

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

OSCAR MERLIN LOPEZ,

Petitioner,

v.

Case No. 3:26-cv-00094-MMH-PDB

SCOTTY RHODEN, Warden of Baker
County Detention Center as Sheriff of
Baker County Sheriff's Office;
GARRETT RIPA, Field Office Director
of Enforcement of Miami Field Office of
U.S. Immigration and Customs
Enforcement; **TODD LYONS**, Acting
Director, U.S. Immigration and Customs
Enforcement; **KRISTI NOEM**,
Secretary, U.S. Department of
Homeland Security; and **PAMELA
BONDI**, Attorney General of the
United States,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Oscar Merlin Lopez challenges his detention by the U.S. Department of Homeland Security ("DHS") and the U.S. Immigration and Customs Enforcement ("ICE"), arguing that he is entitled to a bond hearing under 8 U.S.C. § 1226. This Court has previously addressed the applicability of § 1225 v. § 1226 to persons such as Petitioner who are subject to mandatory detention by ICE without the possibility of obtaining bond. While reserving all rights—including a right to appeal—the

Federal Respondents¹ submit this abbreviated brief in lieu of exhaustive, duplicative briefing on the § 1225(b)(2) v. § 1226 issue. This is an effort to preserve the Federal Respondents' arguments and conserve scarce judicial resources. Should the Court prefer a fulsome discussion or entertain reconsidering its rulings on § 1226, the Federal Respondents stand ready to submit additional briefing.

PRELIMINARY STATEMENT

On January 16, 2026, Petitioner filed the Petition, challenging his detention at the Baker Correctional Institute as unlawful. *See* Doc. 1. By Order dated January 30, 2026, this Court ordered service of the Petition and directed Respondents to respond within 30 days of the date of the Order. *See* Doc. 4. Petitioner's detention is lawful. This Court should deny the writ and dismiss the action.

BACKGROUND

1. Petitioner is a 23-year-old male, who is a national and citizen of Mexico. *See* **Exhibit A** (Notice to Appear); Doc. 1 at ¶ 15. Petitioner entered the United States without inspection on or about 2021. Doc. 1 at ¶ 16.

¹ The individual having physical custody of a petitioner is the only appropriate respondent. 8 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."); *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). Any relief the Court awards should be fashioned within the power of the immediate custodian or ICE/DHS. *See, e.g., Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE *either* to bring petitioner for a bond hearing or release by a specific date).

2. On October 29, 2025, Petitioner was arrested for operating a motor vehicle at a rate of speed of 93 miles per hour. *See Exhibit B* (Petitioner's I-213). He was also driving with a suspended driver's license. *See id.* at 3.

3. On October 30, 2025, Petitioner was placed into ICE custody and served his Form I-862 (Notice to Appear), which charged him under the Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I). *See Exhibit A*; *see also, Exhibit C* (Warrant for Arrest of Alien) & *Exhibit D* (Detention History).

4. On December 8, 2025, an Immigration Judge ("IJ") denied bond in Petitioner's, citing lack of authority. *See Exhibit E* (IJ Order Denying Bond).

5. On February 13, 2026, Petitioner filed a Form I-914 (Application for T-Nonimmigrant Status—under Trafficking and Violence Protection Act ("TVPA"))—before the United States Citizenship and Immigration Services ("USCIS"). *See Doc. 1 at ¶ 20*. Petitioner's application remains pending before USCIS.

6. Petitioner's next scheduled immigration hearing is on April 2, 2026. *See Exhibit F* (Notice of Internet-Based Hearing).

7. To date, Petitioner—who is detained at the Baker County Jail—has been detained for 123 days. *See Exhibit G* (Notice to EOIR Alien Address);

MEMORANDUM OF LAW

I. LEGAL STANDARD

Federal courts may grant writs of habeas corpus for a petitioner "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.

§ 2241(c)(3). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

II. CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). *See* 28 U.S.C. § 2243 (stating “[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

As an “alien present in the United States who has not been admitted or paroled,” *see* **Exhibit A** (Notice to Appear), Petitioner is an “applicant for admission” detention rule in 8 U.S.C. § 1225(b)(2). Accordingly, pursuant to § 1225(b)(2), Petitioner’s detention pending removal is mandatory because as an “alien shall be detained for a proceeding under section 1229a”—*i.e.*, full removal proceedings—after “the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

Further, even with a pending application for Nonimmigrant Status under TVPA, a petitioner may be placed in removal proceedings and detained in ICE custody if there is a relevant removal charge for a nonimmigrant. *See* 8 C.F.R. § 214.214 (“Nothing in this section prohibits SHA from instituting removal proceedings for conduct committed after admission”).

Petitioner is free to contend his detention under § 1225 was unlawful or argue he should have instead been detained under § 1226. But § 1225(b)(2)—not § 1226—was the certified basis on which ICE is detaining Petitioner.

III. ARGUMENT

A. Petitioner's Detention Is Lawful Under § 1225(b)(2).

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 § 1225, the INA’s statutory scheme, Supreme Court and BIA precedents, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and ICE’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. This Court should rule the same.

The Federal Respondents acknowledge that questions of law in this case substantially overlap with *Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR (Doc. 13), 2026 WL 83980 (M.D. Fla. Jan. 12, 2026), and *Hector Gutierrez Ortiz v. Kristi Noem*, No. 3:25-cv-1386-MMH-MCR (Doc. 14), 2025 WL 3653217 (M.D. Fla. Dec. 17, 2025). While the Federal Respondents acknowledge that their position is the minority in this District and around the country, it should be noted, however, that a growing number of courts have ruled in the Federal

Respondents' favor on this issue. *See, E.g., Iraheta Morales v. Noem*, Case No. 25-62598-Civ-Singhal, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026); *Andres Diaz Lopez v. Director of Enforcement and Removal Operations et al.*, Case No. 3:25-cv-1313-JEP-SJH, 2026 WL 261938 (M.D. Fla. Jan. 26, 2026).²

² *See also Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026); *Garibay-Robledo v. Noem*, -- F. Supp. 3d --, No. 1:25-CV-177-H, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026); *Singh v. Noem*, No. 2:25-CV-00157-SCM, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026); *Benitez v. Bradford*, No. 4:25-CV-06178, 2026 WL 82235 (S.D. Tex. Jan. 8, 2026); *Cruz Rodriguez v. Olson*, -- F. Supp. 3d --, No. 1:25-CV-12961, 2026 WL 63613 (N.D. Ill. Jan. 8, 2026); *D.M.R.D. v. Andrews*, No. 1:26-CV-00081-WBS-CSK, 2026 WL 61504 (E.D. Cal. Jan. 8, 2026); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026); *Naikpay v. Sukkar*, No. 2:25-CV-1167-KCD-DNF, 2026 WL 44820 (M.D. Fla. Jan. 7, 2026) (Dudek, J.); *Azizzadeh v. Rhoney*, No. 25-CV-1288 (JLS), 2026 WL 44324 (W.D.N.Y. Jan. 6, 2026); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026); *Parra v. Sec'y, DHS*, No. 2:25-CV-1116-KCD-DNF, 2026 WL 21243 (M.D. Fla. Jan. 5, 2026) (Dudek, J.); *Rodriguez v. Jeffreys*, No. 8:25CV714, 2025 WL 3754411 (D. Neb. Dec. 29, 2025); *Zuniga v. Lyons*, No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025); *Masis Lucero, v. Field Office Director of Enforcement and Removal Operations*, No. 1:25-CV-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025); *A.M. v. Joyce*, No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025); *Zapata v. Chestnut*, No. 1:25-CV-01922-WBS-CKD, 2025 WL 3687643 (E.D. Cal. Dec. 19, 2025); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025); *Romero Rebolledo v. Chestnut*, No. 1:25-CV-01904-WBS-CKD, 2025 WL 3683122 (E.D. Cal. Dec. 18, 2025); *Padilla v. Galovich*, No. 25-CV-865-JDP, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *Liang v. Almodovar*, No. 1:25-cv-09322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025); *Garcia v. U.S. Attn'y Gen.*, No. 2:25-CV-1053-KCD-DNF, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) (Dudek, J.); *Rodriguez v. Noem*, No. 9:25-CV-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025); *Oliveria v. Albarran*, No. 1:25-CV-01760 WBS AC, 2025 WL 3525923 (E.D. Cal. Dec. 9, 2025); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); *Chen v. Almodovar*, No. 1:25-cv-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *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); *Manzo Valencia v. Chestnut*, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *1-4 (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.

As the battle of the string cites builds, there is clearly a split amongst district courts across the country on applying § 1225 or § 1226. Currently, there are active appeals regarding this issue in the Eleventh Circuit, *see Hernandez Alvarez v. Warden, Federal Detention Center Miami et al.*, No. 25-14065 (11th Cir.) and *Cerro Perez v. Assistant Field Office Director, Krome North Service Processing Center, et al.*, No. 25-14075 (11th Cir.),³ and active appeals in several other circuits, *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.).⁴ Also, the appeal in the Fifth Circuit was decided in favor of the Federal Respondents in *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir. Feb. 6, 2026), concluding “the government’s position is correct,” reversing “the district courts’ orders to provide petitioners with bond hearings or release them.”⁵

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).

³ *See Hernandez Alvarez v. Warden, Federal Detention Center Miami, et al.*, Case No. 1:25-cv-24806-KMW (S.D. Fla. Oct. 27, 2025); *Cerro Perez v. Assistant Field Office Director, Krome North Service Processing Center, et al.*, Case No. 1:25-cv-24820-KMW (S.D. Fla. Oct. 27, 2025).

⁴ *See Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Pizzaro Reyes v. ERO*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025).

⁵ *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025).

The Federal Respondents respectfully disagree with the Court's decision in *Gomez-Pena* and *Gutierrez Ortiz* and believe appeals on this legal question will be in their favor. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Federal Respondents make the following arguments for preservation purposes:

1. 8 U.S.C. § 1252(g) bars review of Petitioner's claims. *See Gomez-Pena*, No. 3:25-cv-1287-MMH-MCR (Doc. 11 at p. 4-7) (M.D. Fla.).⁶
2. 8 U.S.C. § 1252(b)(9) bars review of these claims. *Id.* at 8.
3. Petitioner failed to exhaust administrative remedies. *Id.* at 9-10.
4. Petitioner is properly detained under 8 U.S.C. § 1225. *Id.* at 10-17.

Should the Court determine Petitioner's detention is subject to § 1226, the only appropriate remedy is to begin the process for a bond hearing—not outright release—during which an IJ can determine whether Petitioner is a flight risk or danger to the community. *See, e.g., Vasquez Carcamo*, 2025 WL 3119263, at *5-6. Again, only EOIR can provide a bond hearing. That said, if ordered, ICE would do what is in its power to facilitate a hearing. *See Mirando Bravo*, No. 2:25-cv-1046, Doc. 8 at *3.

⁶ Federal 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* M.D. Fla. Local R. 1.01(a)-(b); Fed. R. Civ. P. 1.

B. *Maldonado Bautista* Does Not Apply.

Contrary to Petitioner's assertions, *see* Doc. 1 at 6, the *Maldonado Bautista*, Case No. 5:25-cv-1873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec 18, 2025), should not be applied in this case and, thus, does not entitle him to the relief he requests.

Even if Petitioner does fit within the class in *Maldonado Bautista*, that decision is not binding on this Court because "absent the application of *res judicata* or collateral estoppel, a district court is not bound by another district's judgment," *Iraheta Morales*, Case No. 0:23-cv-62598-AHS (Doc. 10, p 16) (S.D. Fla. Jan. 29, 2026) (citing *Stone v. First Union Corp.*, 371 F.3d 1305, 1310 (11th Cir. 2004)). Here, Petitioner has not bothered to argue *res judicata* or collateral estoppel, *see generally* Doc. 4, and neither would apply to his case, *see Iraheta Morales*, Case No. 0:23-cv-62598-AHS (Doc. 10, p 17) (S.D. Fla. Jan. 29, 2026). Even so, the *Maldonado Bautista* case is on appeal as of December 18, 2025, *Maldonado Bautista*, Case No. 5:25-cv-1873-SSS-BFM (Doc. 95); hence, this Court should not give preclusive effect to the declaratory final judgment entered in *Maldonado Bautista* on December 18, 2025.

Moreover, the declaratory judgment entered in *Maldonado Bautista* has no preclusive effect outside of the Central District of California and over custodians who are located outside of that District. *See Calderon v. Ashmus*, 523 U.S. 740, 747 (1998). *See also Burnham v. Superior Court of Cali.*, 495 U.S. 604, 608 (1990). Hence, the Court should not apply the declaratory judgment entered in *Maldonado Bautista* to this case.

To be fair, on February 18, 2026, United States District Court for the Central District of California issued an order stating the court “hereby VACATES *Matter of Yajure Hurtado* as contrary to law under the APA.” *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *12 (C.D. Cal.). Respondents submit *Yajure Hurtado* remains persuasive authority in this Court regarding the proper interpretation of 8 U.S.C. § 1225(b)(2). Here, this Court does not need to decide the issue of *Maldonado Bautista*’s preclusive effect. *See Avendano v. Warden, Fla. Soft Side S.*, No. 2:25-CV-01221-SPC-NPM, 2026 WL 145499, at *1 (M.D. Fla. Jan. 20, 2026) (declining to rule on *Bautista*’s preclusive effect)

C. No Violation of Due Process.

Petitioner is in removal proceedings. The Supreme Court has held that 8 U.S.C. § 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings [for removal] and not just until the moment those proceedings begin.” *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Because § 1225(b)(2) is the proper basis for detention, there is no Fifth Amendment violation caused by detaining Petitioner or denying a bond hearing to Petitioner.

Based on the foregoing reasons and citations of authority, this Court should deny the instant Petition (Doc. 1) and dismiss this action.

Dated: March 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 2, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participant:

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