

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

CHRISTIAN DAVID ORTIZ MONTAGUANO,

Petitioner,

v.

No. 1:26-cv-00288-DHU-GJF

PAMELA BONDI, *Attorney General, United States  
Department of Justice,*  
KRISTI NOEM, *Secretary of the U.S. Department of  
Homeland Security,*  
TODD LYONS, *Acting Director of Immigration and  
Customs Enforcement,*  
and DAVID EASTERWOOD, *Field Office Director, St.  
Paul Field Office, U.S. Immigration and Customs  
Enforcement*

Respondents.

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

This Office represents Federal Respondents (“Respondents”) in this habeas corpus action, in which Petitioner challenges his detention by U.S. Immigration and Customs Enforcement (“ICE”). On January 21, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. Doc. 1. On February 6, 2026, the Court ordered the government to show cause why the petition should not be granted, with a response due within ten business days of February 5, 2026. Doc. 6.

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 in *Raquejo Roman v. Castro*, Case No. 2:25-cv-01076, 2026 U.S. Dist. LEXIS 15709 (D.N.M. Jan. 12, 2026) on facts substantially similar to those currently before the Court. In a decision issued on January 12, 2026, 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 Raquejo Roman v. Castro*. Specifically, the Court stated that “Petitioner is not subject to mandatory detention under § 1225 and instead is entitled to a bond hearing pursuant to § 1226.” *Id.* at 24.<sup>1</sup>

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 *Raquejo Roman v. Castro*, 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,

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<sup>1</sup> Respondents further acknowledge that this Court entered a ruling in another case involving similar legal issues on January 16, 2026. *See Uribe v. Noem*, Case No. 2:25-cv-01139-DHU-KRS, 2026 U.S. Dist. LEXIS 9338 (D.N.M. Jan. 16, 2026).

the legal arguments presented in *Raquejo Roman v. Castro*, 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/ Jesse E. Pecoraro  
JESSE E. PECORARO  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 19, 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/ Jesse E. Pecoraro  
JESSE E. PECORARO  
Assistant United States Attorney