

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

**ALEXIS TACO-CUNALATA,**

**Petitioner,**

**Civ. No. 26-0230 KG-GJF**

**vs.**

**WARDEN, Torrance County Detention Facility;  
MARY DE ANDA-YBARRA, Field Officer Director of  
Enforcement and Removal Operations, El Paso  
Field Office, Immigration and Customs  
Enforcement; KRISTI NOEM, Secretary, U.S. Department  
Of Homeland Security,**

**Respondents.**

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

On or about February 2, 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 to answer and show cause<sup>1</sup>. *See* Doc. 4.

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

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<sup>1</sup> Respondents acknowledge that this Response is not timely pursuant to the Court's original show cause order (Doc. 3). The Court may take judicial notice that the service process has recently changed on habeas matters in the District of New Mexico. On a number of recent cases, that transition has caused an unintentional delay in response. Respondents did not willfully disregard the Court's order for a response and respectfully request that this Response be considered on the merits.

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 in *Patel v. Noem*, No. 1:25-CV-01261-KG-GBW, 2026 WL 103163 (D.N.M. Jan. 14, 2026) on facts substantially similar to those currently before the Court. This Court, following the rationale of other courts that have addressed the issue, 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. *See Patel v. Noem*.

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 decision in *Patel v. Noem*, would control the result here if the Court adheres to that decision, as the facts are not 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 *Patel v. Noem*, and the Court can decide this issue without further briefing.

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

Respectfully submitted,

TODD BLANCHE  
Deputy Attorney General  
RYAN ELLISON  
First Assistant United States Attorney

*/s/ Jack Burkhead*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 17, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

*/s/ Jack Burkhead*  
JACK BURKHEAD  
Assistant United States Attorney