

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

YOSLEMU ESCALONA
RODRIGUEZ,

Petitioner,

v.

Case No. 2:26-cv-00688-JES-NPM

GARRETT RIPA, Field Office Director
of Enforcement and Removal
Operations, Miami, Field Office,
Immigration and Customs
Enforcement; KRISTI NOEM,
Secretary, U.S. Department of
Homeland Security; TODD LYONS,
Acting Director, U.S. Immigration and
Customs Enforcement; PAMELA
BONDI, U.S. Attorney General;
DAVID HARDIN, Sheriff of Glades
County Detention Center;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW,

Respondents.

RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Yoslemu Escalona Rodriguez challenges his detention by U.S.
Immigration and Customs Enforcement, arguing he is entitled to immediate

release.¹ While reserving all rights, including the right to appeal, the 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, the Federal Respondents request leave to submit additional briefing.

FACTS

Petitioner Escalona Rodriguez is a 47-year-old male native and citizen of Cuba. *See* Ex. A at 2. On January 30, 2020, Petitioner applied for admission into the United States at the San Luis, Arizona port of entry. *See id.* When interviewed, Petitioner admitted that he did not have valid entry documents, and he was processed for Expected Removal pursuant to section 235(b)(1) of the Immigration and Nationality Act. *See id.*

On March 9, 2020, a final order of removal was entered against the Petitioner. *See* Ex. B. ICE advises that, in January 2022, Petitioner filed an application for relief with U.S. Citizenship and Immigration Status, which is still pending.²

¹ Based on the extensive allegations relating to bond hearings, it is presumed that Petitioner alternatively seeks a bond hearing under 8 U.S.C. § 1226.

² Through ICE, the undersigned has requested and is presently awaiting documents supporting these statements. However, given the March 27th response

On December 8, 2025, the Petitioner was detained for removal. *See* Ex. C. ICE advises that on that same date ICE issued Petitioner a notice of revocation of release and afforded the initial informal interview.³ On March 12, 2026, ICE issues Petitioner a Notice of Removal that it intends to remove him to Mexico. *See* Ex. D. On March 27, 2026, ICE served updated OSUP revocation documents on Petitioner. *See* Ex. E. Petitioner is currently detained at Glades County Detention Center, *see* Ex. F., and has been in custody for 109 days as of the date of this Response.

On March 11, 2026, Petitioner filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and the APA. *See generally* Dkt. 1.

CERTIFIED HABEAS RETURN

ICE is detaining Petitioner 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.”). Petitioner bears the burden to prove his custody violates federal

deadline set by the Court, it was necessary to file this response before receiving any such supporting documents. If such documents are received before the Court rules on this Petition, the undersigned will seek such leave as may then be required to file same.

³ As of the date of this filing, the undersigned has not been able to determine if copies of supporting documents can be obtained.

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 225.⁴ This Court should rule the same.

The Federal Respondents acknowledge that questions of law in this case,

⁴ 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.). The 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). The 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.).

and the challenges to the government's policy and practice, substantially overlap with *Patel v. Hardin*, No. 2:25-cv-00870-JES-NPM (M.D. Fla.) (Doc. 22) (granting habeas in part). 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, 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.).

Respondents respectfully disagree with the Court's decision in *Patel*.

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 Petitioner's claims. *Patel v. Hardin*, No. 2:25-cv-00870-JES-NPM, Doc. 15 at 4-7 (M.D. Fla. Oct. 22, 2025).⁵
2. Title 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims. *Id.* at 7-8.
3. Petitioner failed to exhaust his administrative remedies. *Id.* at 8-9.
4. Petitioner is properly detained under 8 U.S.C. § 1225. *Id.* at 10-16.

Petitioner argues there were invalidities and errors related to revocation of his OSUP. However, procedurally the OSUP was properly revoked and, in any event, any procedural defect was harmless error that has been corrected. Any equitable remedy related to a defect in the OSUP revocation is not release but procedural correction. *See Guillermo Lageyre v. Acting Director*, Case No. 2:25-cv-1171-KCD-DNF, 2026 WL 575183 at *4 (M.D. Fla. Mar 2, 2026) (“[W]hen a violation of immigration regulations implicates less than fundamental rights,” a showing of prejudice is required to warrant judicial

⁵ The Federal 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, the Federal 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.

intervention. [F]or a regulation to protect a fundamental right, a violation must be a structural error that necessarily makes proceedings fundamentally unfair.”) (internal quotations and citations omitted). Petitioner has failed to meet his burden of showing any defect has prejudiced him. There is a valid removal order as to Petitioner, and DHS is within its right to attempt to effectuate that removal order.

Finally, the 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., Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *6 (M.D. Fla. Oct. 31, 2025)—the 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 Respondents is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official”).

CONCLUSION

Wherefore, the Federal Respondents⁶ request that Petitioner's Petition for Writ of Habeas Corpus be denied.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

March 27, 2026

s/ Charles T. Harden III
Charles T. Harden III
Assistant United States Attorney
LEAD COUNSEL
for the Federal Respondents
FBN: 97934
400 North Tampa Street, Suite 3200
Tampa, FL 33602
Phone: 813-274-6096
Fax: 813-274-6200
E-Mail: Charles.Harden@usdoj.gov

⁶ Pursuant to its Inter-Governmental Services Agreement for Glades County Detention Center, U.S. Immigration and Customs Enforcement requests David Hardin as Sheriff of Glades County Detention Center be terminated from this case. *See* Ex. G at 12 (Inter-Governmental Services Agreement for Glades County Detention Center); *see also* Mota-Constanzo v. Noem, 2:26-cv-00369-KCD-DNF, 2026 WL 681819, at *2 & n.2 (M.D. Fla. Mar. 11, 2026).

CERTIFICATE OF FILING

I hereby certify that, on the date set forth above, I filed the foregoing documents and any exhibits referenced therein using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/ Charles T. Harden III

Charles T. Harden III
Assistant United States Attorney