

BART M. DAVIS, IDAHO STATE BAR NO. 2696
UNITED STATES ATTORNEY
CHRISTINE G. ENGLAND, IDAHO STATE BAR NO. 11390
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
1290 W. MYRTLE ST. SUITE 500
BOISE, ID 83702-7788
TELEPHONE: (208) 334-1211
FACSIMILE: (208) 334-9375
Email: Christine.England@usdoj.gov

Attorneys for Federal Respondents

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

EDGAR AGUSTIN MOCTEZUMA
MACIAS,

Petitioner,

v.

BRIAN HENKEY, Field Office Director of
Enforcement and Removal Operations, Salt
Lake City Field Office, Immigration and
Customs Enforcement; KENNETH PORTER,
Acting Director of the Boise U.S. Immigration
and Customs Enforcement Field Sub-Office;
KRISTI NOEM, Secretary, U.S. Department
of Homeland Security; PAMELA BONDI,
U.S. Attorney General, and MIKE
HOLLINSHEAD, Sheriff of Elmore County,

Respondents.

Case No. 1:25-CV-00741-BLW

**RESPONSE TO PETITION FOR WRIT
OF HABEAS CORPUS (Dkt. No. 1)**

**RESPONSE TO PETITION FOR HABEAS CORPUS
(Edgar Agustin Moctezuma Macias)**

I. The Court lacked jurisdiction to issue its January 2 Order because the United States has not been served.

Petitioner Edgar Agustin Moctezuma Macias filed a Petition for Habeas Corpus on December 31, 2025 (Dkt. No. 1). On January 2, 2026, the Court grant ordered the Petitioner released (Dkt. No. 4). Neither the Court nor Petitioner provided a copy of the Petition to the U.S. Attorney’s Office before the Court issued its Order. Nor did the Court order the clerk or the Petitioner to serve the Government. (*See id.*) Indeed, the Government was not properly served until January 7, 2026. Accordingly, the Court lacks personal jurisdiction over the Government. *Omni Capital Int’l, Ltd., v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987) (“Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.”).

In future cases, the Government respectfully requests that the Court require all plaintiffs to comply with Federal Rule of Civil Procedure 4, so that the Court may properly exercise jurisdiction.

II. The Court should provide notice to the United States before ordering the release of Petitioner.

It is fundamental that due process of law requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In this case, the Court accepted the Petitioner’s allegations as true, without providing the Government with a copy of the Petition, let alone an opportunity to be heard, before ordering the release of the Petitioner. For example, the Court accepted as true that Petitioner has three U.S. citizen children and no criminal history, without a sworn affidavit or verified pleading. Petitioner would not necessarily present evidence of any criminal history

because doing so would not aid his case. But the Court, nonetheless, accepted as fact unverified allegations to conclude that Petitioner does not pose a flight risk or a danger to the community.

Under Federal Rule of Civil Procedure 65, a court may issue a Temporary Restraining Order without notice *only if*

A. specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury . . . will result to the movant before the adverse party can be heard in opposition; *and*

B. the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Here, Petitioner did not offer sworn testimony, nor did he file a verified pleading, nor did his counsel certify efforts made to give notice or why notice should not be required. The Court's January 2 Order violates Federal Rule of Civil Procedure 65. The requirements of Rule 65 may be stringent, but as the Supreme Court has explained "our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

In future cases, the Government respectfully requests that the Court provide the Government with notice and an opportunity to be heard before release, so that the Government may, at the very least, identify factual inaccuracies in the Petition.

III. The Government rests on its prior briefing.

In this case, the Government does not dispute the material facts of the Petition¹ and recognizes that Court has already ruled on the legal issues presented here. The Government

¹ Petitioner failed to disclose to the Court the following facts: (1) that Petitioner illegally entered the United States in 1993 and was voluntarily returned to Mexico in 1997, before illegally re-entering again in 1997; (2) that Petitioner has been fined three times for failure to purchase a driver's license; (3) that Petitioner was cited for driving with an open container;

maintains its position that Petitioner was properly detained under the plain language of 8 U.S.C. § 1225(b), as set forth in the Government's Response in *Ayala v. Henkey*, 25-CV-682-AKB, Dkt. No. 8 (D. Idaho, December 11, 2025). The Government also maintains its position that release is not the appropriate remedy if the Court concludes that 8 U.S.C. § 1226 applies to Petitioner's detention. If Section 1226 applies, the Petitioner is entitled to the process provided in that Section. See Government's Response, *Ayala v. Henkey*, 25-CV-682-AKB, Dkt. No. 8. The regulations implementing Section 1226(a) provide that the Field Office Director makes the first determination about whether the alien should remain in detention, but the alien may thereafter request a bond determination by an immigration judge. See 8 C.F.R. § 236.1(d)(1). The Court should therefore allow the Agency to follow the process provided by the statute and regulations and allow the Agency to make a detention determination pursuant to Section 1226(a), in the first instance.

Respectfully submitted this 12th day of January, 2026.

BART M. DAVIS
UNITED STATES ATTORNEY
By:

/s/ Christine G. England
CHRISTINE G. ENGLAND
Assistant United States Attorney

(4) that Petitioner was cited for a vicious animal at large; and (5) that Petitioner was convicted of driving without a license. A sworn affidavit as to these facts may be provided upon request.