

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Belloso Pirela, Julio Cesar, by Next Friend,
Raul Sergio Lozano;

Petitioner,

v.

Warden, Karnes County Immigration
Processing Center, *et al.*,

Respondents.

Civil Action No. 5:26-CV-00329-XR

ABBREVIATED RESPONSE TO HABEAS PETITION

Federal Respondents provide the following timely response to Petitioner's habeas petition.¹ 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").² 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

¹ The Department of Justice represents only federal employees in this action.

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

this case and those rulings, would control the result in this case should this Court follow its legal 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. Thomspson 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. Thomspson*, *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. Mr. Lozano 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 Mr. Lozano 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, Mr. Lozano has not established he should be permitted to proceed here as "next friend." In fact, Mr. Lozano's only stated reason for appearing as "next friend" is that Petitioner "is detained and unable to litigate this matter on his own behalf." ECF No. 1 at 3. Mr. Lozano does not claim that Petitioner is unavailable or inaccessible. 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, Mr. Lozano has not shown that Petitioner cannot appear on his own behalf in this proceeding. Indeed, the petition states that Petitioner was scheduled for a removal hearing in early January, and there is no indication that Petitioner was unable to attend that hearing or otherwise represent himself before the immigration court where he is entitled to counsel at no expense to the government. There is no allegation that Petitioner was suffering any incapacitation that prohibited him from making "an intelligent decision" related to his detention and removal proceedings.

Mr. Lozano 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. Mr. Lozano simply claims he has “personal knowledge” of the circumstances in this case and “has agreed to assume responsibility” for compliance with any court orders. 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 argues that he was “lawfully present” and had a “properly filed asylum application pending” at the time he was detained. *See* ECF No. 1 at 7. He argues that his 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. Even if Petitioner were paroled into the United States via humanitarian parole following his unlawful entry, such parole is discretionary and terminates immediately upon the issuance of a Notice to Appear (NTA). 8 C.F.R. § 212.5(e)(2)(i). Once parole terminates, the alien reverts to the status he was in prior to being granted parole. *See Bouchikhi v. Holder*, 676 F.3d 173, 178 n.5 (2012) (citing 8 C.F.R. § 1.2). As such, Petitioner reverted to an applicant for admission upon the issuance of his NTA. 8 U.S.C. § 1225(a). There is no dispute that an NTA was issued and filed in this case, as Petitioner is currently in removal proceedings. ECF No. 1 at 5. Additionally, once the NTA is filed with the immigration court, only the immigration court has jurisdiction over an asylum application. 8 C.F.R. § 208.2(b). As an applicant for admission,

Petitioner is subject to mandatory detention and not entitled to a bond hearing before the immigration judge. Respondents further contend Petitioner should be required to exhaust administrative remedies before bringing a habeas challenge in federal court.

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.³

³ 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. 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.).

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.

Conclusion

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

Dated: January 27, 2026

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Lacy L. McAndrew
Lacy L. McAndrew
Assistant United States Attorney
Florida Bar No. 45507
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (phone)
(210) 384-7312 (fax)
lacy.mcandrew@usdoj.gov

Attorneys for Federal Respondents