Rosas is a national and citizen of Mexico who last entered the United States at an unknown time place in or about 2005. (Petition, Doc. 1 ¶¶ 2, 5.) Rosas is currently detained at the ERO El Paso Camp East Montana. (Detainee Locator, Ex. A.) The petitioner is listed as a derivative in a Form I-589, Application for Asylum and for Withholding of Removal filed on February 6, 2025. (Petition, Doc. 1, Ex. C.) He was served with a Notice to Appear on December 11, 2025.[2]

Rosas has filed a petition for writ of habeas corpus alleging his custody violates the Fifth Amendment, the Immigration and Nationality Act, and bond regulations. (Doc. 1.)

ARGUMENT

I. Rosas's continued detention does not violate the U.S. Constitution

Under the Fifth Amendment's Due Process Clause, "a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). For confinement to constitute "punishment," a petitioner must show either "an expressed intent to punish on the part of detention facility officials," or an implied intent to punish through a condition or restriction that a "is not reasonably related to a legitimate goal—if it is arbitrary or purposeless[.]" *Id.*

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[2] Undersigned has not received a copy of the Notice to Appear at the time of filing but will supplement the record once it is received.

at 538-39. "Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Id.* at 539.

Rosas fails to show that detention is not proportionately related to the government's non-punitive responsibilities and administrative purposes. While civil detainees retain greater liberty protections than individuals convicted of crimes, *see, e.g.*, *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982), continued immigration detention pending removal cannot be described as punitive or excessive in relation to the legitimate government purpose of protecting the public and ensuring their removal. *See, e.g., Demore v. Kim*, 538 U.S. 510, 523 (2003) ("[T]his Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process."). "[I]t is a fallacy to think that Respondents do not have a legitimate government purpose in 'preventing detained aliens from absconding and ensuring that they appear for removal.'" *Matos v. Lopez Vega*, No. 20-CIV-60784-RAR, 2020 WL 2298775, at *10 (S.D. Fla. May 6, 2020).

II. Rosas is properly detained under 8 U.S.C. § 1225.

In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) the Board of Immigration Appeals (BIA) examined the plain language of Section 1225, the INA's statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

("IIRIRA"), Pub L. No. 104-208, and DHS's prior practices. After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the petitioner, who are present in the United States without admission." 29 I&N Dec. at 225. This Court should rule the same.

Respondents acknowledge that questions of law in this case, and the challenges to the government's policy and practice, substantially overlap with *Patel v. Hardin*, No. 2:25-cv-00870-JES-NPM (M.D. Fla.) (Doc. 22) (granting habeas in part). It should be noted, however, many courts recently ruled in Respondents in similar challenges. *Manzo Valencia v. Chestnut*, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *1-4 (E.D. Cal. Nov. 17, 2025).[3] There is therefore a countrywide district split on applying § 1225 or § 1226 in these instances. And at least four circuits have active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Buenrostro-Mendez v. Bondi*, No.

[3] *See also Suarez v. Noem*, No. 1:25-cv-00202-JMD, 2025 WL 3312168, at *2-3 (E.D. Mo. Nov. 28, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284, at *1-5 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *4-9 (C.D. Cal. Nov. 12, 2025); *Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *3-7 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *2-5 (E.D. Mo. Nov. 10, 2025);*Oliveira v. Patterson*, No. 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972, at *2-6 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, *2-6 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *2-10 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H (Doc. 9) (N.D. Tex. Oct. 24, 2025); *Kum v. Ross*, No. 6:25-cv-00451-DCJ-CBW, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351, at *4-9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4-5 (S.D. Cal. Sept. 24, 2025).

25-20496 (5th Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.).[4]

Respondents respectfully disagree with the Court's decision in *Patel*. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments:

1. Title 8 U.S.C. § 1252(g) bars review of the Rosas's claims. *Patel v. Hardin*, No. 2:25-cv-00870-JES-NPM, Doc. 15 at 4-7 (M.D. Fla. Oct. 22, 2025).[5]
2. Title 8 U.S.C. § 1252(b)(9) bars review of Rosas's claims. *Id.* at 7-8.
3. Rosas failed to exhaust his administrative remedies. *Id.* at 8-9.
4. Rosas is properly detained under 8 U.S.C. § 1225. *Id.* at 10-16.

Finally, Respondents contend that should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226, outright release is inappropriate. To the extent the Court orders a bond hearing before an Immigration Judge for the purpose of determining whether Petitioner is a flight risk or danger to the community—*see, e.g., Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL

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[4] *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Cortes Alonzo*, 2025 WL 3208284; *Pizzaro Reyes v. ERO*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).

[5] Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of efficiency, Respondents respectfully request the Court to suspend application of the rule in this instance. *See* Local Rule 1.01(a) and 1.01(b); Fed. R. Civ. P. 1.

3041895, at *6 (M.D. Fla. Oct. 31, 2025)—Respondents aver that such bond hearings are not conducted or managed by ICE, rather by the Executive Office for Immigration Review, which is not a proper party to this suit. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (noting that for habeas petitions challenging detention, "the default rule is that the proper Respondents is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official").

CONCLUSION

Rosas's Petition for Writ of Habeas Corpus should be denied.

DATED this 11th day of December, 2025.

Respectfully submitted,

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