

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Garcia Fuente, Elizabeth, by Next Friend, Ma  
Olivia Mondragon;

Petitioner,

v.

USICE, *et al.*,

Respondents.

Civil Action No. 5:26-CV-00062-XR

**ABBREVIATED RESPONSE TO HABEAS PETITION**

Federal Respondents provide the following timely response to Petitioner's habeas petition.<sup>1</sup> Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought, including attorney's fees under the Equal Access to Justice Act ("EAJA").<sup>2</sup> The legal issues presented in this Petition for Writ of Habeas Corpus ("Petition") concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner, and whether Petitioner is entitled to a bond hearing. While reserving all rights, including the right to appeal, Respondents submit this abbreviated response to preserve the legal issues and to conserve judicial and party resources.

Respondents acknowledge that this Court's prior rulings concerning similar challenges to the government policy or practice at issue in this case, and the common question of law between this case and those rulings, would control the result in this case should this Court follow its legal

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<sup>1</sup> The Department of Justice represents only federal employees in this action.

<sup>2</sup> *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

reasoning in its prior decisions. *See Navarro v. Bondi et al.*, No. 5:25CV1468-FB (W.D. Tex. Dec. 2, 2025); *Moradi v. Thompson et al.*, No.5:25CV1470-OLG (W.D. Tex. Dec. 18, 2025); *Reyes v. Thomspon et al.*, No.5:25CV1590-XR (W.D. Tex. Dec. 12, 2025); *Acosta-Balderas v. Bondi et al.*, No.5:25CV1629-JKP (W.D. Tex. Dec. 11, 2025); *Tisighe v. De Anda-Ybarra et al.*, 3:25CR593-KC (W.D. Tex. Dec. 5, 2025); *Chauhan v. Noem et al.*, 3:25CV574-DB (W.D. Tex. Dec. 8, 2025); *Gvedashvili v. Mooneyham et al.*, 6:25CV552-ADA-DTG (W.D. Tex. Dec. 22, 2025). While Respondents respectfully disagree with those decisions, the factual and legal issues presented in the instant habeas petition do not differ in any material fashion from those presented in those cases. Namely, both the instant petition and the cases cited primarily concern whether an alien who is present in the United States without admission is properly subject to mandatory detention (*i.e.*, detention without the prospect of release on bond) during the pendency of his administrative removal proceedings pursuant to 8 U.S.C. § 1225(b). This Court should incorporate the filings in *Navarro v. Bondi*, *Moradi v. Thompson*, *Reyes v. Thomspon*, *Acosta-Balderas v. Bondi et al.*, *Tisighe v. De Anda-Ybarra et al.*, *Chauhan v. Noem et al.* and *Gvedashvili v. Mooneyham et al.* into the record of this habeas action.

Should the Court prefer to receive a more exhaustive opposition brief, Respondents respectfully request leave to file such a brief upon the Court's request.

## **I. Discussion**

### **A. Ms. Mondragon Lacks Standing as "Next Friend."**

Prior to reaching the merits, however, this Court must first decide whether "next friend" standing is proper in this case. Respondents aver that Ms. Mondragon does not qualify as "next friend" sufficiently to trigger this Court's jurisdiction over this habeas petition. *See Whitmore v.*

*Arkansas*, 495 U.S. 149, 164 (1990) (finding that restrictions on “next friend” standing are necessary to preserve the jurisdictional limits of Article III). For example, in *Whitmore*, the Court ruled that the proposed next friend “failed to establish that [the prisoner was] unable to proceed on his behalf” where “there was no meaningful evidence that he was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision.” *Id.* at 166.

Under *Whitmore*’s two-pronged framework, Ms. Mondragon has not established she should be permitted to proceed here as “next friend.” In fact, Ms. Mondragon’s only stated reason for appearing as “next friend” is that Petitioner “is unable to litigate this matter on her own behalf due to her continued detention and limited access to resources.” ECF No. 1 at 5. Ms. Mondragon does not claim that Petitioner is unavailable or inaccessible, arguing instead that she cannot “meaningfully access the courts on her own” while detained. *Id.* at 6. In denying a mother “next friend” standing where her adult daughter might be “temporarily” unavailable due to military service, a court relied on the absence of a showing of “a complete inability to access the courts.” *J.B. ex rel. K.E. v. Charley*, No. 21-632 MV/SCY, 2021 WL 5768907, at \*2 (D.N.M. Dec. 6, 2021). There is no such showing here.

As to the first prong, Ms. Mondragon has not shown that Petitioner cannot appear on her own behalf in this proceeding. Indeed, the petition states that Petitioner received an adverse decision on her relief application in immigration court and that she has appealed that decision administratively as of November 21, 2025. *Id.* at 7. Petitioner was detained during that time, yet she still managed to apply for relief from removal and seek administrative review over the adverse decision. There is no indication that Petitioner was unable to attend the hearings in those

proceedings or otherwise represent herself before the immigration court where she is entitled to counsel at no expense to the government. There is no allegation that Petitioner was suffering any incapacitation that prohibited her from making “an intelligent decision” related to her detention and removal proceedings.

Ms. Mondragon faces obstacles proving the second prong of *Whitmore*, as well, which requires a showing that a “next friend” petitioner has “some significant relationship with the real party in interest.” *Whitmore*, 495 U.S. at 163-64. Ms. Mondragon simply claims she has “significant personal relationship” with Petitioner after having “known her for approximately two years.” ECF No. 1 at 4. This is insufficient under *Whitmore*, and this Court should find that Mr. Lozano lacks standing to appear in this case as Petitioner’s “next friend.”

**B. Petitioner Is Detained under 8 U.S.C. § 1225(b) on a Mandatory Basis.**

Petitioner principally seeks an order from this Court directing ICE to immediately release Petitioner from ICE detention. Petitioner concedes that she is actively in removal proceedings, noting that her administrative appeal of her removal order remains pending at the Board of Immigration Appeals. *See* ECF No. 1 at 7. Nonetheless, she argues that continued detention is punitive and constitutionally impermissible. *Id.*

Respondents contend that Petitioner’s detention is governed by INA § 235, 8 U.S.C. § 1225, because as an alien who entered without inspection or parole was, and remains, an applicant for admission. As an applicant for admission, Petitioner is subject to mandatory detention and not entitled to a bond hearing before the immigration judge during removal proceedings. Respondents further contend Petitioner should be required to exhaust administrative remedies before bringing a habeas challenge in federal court. Because Petitioner’s removal order is still under review at the

BIA, there is no final order of removal, but even a preliminary removal order by an immigration judge weighs heavily against discretionary release on bond, as it calls into question the alien's likelihood of compliance with any removal order once it becomes final. *See, e.g., Johnson v. Guzman Chavez*, 594 U.S. 523, 544 (2021) (finding that aliens "who have not been ordered removed are less likely to abscond" but those who have been ordered removed pose a higher flight risk).

Respondents further rely upon *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). There, the BIA examined the plain language of § 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 respondent, who are present in the United States without admission." 29 I&N Dec. at 225. Respondents contend this Court should rule the same, and many courts within this Circuit agree.<sup>3</sup>

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<sup>3</sup> *See e.g., Garabay-Robledo*, 2026 WL 81679 at \*4; *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, -- F.Supp.3d --, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.); *De Leon Lopez, et al, v. Ladwig, et al*, No. 6:25-CV-01884, 2026 WL 19095, W.D. La. Jan. 2, 2026) (Joseph, J.); *Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447 (S.D. Tex. Dec. 31, 2025); *Zuniga v. Lyons*, No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (Hendrix, J.); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.); *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O'Connor, J.); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025) (Truncale, J.); *Rodriguez v. Noem*, No. 9:25-CV-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) (Truncale, J.); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.); *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D.

In its current posture and based upon the Court's prior rulings, the Court can decide this matter without delay. If, however, the Court prefers a full opposition brief in this matter, Respondents will provide a brief upon the Court's request. If the Court believes any additional claims are material to the resolution of this petition beyond the issues decided in the previous cases, Respondents request an opportunity to respond to those by order of the Court.

Should this Court order release of Petitioner, Respondents request that the release order specify a date for release expressed by a calendar day instead of hours. Respondents further request that a time for release not be set. Each release from a detention facility carries unique security considerations. It requires coordination within the detention facility and with the Petitioner, their family, and/or their counsel. Setting an exact time for release beyond the calendar date can unduly burden the already complicated process.

## **II. Conclusion**

Respondents appreciate the Court's consideration of this abbreviated response and respectfully request that the Court deny this Petition.

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Tex. Nov. 13, 2025) (Eskridge, J.); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), (Whitehurst, M.J.), *report and recommendation adopted*, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) (Joseph, J.); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.).

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Respectfully submitted,

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