

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

ANDY POZO SANCHEZ,

Petitioner,

v.

Case No. 2:26-cv-716-SPC-NPM

WARDEN, GLADES DETENTION
CENTER et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Andy Pozo Sanchez 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, Respondents submit this abbreviated brief in lieu of an exhaustive memorandum to preserve the Respondents' arguments and to conserve judicial resources. Should the Court prefer a more exhaustive discussion, Respondents request leave to submit additional briefing.

FACTS

Pozo Sanchez is a national and citizen of Cuba who last entered the United States on or about November 11, 2023 in San Ysidro, CA. Composite Ex. 1. at 1. He was paroled in the United States as a Cuban DT-Parolee until April 18, 2025 and was

issued a Notice to Appear on or about November 12, 2023. *Id.* at 2, 6. On October 2, 2025, he was arrested by the Miami-Dade Sheriff's Office for Possession of Cocaine. *Id.* at 7. The charge was dropped/abandoned on December 1, 2025. *Id.* at 9. He was placed in immigration custody on October 3, 2025. *Id.* at 6. A final order of removal to Ecuador was entered on March 3, 2026. *Id.* at 13-16. Pozo Sanchez reserved his right to an appeal, which must be filed by April 2, 2026. *Id.* at 16. Pozo Sanchez filed an initial response with the Board of Immigration Appeals on or about March 9, 2026, but it was rejected. *Id.* at 17.

On March 13, 2025, Pozo Sanchez filed a Petition for Writ of Habeas Corpus and an Emergency Motion for Temporary Administrative Stay of Removal. Dkts. 1-2. Pozo Sanchez is currently detained at Glades County Detention Center¹. Ex. 2. When he filed his petition, Pozo Sanchez had been in ICE custody for 161 days.

CERTIFIED HABEAS RETURN

ICE is detaining Pozo Sanchez 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.”). Pozo Sanchez bears the burden to prove his custody violates federal law. *Whitfield v. U.S.*

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 be terminated from this case. *See Mota-Constanzo v. Noem*, 2:26-cv-00369-KCD-DNF, 2026 WL 681819, at *2 & n.2 (M.D. Fla. Mar. 11, 2026).

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 225.² 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-

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).

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.); *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 Pozo Sanchez'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

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,

2. Title 8 U.S.C. § 1252(b)(9) bars review of Pozo Sanchez's claims. *Id.* at 6-7.
3. Pozo Sanchez failed to exhaust his administrative remedies. *Id.* at 7-8.
4. Pozo Sanchez 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 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”).

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.

CONCLUSION

Pozo Sanchez's Petition for Writ of Habeas Corpus should be denied.

DATED this 23rd day of March, 2026.

Respectfully submitted,

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