

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

FRANCISCO CRUZ TORRES,
Petitioner,

v.

Case No. 2:26-cv-729-KCD-NPM

WARDEN, FLORIDA SOFT SIDE
SOUTH DETENTION FACILITY, ET AL.
Respondents.

FEDERAL RESPONDENTS' RESPONSE TO HABEAS PETITION

Petitioner Francisco Cruz Torres 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

Cruz Torres is a national and citizen Mexico who purports to have last entered the United States without inspection in 1990. Petition for Writ of Habeas Corpus, ECF No. 1 ("Petition"), ¶ 16; *see also* ECF No. 1, Exhibit D at p. 72. Petitioner is currently detained at Florida Soft Side South detention center. Petition, ¶ 22.

On February 21, 2026, immigration authorities placed a detainer on Petitioner after learning that he was incarcerated at Highlands County Jail. *See* Form I-213, Record of Deportable/Inadmissible Alien, attached as “Exhibit A” at p. 2. Custody was then transferred to ICE. Cruz Torres was issued a Notice to Appear placing him in removal proceedings on which remain pending at this time. *See* EOIR Automated Case Information, attached as “Exhibit B.” It does not appear that he has requested a bond hearing before an immigration judge. *See generally* Petition.

On March 13, 2026, Torres Cruz filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act (“INA”) and the Fifth Amendment to the United States Constitution. *See generally* Petition. On March 17, 2026, he filed (1) motion to expedite, (2) emergency motion for temporary restraining order, and (3) motion for an order to show cause. ECF Nos. 3, 4, 5. That same day this Court issued an order to show cause why Petitioner should not be released from custody. ECF No. 6. The Court denied the motion to expedite and motion for an order to show cause as moot and denied Petitioner’s motion seeking a temporary restraining order, allowing this matter to proceed on the timeline established by the order to show cause. ECF Nos. 7, 8. The government now timely responds.

CERTIFIED HABEAS RETURN

ICE is detaining Cruz Torres 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.”). Cruz Torres

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.

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 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*,

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.). This order has stayed pending disposition of the appeal appeal, insofar as the district court's judgment extends beyond the Central District of California. *See Bautista et al. v. Dep't. of Homeland Sec., et al.*, No. 26-1044 (9th Cir. 2026), Dkt. 17. The Federal Respondents submit *Yajure Hurtado* remains persuasive authority in this Court regarding the proper interpretation of 8 U.S.C. § 1225(b)(2).

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 *Hernandez-Lopez*. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments for preservation purposes:²

1. Title 8 U.S.C. § 1252(g) bars review of Torres Cruz'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 A copy of the referenced brief is attached as "Exhibit C."

2. Title 8 U.S.C. § 1252(b)(9) bars review of Torres Cruz's claims. *Id.* at 7-8.
3. Torres Cruz failed to exhaust his administrative remedies. *Id.* at 8.
4. Torres Cruz is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

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., Hernandez-Lopez*, 2025 WL 3022245, at *5—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”).

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CONCLUSION

For the foregoing reasons, Cruz Torres's Petition for Writ of Habeas Corpus should be denied.

DATED: April 2, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Amanda Saylor
Amanda Saylor
Assistant United States Attorney
Lead Counsel for Respondents
Florida Bar No. 1031480
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6020
Facsimile: (813) 274-6198
Email: Amanda.Saylor@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 2, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: April 2, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney