

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MUKESHKUMAR CHANDULAL PATEL,

Petitioner,

NO. 2:26-cv-00169-MLG-GJF

vs.

MARY DE ANDA-YBARRA, in her official capacity as Deputy Managing Director, Atlanta Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");
TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement ("ICE");
KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security ("DHS");
PAMELA BONDI, in her official capacity as Attorney General of the United States;
WARDEN, in his official capacity as Warden of the Otero County Processing Center,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

On or about January 27, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. *See* Doc. 1. On February 3, 2026, the Court entered an order for service and to show cause. *See* Doc. 5.

Respondents have carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for ICE's detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), whether Petitioner is entitled to a bond hearing, and whether Petitioner must first exhaust his administrative remedies before applying to this Court. While reserving all

rights, including the right to appeal, Respondents respectfully submit this abbreviated response in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law, Respondents will be happy to submit one upon request.

It is Respondents' position that Petitioner is subject to mandatory detention under § 1225(b), because he was present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025). However, Respondents acknowledge that this Court recently reached the opposite conclusion on facts substantially similar to those currently before the Court. *See, e.g., Cortez-Gonzales v. Noem*, No. 2:25-cv-00985, 2025 WL 3485771, at *3-5 (D.N.M. Dec. 4, 2025); *Diaz-Cruz v. Dedos*, No. 1:25-cv-01117, 2025 WL 3628517, at *2 (D.N.M. Dec. 12, 2025); *Gonzales Ramos v. Dedos*, No. 1:25-cv-00975, 2025 WL 3653928, at *3-4 (D.N.M. Dec. 17, 2025). This Court, following the rationale of other courts that have addressed the issue,¹ including others in this District, concluded that the petitioner's detention was not governed by § 1225, and that his detention was instead pursuant to § 1226.

On the legal issue of which statute governs Petitioner's detention here—whether it is 8 U.S.C. § 1226(a), or 8 U.S.C. § 1225(b)—Respondents acknowledge that this Court's prior decisions would control the result here if the Court adheres to that position, as the facts are not

¹ The December 18, 2025, partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, is neither binding nor applicable here and presents no basis for granting the petition. First, the *Bautista* declaratory judgment is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction. That court "set[] aside one policy, but it declined to set aside a broader, independent decision from the Board of Immigration Appeals." *Calderon Lopez v. Lyons*, *1, No. 1:25-CV-226-H, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025). The U.S. Immigration Court is still, as of the filing of this motion, bound to the precedent set by *Hurtado*. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. For these reasons, the recent judgment in *Maldonado Bautista* is not binding on this court and provides no basis upon which to grant Petitioner any relief.

materially distinguishable for purposes of the Court’s decision on the legal issue of which statutory provision authorizes Petitioner’s detention.

Thus, while Respondents do not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court’s consideration of this case, Respondents hereby rely upon, and incorporate by reference, the legal arguments presented in *Cortez-Gonzales v. Noem*, No. 2:25-cv-00985, 2025 WL 3485771 (D.N.M. Dec. 4, 2025) and the Court can decide this issue without further briefing.

Finally, the government believes that this matter can be decided without hearing. If, however, the Court determines that a hearing would be helpful, the government will attend and present Respondents’ position.

Respectfully submitted,

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RYAN ELLISON
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I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send electronic notification to defense counsel of record on this date.

/s/ _____
RORY MCGARRY
Special Assistant United States Attorney