

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ERWIN MENDEZ LABARCA,

Petitioner,

v.

Case No. 2:26-cv-639-SPC-DNF

ICE MIAMI FIELD OFFICER
DIRECTOR, et al.,¹

Respondents.

RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Erwin Mendez Labarca seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 seeking his release on the basis that his detention is lawful. Dkt. 1. Mendez Labarca was granted a two-year period of humanitarian parole and that parole has since expired. That limited period of parole did not constitute admission to the United States. Based on the statutory language, upon the expiration of the parole, Mendez Labarca returns to the same position he was in at the time the parole was granted – an applicant for admission to the United States. He is subject to the mandatory detention provision of 8 U.S.C. § 1225(b)(2). This Court should deny his petition.

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *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). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. See, e.g., *Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE *either* to bring petitioner for a bond hearing or release by a specific date).

BACKGROUND

Erwin Mendez Labarca is a national and citizen of Venezuela. He entered the United States on or about December 25, 2023, at Miami International Airport with no proper documents or basis to be admitted into the United States. Ex. 1. He was paroled into the United States during the Venezuela Humanitarian Parole program for a period of two years. *Id.* at 2. This two-year period expired on December 25, 2025. Ex. 2. After that time, Mendez Labarca reverted to the same position he was in when he first presented himself at the border without proper documentation. On March 2, 2026, Petitioner was served with a Notice to Appear before an immigration judge on April 1, 2026. Ex. 3. The Notice to Appear was filed on March 11, 2026. *Id.* Mendez Labarca is currently detained at Florida Soft Side South. Ex. 4.

ICE is currently detaining Mendez Labarca under the mandatory 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.”). Mendez Labarca 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

A. Humanitarian Parole

The statutory basis for the Humanitarian Parole program is at 8 U.S.C. § 1182(d)(5)(A), which states:

The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion

parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

Based on this statutory language, at the expiration of the humanitarian parole in 2025, Petitioner “shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.* His parole “shall not be regarded as admission” to the United States. *Id.* That is, the humanitarian parole program legally does not constitute admission to the United States and Petitioner is the same as any other *applicant for admission*.

B. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225.

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 225.² 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 *Garcia v. Noem, et al.*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025). 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 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.);

² On February 18, 2026, U.S. District Court for the Central District of California issued an order stating the court “hereby VACATES *Matter of Yajure Hurtado* as contrary to law under the APA.” *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *12 (C.D. Cal.). Respondents submit *Yajure Hurtado* remains persuasive authority in this Court regarding the proper interpretation of 8 U.S.C. § 1225(b)(2). The Court does not need to decide the issue of *Bautista*’s preclusive effect. *See Avendano v. Warden*, Fla. Soft Side S., No. 2:25-CV-01221-SPC-NPM, 2026 WL 145499, at *1 (M.D. Fla. Jan. 20, 2026) (declining to rule on *Bautista*’s preclusive effect).

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 *Garcia v. Noem*. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments:

1. Title 8 U.S.C. § 1252(g) bars review of Mendez Labarca's claims. *Garcia v. Noem, et al.*, No. 2:25-cv-00879-SPC-NPM, Doc. 14 at 4-5 (M.D. Fla. Oct. 10, 2025).³
2. Title 8 U.S.C. § 1252(b)(9) bars review of Mendez Labarca's claims. *Id.* at 6-7.
3. Mendez Labarca failed to exhaust his administrative remedies. *Id.* at 7-8.
4. Mendez Labarca is properly detained under 8 U.S.C. § 1225. *Id.* at 9-14.

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., *Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *6 (M.D. Fla. Oct. 31, 2025)—Respondents aver that such bond hearings are not conducted or managed by ICE, rather by the Executive Office for Immigration

³ Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of efficiency, Respondents respectfully request the Court to suspend application of the rule in this instance. See Local Rule 1.01(a) and 1.01(b); Fed. R. Civ. P. 1.

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 Respondents is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official”).

Mendez Labarca’s Verified Petition for a Writ of Habeas Corpus should be denied. Even if the Court grants relief under § 1226, the only appropriate relief would be a bond determination by ICE and submission to an actual IJ bond hearing as set by EOIR.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Mamie V. Wise
MAMIE V. WISE
Assistant United States Attorney
LEAD COUNSEL
Florida Bar No. 65570
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: 813-274-6000
Facsimile: 813-274-6200
E-mail: mamie.wise@usdoj.gov

Lead Counsel for Federal Respondents