

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

ANTONIO JOSE PEROZO-
GUTIERREZ,

Petitioner,

v.

Case No. 2:26-cv-654-SPC-DNF

SECRETARY KRISTI NOEM, et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Antonio Jose Perozo-Gutierrez challenges his detention by United States Immigration and Customs Enforcement, arguing that he is entitled to immediate release and/or a bond hearing before an immigration judge. The Federal Respondents file this response.

While reserving all rights, including the right to appeal, the Federal Respondents submit this abbreviated brief in lieu of an exhaustive memorandum to preserve their arguments and to conserve judicial resources. Should the Court prefer a more exhaustive discussion, the Federal Respondents request leave to submit additional briefing.

BACKGROUND

Petitioner Perozo-Gutierrez is a 30-year-old native and citizen of Venezuela. Ex. 1. On December 26, 2021, petitioner entered the United States at or near Eagle Pass, TX. Ex. 2. Plaintiff was encountered, then neither admitted nor paroled. *Id.*

On December 20, 2025, the petitioner was again encountered by Border Patrol agents on roving patrol and detained. Ex. 1. On January 27, 2026, a Notice to Appear was issued to petitioner and successfully filed with the immigration court. Ex. 2. Petitioner remains in removal proceedings and ICE has informed undersigned counsel that Petitioner has a master hearing scheduled April 16, 2026.

Perozo-Gutierrez had been in custody a total of 76 days at the time this Petition was filed. On February 19, 2026, the immigration judge heard Perozo-Gutierrez's motion for bond and issued an order denying the bond on two grounds: that "the Court lacks jurisdiction" citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and that "the Court finds that [Perozo-Gutierrez] has not met his burden in establishing he is a suitable bail risk" citing *Matter of Guerra*. Ex. 3. The Department of Homeland Security waived its appeal, but Perozo-Gutierrez reserved his right to an appeal, which is due March 23, 2026. *Id.* He is currently detained at the Glades County Detention Center. Ex. 4.¹

CERTIFIED HABEAS RETURN

ICE is detaining Perozo-Gutierrez under the mandatory detention 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.").

¹ Pursuant to its Inter-Governmental Services Agreement for Glades County Detention Center, U.S. Immigration and Customs Enforcement requests [Warden of Glades County Detention Center] / [David Hardin] be terminated from this case. *See* Inter-Governmental Services Agreement for Glades County Detention Center, Ex. 5 at 12; *Mota-Constanzo v. Noem*, 2:26-cv-00369-KCD-DNF, 2026 WL 681819, at *2 & n.2 (M.D. Fla. Mar. 11, 2026).

Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. United States Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

ARGUMENT

I. Petitioner has received a bond hearing and cannot challenge an unfavorable bond determination before this Court.

When an immigration judge makes an unfavorable bond determination, federal courts have no jurisdiction to review those discretionary decisions under 8 U.S.C. § 1226(e), which reads: “The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e). If Petitioner disagrees with a bond decision, he has the right to appeal it to the Board of Immigration Appeals. 8 C.F.R. § 1003.19(f); *see also Lopez Galicia v. Field Office Director*, Case No. 2:26-cv-00255-SPC-DNF at Dkt. 12 (M.D. Fla. March 5, 2026) (noting that the proper way to challenge a bond hearing result is by appeal to the Board of Immigration Appeals). Indeed, Plaintiff has reserved the right to file just such an appeal and the deadline has not yet passed. Ex. 3. He cannot seek judicial review by this Court.

II. Petitioner’s detention does not violate due process.

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 Enf’t & 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

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).

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.); *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 Perozo-Gutierrez'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 Perozo-Gutierrez's claims. *Id.* at 6-7.
3. Perozo-Gutierrez failed to exhaust his administrative remedies. *Id.* at 7-8.
4. Perozo-Gutierrez 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.

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.

To the extent the Court orders an additional 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 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”).

CONCLUSION

Perozo Gutierrez’s Petition for Writ of Habeas Corpus should be denied.

DATED this 17th day of March, 2026.

Respectfully submitted,

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