

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MAYKEL TORRES JIMENEZ,

Petitioner,

Case No. 2:26-cv-139-KCD-NPM

v.

DAVID HARDIN, ET AL.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Maykel Torres Jimenez 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 Torres Jimenez. 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 the facility in which he is being detained and only 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

Torres Jimenez is a national and citizen of Cuba who last entered the United States on June 20, 2021. *See* Petition for Writ of Habeas Corpus, ECF No. 1 (“Petition”) at ¶ 39; *see also* ECF No. 1-3 at 1. He was detained at that time before being released and placed in immigration proceedings. Petition, ¶¶ 8, 17. At a master calendar hearing in immigration court on November 4, 2025, immigration removal proceedings were dismissed. *Id.* at ¶¶ 34, 40; *see also* Form I-213, Record of Deportable/Inadmissible Alien, attached as “Exhibit A” at pg. 2. On information and belief, dismissal was sought for the purpose of seeking expedited removal, a process which remains on hold during the pendency of Petitioner’s appeal of the dismissal order. Torres Jimenez is currently detained at Alligator Alcatraz.

On January 25, 2026, Torres Jimenez filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and the Administrative Procedures Act (“APA”). *See* Petition.

CERTIFIED HABEAS RETURN

ICE is detaining Torres Jimenez 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.”). Torres Jimenez 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).

ARGUMENT

I. Petitioner Lacks Standing to Bring Claims Under the APA.

Petitioner does not have standing to bring his APA claim. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

II. Petitioner is an Applicant for Admission.

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).² 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

² One significant distinction from *Hernandez-Lopez* is that the Petitioner here was apprehended upon his entry into the United States. *See* Petition, ¶ 39; ECF No. 1-3; *see also* Exhibit A at page 2 (describing Petitioner's encounter with Border Patrol in Del Rio, Texas).

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 Torres Jimenez'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 Torres Jimenez's claims. *Id.* at 7-8.
3. Torres Jimenez failed to exhaust his administrative remedies. *Id.* at 8.

4. Torres Jimenez 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

Torres Jimenez’s Petition for Writ of Habeas Corpus should be denied

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Respectfully submitted,

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