

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE No. 1:26-cv-20319-CMA

**NORBERTO BENITEZ HERNANDEZ,**

Petitioner,

v.

**ASSISTANT DIRECTOR, U.S. DHS  
ICE ERO Miami Field Office, et al.,**

Respondents.

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**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO  
THE COURT'S ORDER GRANTING  
MOTION FOR ORDER TO SHOW CAUSE (ECF No. [6])**

NOW COMES the Petitioner, Norberto Benitez Hernandez, by and through undersigned counsel, and hereby files the instant Reply to Respondent's Response to the Court's Order Granting Motion for Order to Show Cause (ECF No. [9]) ("Response"), and respectfully states as follows:

**LEGAL ARGUMENT**

In their Response, Respondents argued *inter alia* that 8 U.S.C. § 1225(b)(2)(A) mandates Mr. Benitez Hernandez's detention because he is in the United States without having been lawfully admitted or paroled. *See* ECF No.[9] at \*\*3-9. This Court, in *Puga v. Assistant Field Off. Fir. Krome N. Serv. Processing Ctr.*, No. 25-cv-24535, 2025 WL 2938369, at \*5 (S.D. Fla. Oct. 15,

2025), “and District Courts within this District, have consistently rejected similar arguments in granting habeas petitions.” *Garcia-Perez v. Walker*, Case No. 25-62639-CV-DIMITOULEAS, 2026 WL 522258, at \*1 (S.D. Fla. Jan. 8, 2026) (citing *Puga*; *Acosta v. Ripa, et. al*, Case No. 25-cv-62360-WPD (S.D. Fla. Dec. 26, 2025); *Taffur v. Noem, et. al.*, Case No. 25-cv-62308-WPD (S.D. Fla. Dec. 22, 2025)). In *Puga*, this Court reviewed the statutory text, context, and scheme of 8 U.S.C. §§ 1225 and 1226 and rejected the Respondents’ argument that § 1225(b)(2)(A) mandates detention of noncitizens that entered the United States without inspection before remaining in the United States for long periods under similar circumstances to those Mr. Benitez Hernandez presents in the instant matter. *See Puga*, 2025 WL 2938369, at \*\*3-5.

Moreover, this Court also addressed Respondents’ administrative exhaustion claim in *Puga*. *See* ECF. No. [6] at \*10 (exhaustion argument); *Puga*, 2025 WL 2938369, at \*2. This Court found that “[s]ince the result of Petitioner’s custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado* [29 I&N Dec. 216 (BIA 2025), any prudential exhaustion requirements are excused for futility.” *Id.*

This Court and others within this District have dismissed Due Process violation claims without prejudice when granting habeas petitions similar to Mr. Benitez Hernandez’s. *See Puga*, 2025 WL 2938369, at \*6 (“The Court declines to reach the merits of Petitioner’s Fifth Amendment due process claim” but “[s]hould Respondents fail to comply with this Order by providing Petitioner with a bond hearing, Petitioner may renew his due process claim”). However, other Courts have found that “redetention pursuant to the wrong statute violate[s] due process. *See, e.g., Barco Mecado v. Francis*, --- F. Supp. 3d ----, Case No. 25-cv-6582 (LAK), 2025 WL 3295903, at \*2 (S.D.N.Y. Nov. 26, 2025).

Although Respondents did not cite to *Puga* or other District Court decisions in arguing that 8 U.S.C. § 1225(b)(2)(A) mandates Mr. Benitez Hernandez's detention, Respondents cite to District Court cases when acknowledging that the District Courts have provided "several inconsistent judgments" regarding the applicability of the *Bautista* declaratory judgment. *See* ECF No. [6], at \*14. In *Gonzalez v. Noem*, a Magistrate Judge within this District recently recommended "ruling on Petitioner's Amended Petition because only this Court, and not the California court, has jurisdiction to rule on Petitioner's Amended Petition." *Gonzalez*, Case No. 0:25-cv-62261-MIDDLEBROOKS.AUGUSTIN-BIRCH, 2025 WL 4053421, at \*4 (S.D. Fla. Dec. 23, 2025), adopted by *Gonzalez v. Noem*, 2026 WL 115211, at \*1 (S.D. Fla. Jan. 15, 2026). Thus, there is inconsistency regarding findings as to the scope of the *Bautista* class, but it has not prevented the Courts from granting habeas petitions. *See id.*

Respondents also argue that the Administrative Procedure Act does not apply where agency action is committed to discretion by law and that Mr. Benitez Hernandez failed to identify any agency action subject to review. *See* ECF No. [6] at \*16-17. However, this position is erroneous because Mr. Benitez-Hernandez is challenging the nondiscretionary determination in *Matter of Yajure-Hurtado* that the Immigration Court does not have jurisdiction over Mr. Benitez Hernandez's bond proceedings. *See* ECF No. [1] at \*11.

Lastly, in their Response, Respondents disclosed in a footnote that a DHS ICE ERO Assistant Miami Field Office Director, in his official capacity, is Petitioners' immediate custodian. *See* ECF No. [6] at \*1, n.1. A writ of habeas corpus must "be directed to the person having custody of the person detained," 28 U.S.C. § 2243, which, in cases involving present physical confinement, means the "immediate custodian, not a supervisory official who exercises legal control," *see Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). For that reason, Respondents assert, and Petitioner

agrees, that the proper Respondent in this case is Parra in his official capacity. *See, e.g., Masingene v. Martin*, 424 F. Supp. 3d 1298, 1302–03 (S.D. Fla. 2020) (“[T]he Court finds that the proper respondent to the Petition is Jim Martin, the Director of the Miami Field Office for ICE.”). Accordingly, Petitioner respectfully requests that the Court substitute the Assistant Field Office Director as Respondent. *See, e.g., Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815, at \*3 (S.D. Fla. Sept. 26, 2024) (substituting as Respondent the Assistant Field Director of facility where Petitioner was detained because denial of a habeas petition for failure to name proper respondent would give an unreasonably narrow reading to habeas corpus statute).

### **CONCLUSION**

Accordingly, Petitioner respectfully requests that this Honorable Court issue a Writ of Habeas Corpus requiring that Respondents release Petitioner from custody and produce Petitioner. Alternatively, Petitioner requests that this Honorable Court issue an order requiring Respondents to conduct a bond hearing where the Respondents bear the burden of establishing continued detention of Petitioner by clear and convincing evidence.

Respectfully submitted this 27th day of January, 2025,

By: /s/ Andrew W. Clopman

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that I electronically filed the foregoing document with the Court Clerk and to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served through the Court's ECF system to all counsel of record this 27th day of January, 2025.

Respectfully submitted,

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