

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JUNIOR JEVANY CRISTOBAL
GASPAR,

Petitioner,

Case No. 2:26-cv-00070-SPC-NPM

v.

FIELD OFFICE DIRECTOR,
ENFORCEMENT AND REMOVAL
OPERATIONS, MIAMI FIELD
OFFICE, IMMIGRATION AND
CUSTOMS ENFORCEMENT;
KRISTI NOEM, SECRETARY,
U.S. DEPARTMENT OF HOMELAND
SECURITY; PAMELA BONDI,
U.S. ATTORNEY GENERAL;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; and
WARDEN OF THE FLORIDA SOFT
SIDE SOUTH FACILITY,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Junior Jeovany Cristobal Gaspar challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"), arguing he is entitled to a bond hearing under 8 U.S.C. § 1226. (Doc. 1.) While reserving all rights, including the right to appeal, Respondents submit this abbreviated brief in lieu of an exhaustive memorandum to preserve Respondents' arguments and to conserve judicial resources. In addition, Respondents submit brief but substantive argument concerning the

dispositive significance of Petitioner's classification as "an alien present in the United States who has not been admitted or paroled" upon his initial entry into the United States. Should the Court prefer a more exhaustive discussion, Respondents request leave to submit additional briefing.

FACTS

Petitioner, Junior Jeovany Cristobal Garcia, is a 22-year-old national and citizen of Guatemala who is present in the United States without admission, parole, or an immigrant visa. (Ex. A, DHS Form I-213, at 1.) According to Petitioner, he has resided in the United States since December 7, 2019, and was inspected by the U.S. Department of Homeland Security ("DHS") upon entry. (Doc. 1, ¶ 40.) Notably, however, DHS records reveal that when Petitioner was stopped by the United States Border Patrol on December 7, 2019, in or around Andrade, California, he was identified as an alien present in the United States who had not been admitted or paroled and he was not admitted or paroled after inspection by an immigration officer. (Ex. A, p. 2; Doc. 1-2, p. 2.)

Indeed, on December 8, 2019, Petitioner was served with a Notice to Appear and placed in removal proceedings before an immigration judge. (Ex. A, p. 2; *see also* Doc. 1-2, p. 2.) Petitioner was later released into the custody of his father by the U.S. Department of Health and Human Services' Office of Refugee Resettlement. (Doc. 1-3, p. 2.) On September 30, 2021, Petitioner filed an affirmative asylum application with the United States Citizenship and Immigration Services ("USCIS").

(Doc. 1, ¶ 44.) DHS acknowledged receipt of Petitioner's application for asylum and for withholding of removal as of this date. (Doc. 1-4.) The acknowledgement notice stated in bold, capital letters at the top that it did not grant any immigration status or benefit. (*Id.*) Subsequently, on August 13, 2024, an immigration judge in Miami, Florida, terminated Petitioner's removal proceedings citing, in part, Petitioner's pending asylum application. (Doc. 1-5.)

On January 10, 2026, Petitioner was a passenger in a white work van that was stopped in Homestead, Florida. (Ex. A, p. 2.) During that stop, Petitioner was identified as an individual in the country illegally and arrested on that basis. (*Id.*; Ex. B, DHS Form I-826.) After being taken into custody, Petitioner was transported to Miramar, Florida, for processing. (Ex. A, p. 2.) It was ultimately determined that he would be held in the custody of ICE pending removal. (*Id.*; Ex. C, DHS Form I-200.) He is currently being held at Florida Soft Side South Facility. (Doc. 1, ¶ 1.)

On January 15, 2026, Petitioner filed the instant Petition for Writ of Habeas Corpus. (*See generally* Doc. 1.) Notably, in arguing that he is entitled to release unless Respondents provide him with a bond hearing under 8 U.S.C. § 1226(a), Petitioner primarily argues that 8 U.S.C. § 1225(b)(2)(A) only applies to people *arriving* at U.S. ports of entry or who *recently* entered the United States. (*Id.* ¶¶ 7, 38.) For the reasons referenced and discussed below, Petitioner is incorrect.

ARGUMENT

In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216, 2025 WL 2674169 (B.I.A. Sept. 5, 2025), the Board of Immigration Appeals (“BIA”) examined the plain language of 8 U.S.C. § 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, Pub L. No. 104-208, and prior practices of DHS. After doing so, the BIA held that “under a plain language reading of section 235(b)(2)(A) of the [Immigration and Nationality Act (“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. This Court should rule the same here.

Respondents acknowledge that questions of law in this case substantially overlap with those in *Vasquez Carcamo v. Noem*, Case No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025) and *Hinojosa Garcia v. Noem*, Case No. 2:25-CV-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025). It should be noted, however, that several courts have recently ruled in Respondents’ favor on this issue. *E.g.*, *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).¹ There is currently a district

¹ See also *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972, at *2–7 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, *2–7 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *2–10

split across the country on the applicability of § 1225 and § 1226 in these instances. And at least two circuits have active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir.).²

Respondents respectfully disagree with the Court's decisions in *Vasquez Carcamo* and *Hinojosa Garcia* and believe appeals will be in their favor. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments for preservation purposes:

1. Title 8 U.S.C. § 1252(g) bars review of Petitioner's claims. *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, (Doc. 5, pp. 2–6), (M.D. Fla. Oct. 21, 2025).³
2. Title 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims. (*Id.* at 6–7.)
3. Petitioner failed to exhaust his administrative remedies. (*Id.* at 7–8.)
4. Petitioner is properly detained under 8 U.S.C. § 1225. (*Id.* at 8–12.)

In addition, the Court should deny the instant petition because, at the time he entered the United States, Petitioner was identified as an alien present in the United

(E.D. Wis. Oct. 30, 2025); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646, at *1–2 (W.D. La. Oct. 22, 2025), *report and recommendation adopted by* 2025 WL 3113644 (W.D. La. Nov. 6, 2025); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *7–10 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250-CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025). *Cf. Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H, (Doc. 9) (N.D. Tex. Oct. 24, 2025).

² See *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).

³ 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); *see also* Fed. R. Civ. P. 1.

States who had not been admitted or paroled and ordered to appear before an immigration judge for removal proceedings. *See Duenas Garcia v. Immigr. & Customs Enft Dep't of Homeland Sec.*, Case No. 2:25-cv-1004-KCD-NPM, 2025 WL 3277163, at *2 (M.D. Fla. Nov. 25, 2025). In the *Duenas Garcia* proceeding, the petitioner was apprehended at the border and similarly sought admission through asylum. *Id.* The court found “[t]hat put[] him squarely under [8 U.S.C.] § 1225.” *Id.* According to the *Duenas Garcia* court, it was of no consequence that the petitioner spent time in the United States after being released and was later apprehended in the country, as this did not change the petitioner’s classification. *Id.* Rather, because 8 U.S.C. § 1225 says nothing whatsoever about bond hearings, the court found that the petitioner’s continued detention without a bond hearing could not be in violation of the INA. *Id.* In addition, the court concluded that the petitioner’s detention did not violate the Due Process Clause because: (1) it was not clear that such a claim is available for aliens held under 8 U.S.C. § 1225; and (2) the petitioner had only been in custody for just over a month, which the court concluded “is far short of the constitutional threshold in this context.” *Id.* In denying the petitioner’s due process claim, the court found it significant that the petitioner had not been in custody for a prolonged period or shown that his detention would be indefinite.

This case presents substantially similar facts as *Duenas Garcia*; accordingly, this Court should find the same and deny the instant petition. Indeed, 8 U.S.C. § 1225(a)(1) plainly includes “[a]n alien present in the United States who

has not been admitted” as an alien treated as an applicant for admission. 8 U.S.C. § 1225(a)(1). This is precisely how Petitioner was classified in the Notice to Appear issued by DHS on December 8, 2019. (Doc. 1-2, p. 2.) Moreover, Petitioner has not even been in custody for two weeks. (Doc. 1, ¶ 15.) Nor has he demonstrated that his detention will be indefinite. (See Doc. 1, ¶ 51 (stating, without support, that Petitioner “faces the *prospect* of months, or even years, in immigration custody (emphasis added)).) In so arguing, Respondents incorporate their supplemental briefing submitted in *Duenas Garcia*, Case No. 2:25-cv-01004-KCD-NPM, at Document Number 13, pursuant to Local Rule 1.01(a) and 1.01(b).

Should the Court, however, determine that Petitioner’s detention is subject to 8 U.S.C. § 1226, the only appropriate remedy is a bond hearing during which an Immigration Judge can determine whether Petitioner is a flight risk or danger to the community, not release. See, e.g., *Vasquez Carcamo*, 2025 WL 3119263, at *6 (granting a bond hearing); see also *Hinojosa Garcia*, 2025 WL 3041895, at *6 (same).

CONCLUSION

The Petition for Writ of Habeas Corpus should be denied.

DATED this 23rd day of January, 2026.

Respectfully submitted,

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