

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MARVIN GONZALEZ ROBLERO,

Petitioner,

Case No. 2:26-cv-91-KCD-DNF

v.

WARDEN, FLORIDA SOFT SIDE SOUTH, ET AL.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Marvin Gonzalez Roblero challenges his detention by U.S. Immigration and Customs Enforcement, arguing he is entitled to a bond hearing under 8 U.S.C. § 1226. While reserving all rights, including the right to appeal, Respondents submit this abbreviated brief in lieu of an exhaustive memorandum to preserve the Respondents' arguments and to conserve judicial resources. Should the Court prefer a more exhaustive discussion, Respondents request leave to submit additional briefing.¹

¹ The only appropriate respondent to a habeas case is the official with physical custody of Gonzalez Roblero. 28 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."). Accordingly, the only proper respondent in this case is the Warden of Florida Soft Side South in his official capacity. See e.g., *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).

FACTS

Gonzalez Roblero is a national and citizen of Guatemala who purports to have last entered the United States in 2022. *See* Petition for Writ of Habeas Corpus, ECF No. 1 (“Petition”) at ¶ 1. He was placed in immigration custody on January 10, 2026. *Id.* at ¶¶ 4, 24.² He was served with a Notice of Appear on or about January 10, 2026. *See* Notice to Appear, attached as (“Exhibit B”). Gonzalez Roblero is currently detained at Florida Soft Side South detention center.

On January 19, 2026, Gonzalez Roblero filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. *See* Petition.

CERTIFIED HABEAS RETURN

ICE is detaining Gonzalez Roblero under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Gonzalez Roblero 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).

² Department of Homeland Security records reflect entry on or about November 26, 2021 at the Sasabe, Arizona Port of Entry. *See* Form I-213, Record of Deportable/Inadmissible Alien, attached as “Exhibit A” at 3. Entry at a POE appears consistent with Petitioner’s records demonstrating that he was released from the Department of Health and Human Service’s Office of Refugee Resettlement in February 2022. *See* ECF No. 1-1; Petition at ¶¶ 1-2.

ARGUMENT

In *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 Section 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 petitioner, who are present in the United States without admission." 29 I&N Dec. at 225. This Court should rule the same.

Respondents acknowledge that questions of law in this case, and the challenges to the government's policy and practice, substantially overlap with *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). It should be noted, however, that courts have recently ruled against petitioners in similar cases. *See, E.g., Lopez v. Dir. of Enft & Removal Operations*, No. 3:25-CV-1313-JEP-SJH, 2026 WL 261938, at *1 (M.D. Fla. Jan. 26, 2026); *Iraheta Morales v. Noem*, No. 25-62598-CIV-SINGHAL, 2026 WL 236307, at *3-9 (S.D. Fla. Jan. 29, 2026). Some decisions have started recognizing that there is no jurisdiction over this question to begin with. *Munoz Nataren v. Raycraft*, No. 4:26-cv-212, 2026 WL 214368, at *2 (N.D. Ohio Jan. 28, 2026); *Amaya-Velis v. Raycraft*, No. 4:26-cv-73, 2026 WL

100596, at *2-3 (N.D. Ohio Jan. 14, 2026).

Significantly, the Fifth Circuit recently ruled that aliens who have not been admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of whether the alien is already present in the United States. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). At least four circuits—including the Eleventh—have active appeals on the matter. *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.); *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).

Respondents respectfully disagree with the Court's decision in *Hernandez-Lopez*. 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 Gonzalez Roblero's claims. *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM (M.D. Fla. Oct. 29, 2025) (Doc. 19 at 5-6).
2. Title 8 U.S.C. § 1252(b)(9) bars review of Gonzalez Roblero's claims. *Id.* at 7-8.
3. Gonzalez Roblero failed to exhaust his administrative remedies. *Id.* at 8.
4. Gonzalez Roblero is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

Respondents note that, unlike in *Hernandez-Lopez*, the Petitioner here was encountered at a POE. *See* Petition, ¶¶ 1-2 (describing his release from ORR to a sponsor); Exhibit A at 3. To the extent that Petitioner claims that the decision in *Lazaro Maldonado Bautista et al., v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873 (C.D. Cal. 2025) has preclusive effect, though declaratory judgment may—under some circumstances—have preclusive effect as between parties in future litigation, exercising caution is appropriate where imposing *res judicata* on a declaratory judgment that remains subject to appeal, as is the case in *Maldonado Bautista*. *See* Restatement (Second) of Judgments § 33; A.L.R.2d 984 (“both the rule under which the operation of a judgment as *res judicata* is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences”); *see also Maldonado Bautista*, 5:25-cv-01873 at Dkts. 94, 95.

Finally, Respondents contend that should this Court determine that Petitioner’s detention is subject to 8 U.S.C. § 1226, outright release is inappropriate. To the extent the Court orders a bond hearing before an Immigration Judge for the purpose of determining whether Petitioner is a flight risk or danger to the community—*see, e.g., Hernandez-Lopez*, 2025 WL 3022245, at *5—Respondents aver that such bond hearings are not conducted or managed by ICE, rather by the Executive Office for Immigration Review, which is not a proper party to this suit. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (noting that for habeas petitions

challenging detention, “the 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”).

CONCLUSION

Gonzalez Roblero’s Petition for Writ of Habeas Corpus should be denied

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Respectfully submitted,

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