

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NORWING J ORTIZ TALAVERA,

Petitioner,

Case No. 2:26-cv-673-KCD-NPM

v.

SECRETARY KRISTI NOEM,
GARRETT J. RIPA, ICE,
DEPARTMENT OF HOMELAND
SECURITY (DHS), ATTORNEY
GENERAL PAMELA BONDI,
EOI, WARDEN OF FLORIDA
SOFT SIDE SOUTH (ALLIGATOR
ALCATRAZ),

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Norwing J Ortiz Talavera (“Ortiz Talavera” or “Petitioner”) challenges his detention by U.S. Immigration and Customs Enforcement, arguing he is entitled to a bond hearing under 8 U.S.C. § 1226. While reserving all rights, including the right to appeal, Federal Respondents submit this abbreviated brief in lieu of an exhaustive memorandum to preserve the Federal Respondents’ arguments and to conserve judicial resources. Should the Court prefer a more exhaustive discussion, Federal Respondents request leave to submit additional briefing.

FACTS

Ortiz Talavera is a national and citizen of Nicaragua who last entered the United States without inspection on or about October 12, 2021, near Hidalgo, Texas. (Composite Exhibit, Ex. A at 1-2.) On or about December 6, 2021, Ortiz Talavera was released on parole due to detention capacity. *Id.* at 2. On April 12, 2022, Ortiz Talavera filed an application for asylum (Form I-589) with USCIS. *Id.* His application remains pending.

On or about February 22, 2026, he was placed in immigration custody after being detained by ICE ERO at the Monroe County Jail in Key West, FL. Ex. A. at 2. He was arrested for trespassing. *Id.* He was served with a Notice to Appear on or about on February 23, 2026. *Id.* at 4-6. Ortiz Talavera is currently detained at Florida Soft Sided Facility.

On March 9, 2026, Ortiz Talavera filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act. (Doc. 1.)

CERTIFIED HABEAS RETURN

ICE is detaining Ortiz Talavera under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). *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.”). Ortiz Talavera 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

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 225.¹ This Court should rule the same.

Federal Respondents acknowledge that questions of law in this case, and the challenges to the government’s policy and practice, substantially overlap with *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). It should be noted, however, that courts have recently

¹ 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.). Federal 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). Federal Respondents nevertheless note that on March 6, 2026, the Ninth Circuit temporarily stayed the *Bautista* district court’s February 18, 2026, order vacating *Yajure Hurtado*. *Bautista v. U.S. Dep’t of Homeland Security*, 26-1044, Dkt Entry 5.1 ¶ 2 (9th Cir.).

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, two circuits have now 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)(A) 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); *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026). Other circuits—including the Eleventh—have active appeals on the matter. *See e.g., Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).

Federal Respondents respectfully disagree with the Court's decision in *Hernandez-Lopez*. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Federal Respondents make the following arguments for preservation purposes:

1. Title 8 U.S.C. § 1252(g) bars review of Ortiz Talavera's claims. *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM (M.D. Fla. Oct. 29, 2025) (Doc. 19 at 5-6).
2. Title 8 U.S.C. § 1252(b)(9) bars review of Ortiz Talavera's claims. *Id.* at 7-8.
3. Ortiz Talavera failed to exhaust his administrative remedies. *Id.* at 8.
4. Ortiz Talavera is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

Finally, Federal 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., *Hernandez-Lopez*, 2025 WL 3022245, at *5—Federal 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 respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official”).

CONCLUSION

Ortiz Talavera's Petition for Writ of Habeas Corpus should be denied

DATED this 30th day of March, 2026.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

/s/ Christopher J. Emden
CHRISTOPHER J. EMDEN
Assistant United States Attorney
USA No. 158
400 North Tampa St., Suite 3200
Tampa, FL 33602
Telephone No.: (813) 274-6000
Facsimile No.: (813) 274-6198
E-mail: Christopher.Emden@usdoj.gov
Lead Counsel for Federal Respondents