

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

**PITAMBAR MAHATO NUNIYA,**

Petitioner,

v.

No. 2:26-CV-00253-MLG-DLM

DORA CASTRO, Acting Warden, Otero County Processing Center; Field Director for U.S. Immigration and Customs Enforcement, El Paso Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General, in their official capacities,

Respondents.

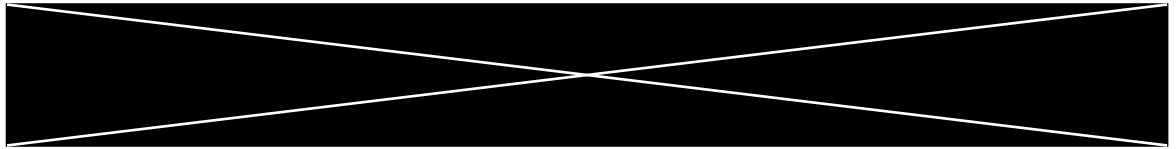
**RESPONSE TO PETITIONER'S VERIFIED PETITION FOR WRIT  
OF HABEAS CORPUS PURSUANT TO U.S.C. § 2241**

Zach Jones, Assistant United States Attorney, enters this Response on behalf of the named Respondents, listed above.

**PROCEDURAL & FACTUAL HISTORY**

1. On October 13, 2024, Petitioner, a citizen of Nepal, entered the United States at or near Tecate, California from Mexico. (Doc. 1, Ex. C, p. 26). Petitioner was detained by U.S. Immigration and Customs Enforcement ("ICE"). (*Id.*).
2. On October 14, 2024, Petitioner was released from federal custody. (*Id.* at Ex. D, p. 30).
3. Petitioner first resided in Daly City, California, (*id.* at Ex. G, p. 61), before settling in East Elmhurst, New York, (*id.* at Ex. E, p. 39).

4. On November 5, 2024, Petitioner formally applied for asylum because h 



5. On or about December 13, 2025, Petitioner was re-arrested by ICE and transferred to the Otero County Processing Center in Chapparral, New Mexico. (*Id.* at Ex. A, p. 21).

6. Petitioner is still detained in Chapparral, New Mexico, at the Otero County Processing Center. (*Id.* at Ex. B, p. 23).

7. On January 27, 2026, Petitioner had a bond hearing before Immigration Judge Ralph Girvin in which Petitioner was ultimately denied bond. (*Id.* at Ex. F, p. 49). As grounds, Judge Girvin stated he denied Petitioner's request because:

Lack of jurisdiction; Hurtado applies; in the alternative, respondent is a flight risk, lack of a viable sponsor, speculative form of relief, manner of entry and he failed to previously keep the court apprised of his new address that no amount of money can overcome.

(*Id.*).<sup>1</sup>

8. On February 3, 2026, Petitioner filed a Petition for habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1).

9. On February 3, 2026, the Court Clerk provided this Petition to Respondents by Notice of Electronic Filing (NEF) using the Case Management and Electronic Case Filing (CM/ECF) system. (Doc. 3).

10. On February 4, 2026, this Court entered an Order to Show Cause, directing Respondents to respond to this Petition within 10 business days of receiving this

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<sup>1</sup> Respondents note Petitioner disputes Judge Girvin's findings and conclusions. (Doc. 2, p. 9 & Exs. F, G).

Court's Order.<sup>2</sup> (Doc. 4). This pleading serves as that Response.

### ARGUMENT

Respondents have carefully reviewed this Petition and determined 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 this Court's consideration of this matter. If this Court prefers a formal memorandum of law, Respondents will 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).<sup>3</sup> However, Respondents acknowledge this Court recently reached the opposite conclusion on facts substantially like those now before this 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).<sup>4</sup> This Court, following the rationale of other courts that have addressed the issue, including others in the District of New Mexico, concluded that a petitioner's detention

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<sup>2</sup> Respondents acknowledge this Response is not timely according to the Court's Order to Show Cause. (Doc. 4). The Court may take judicial notice that the service process has recently changed on habeas matters in the District of New Mexico. Respondents did not willfully disregard the Court's order for a response and respectfully request that this Response be considered on the merits. Respondents have contemporaneously filed a motion to extend permitting this Response.

<sup>3</sup> This Interim Decision is available on the Department of Justice's website at <https://www.justice.gov/eoir/media/1413311/dl?inline> (last accessed Feb. 17, 2026).

<sup>4</sup> This Court cited these cases in its Order to Show Cause. (Doc. 4, p. 2).

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 § 1225(b)—Respondents acknowledge this Court’s prior decisions would control the result here if this Court adheres to that position, as the facts are not materially distinguishable for purposes of this 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, Respondents believe this matter can be decided without hearing. If, however, the Court determines a hearing would be helpful, the government will attend and present Respondents’ position.

Respectfully submitted,

**TODD BLANCHE**  
Deputy Attorney General

**RYAN ELLISON**  
First Assistant United States Attorney



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Zach Jones  
Assistant United States Attorney  
201 Third Street NW, Suite 900  
Albuquerque, New Mexico 87102  
(505) 346-7274; Fax (505) 346-7205  
[zachary.jones2@usdoj.gov](mailto:zachary.jones2@usdoj.gov)

// CERTIFICATE OF SERVICE ON FOLLOWING PAGE //

**CERTIFICATE OF SERVICE**

I 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.



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Zach Jones  
Assistant United States Attorney