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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RIGOBERTO GARCIA ORTIZ,

Petitioner,

v.

BRIAN HENKEY, Field Office Director of
Enforcement and Removal Operations, Salt
Lake City Field Office, Immigration and
Customs Enforcement; KENNETH PORTER,
Acting Director of the Boise U.S. Immigration
and Customs Enforcement Field Sub-Office;
KRISTI NOEM, Secretary, U.S. Department
of Homeland Security; PAMELA BONDI,
U.S. Attorney General, MIKE
HOLLINSHEAD, Sheriff of Elmore County,

Respondents.

Case No. 1:26-CV-00043-BLW

**RESPONSE TO PETITION FOR WRIT
OF HABEAS CORPUS (Dkt. No. 1)**

INTRODUCTION

Petitioner Rigoberto Garcia Ortiz is a native and citizen of Mexico who is currently in the custody of Immigration and Customs Enforcement (ICE). Petitioner admits he entered the United States without inspection. (Dkt. No. 1 p. 1.) ICE records confirm this and show that

**RESPONSE TO PETITION FOR HABEAS CORPUS
(Rigoberto Garcia Ortiz)**

Customs and Border Protection granted the Petitioner voluntary return to Mexico on December 9, 2020, and again on June 4, 2022.¹ (*See* Dkt. No. p. 8 (acknowledging the same).) Most recently, Petitioner came to the attention of immigration officials following his Driving Under the Influence arrest in Mountain Home, Idaho, on August 2, 2025. (*Id.*). Following this state arrest, ICE took the Petitioner into custody on January 22, 2026, and issued him a Notice to Appear, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). (Dkt. No. 1 p. 2.) Petitioner remains detained by ICE pursuant to 8 U.S.C. § 1225(b), as an applicant for admission to the United States. Petitioner challenges his detention, filing a Petition for Writ of Habeas Corpus on January 25, 2026. (Dkt. No. 1.)

ARGUMENT

In this case, the Government does not dispute the material facts of the Petition and recognizes that Court has already ruled on the legal issues presented here. The Government rests on its prior briefing and maintains its position that Petitioner was properly detained under the plain language of 8 U.S.C. § 1225(b), as set forth in the Government's Response in *Ayala v. Henkey*, 25-CV-682-AKB, Dkt. No. 7 (D. Idaho, December 11, 2025). The Government also maintains its position that release is not the appropriate remedy if the Court concludes that 8 U.S.C. § 1226 applies to Petitioner's detention. If Section 1226 applies, the Petitioner is entitled to the process provided in that Section. *See* Government's Response, *Ayala v. Henkey*, 25-CV-682-AKB, Dkt. No. 7. The regulations implementing Section 1226(a) provide that the Field Office Director makes the first determination about whether the alien should remain in detention, but the alien may thereafter request a bond determination by an immigration judge. *See* 8 C.F.R. § 236.1(d)(1). The Court should therefore allow the Agency to follow the process provided by

¹ A sworn affidavit as to these facts may be provided upon request.

the statute and regulations and allow the Agency to make a detention determination pursuant to Section 1226(a), in the first instance.

CONCLUSION

Because Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b), the Court should deny the Petition and lift the Temporary Restraining Order (Dkt. No. 4).

Respectfully submitted this 28th day of January, 2026.

BART M. DAVIS
UNITED STATES ATTORNEY
By:

/s/ Michael W. Mitchell
MICHAEL W. MITCHELL
Assistant United States Attorney