

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BRAYAN RUBIO RUBIO,

Petitioner,

Case No. 2:26-cv-00125-KCD-NPM

v.

DAVID HARDIN, et. al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Brayan Rubio Rubio 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 Rubio Rubio. 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 Glades County Detention Center 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

Rubio Rubio is a national and citizen of Mexico who purports to have last entered the United States in 2015.² *See* Petition for Writ of Habeas Corpus, ECF No. 1 (“Petition”) at ¶¶ 1, 20, 43. He was placed in immigration custody on October 12, 2025. *Id.* at ¶¶ 44-45. He was served with a Notice of Appear on the same day. *See* ECF No. 1-1. On January 22, 2026, Rubio Rubio 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. On January 29, 2026, Petitioner was ordered removed by Immigration Judge Stuart A. Siegel. *See* Order of the Immigration Judge, attached as “Exhibit A.” Petitioner reserved appeal and has until March 2, 2026 to file an appeal of that order. *Id.* at 4.

CERTIFIED HABEAS RETURN

ICE is currently detaining Rubio Rubio 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.”). Rubio Rubio 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 The Notice to Appear Petitioner filed as Exhibit A to ECF No. 1 reflects entry on or about January 14, 2015 at or near Eagle Pass, Texas.

ARGUMENT

This case is in an atypical posture from similar cases challenging detention under 8 U.S.C. § 1225. Here, Petitioner has been ordered removed. Were his removal order final, his detention would be governed by 8 U.S.C. § 1231. However, the order is not yet final. *See* Exhibit A. Respondents aver that his detention thus continues to be governed by 8 U.S.C. § 1225(b)(2)(A) until his removal proceedings come to a close.³ *See Collins v. Rhoden*, No. 3:22-CV-1166-HLA-LLL, 2023 WL 12167872, at *2 (M.D. Fla. June 14, 2023) (declining to find Section 1231 applicable where removal order was not yet final and instead considering bond under the relevant pre-final order statute).

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

³ If the Court disagrees and finds Petitioner's detention better considered under 8 U.S.C. § 1231, Respondents argue that they remain well within the presumptively reasonable detention period contemplated by *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

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 Rubio Rubio'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 Rubio Rubio's claims. *Id.* at 7-8.
3. Rubio Rubio failed to exhaust his administrative remedies. *Id.* at 8.
4. Rubio Rubio is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

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

Rubio Rubio's Petition for Writ of Habeas Corpus should be denied

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Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Amanda B. Saylor
AMANDA B. SAYLOR
Assistant United States Attorney
FL Bar No. 1031480
400 N. Tampa St. Ste. 3200
Tampa, Florida 33602
Telephone: (813) 274-6020

Fax: (813) 274-6198

Email: Amanda.Saylor@usdoj.gov

Counsel for Respondents