

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

YASIEL NIETO GUERRA,

Petitioner,

Case No. 2:26-cv-756-KCD-NPM

v.

Kristi Noem, Secretary of the U.S.
Department of Homeland Security;
Pamela Bondi, Attorney General of the United States;
Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement;
Director of the Florida Soft Side South
(Alligator Alcatraz); Garret Ripa, Field Office
Director for Enforcement and Removal
Operations, U.S. Department of Homeland Security;
in their official capacities,,

Respondents.

**RESPONDENTS' OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Yasiel Nieto Guerra seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by U.S. Immigration and Customs Enforcement and seeking his immediate release from custody or, alternatively, an individualized custody redetermination hearing with an immigration judge. The Federal Respondents hereby respond and assert the Petition should be denied, as Petitioner is as an applicant for admission, apprehended at or near the border, and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

BACKGROUND

Petitioner is a 37-year old native and citizen of Cuba, see Dkt. 1 at ¶16, who entered the United States without inspection on or about December 18, 2021, see Dkt. 1 at ¶23, see also Ex. A at 2, at or near San Luis, Arizona, see Ex. A at 2, which is near the United States / Mexico Border. Border Patrol encountered him there and detained him. See Dkt. 1 at ¶ 23. On or about January 17, 2022, he was released on his own recognizance. See Ex. D.

On or about November 19, 2025, Petitioner and two other individuals were arrested for felony charges of illegally dumping household appliances from a truck into a brush area, see Dkt. 1-2 at pg. 14, which charges were apparently later resolved on a misdemeanor basis. See id. at 12. ICE took Petitioner into custody on or about November 20, 2025. See Ex. A at 2; see also Ex. C. He was issued a Notice to Appear. See Ex B.

As of the date of this filing, Petitioner is being detained at the Florida Soft-Sided South Facility, see Ex. D, and has been detained for 134 days as of the date of this Response. See Ex. C.¹

¹ ICE's detention history shows an approximately seven-day gap in Petitioner's detention, from February 20, 2026, to February 28, 2026. See Ex. C. This may reflect Petitioner having been transferred to the custody of the local authorities to resolve his State criminal charges during that period. See Dkt. 1-2 at pg. 12 (showing charges resolved on February 26, 2026). In any event, for purposes only of this Response, the Respondents will assume Petitioner has been in ICE's custody continually since November 20, 2025, or 134 days as of the date of this Response. Should Petitioner subsequently (re-)challenge the length of his detention, the Respondents reserve the right to present a more specific

CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provision 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.”)

LEGAL STANDARD

Federal courts may grant writs of habeas corpus for a petitioner “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Petitioner 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

Petitioner asserts violations of his violations of the INA and his Due Process Rights under the Fifth Amendment to the U.S. Constitution. He seeks immediate release or, alternatively, a bond hearing. His Petition should be denied for the following reasons.

I. The Court lacks jurisdiction over Petitioner’s claims.

Federal courts have limited jurisdiction and “possess only that power authorized by Constitution and statute.” Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). In this case, 8 U.S.C. § 1252(g) divests this Court’s

calculation of Petitioner’s federal immigration detention, accounting for any time he may have been transferred to State or local custody.

jurisdiction to consider Petitioner's claims of unlawful detention. Further, he has failed to exhaust other remedies available to him before turning to the District Court for intervention.

There is no jurisdiction to review "any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); Gupta v. McGahey, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from "discrete acts of commencing proceedings, adjudicating cases, and executing removal orders." Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 483 (1999) (cleaned up). These activities "represent the initiation or prosecution of various stages in the deportation process" that Congress had "good reason" to withhold from judicial review. Id.

This bar is subject to limitations and must be applied "to just those three specific actions" listed. Jennings v. Rodriguez, 583 U.S. 281, 294 (2018). In doing so, "courts must focus on the action being challenged." Canal A Media Holding, LLC v. USCIS, 964 F.3d 1250, 1258 (11th Cir. 2020). Detaining an alien while a removal determination remains pending constitutes an action taken to commence proceedings. Gupta, 709 F.3d at 1065; see also Alvarez v. ICE, 818 F.3d 1194, 1203 (11th Cir. 2016) ("Because [the alien] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in Gupta.");

Johnson v. U.S. Att’y Gen., 847 F. App’x 801, 802 (11th Cir. 2021). “By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.” Alvarez, 818 F.3d at 1203. Here, Petitioner is being detained “while awaiting a removal determination.” Gupta, 709 F.3d at 1065. Under Gupta’s binding interpretation of Section 1252(g), the Court has no jurisdiction. *Id.* The Court must therefore dismiss this action for lack of subject matter jurisdiction.

II. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

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.

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

Petitioner's apprehension at or near the border without being previously admitted qualifies him as an applicant for admission seeking admission under 8 U.S.C. § 1225(b)(2). As stated, Petitioner was first detained at or near the border when he illegally entered the United States, see Dkt. 1 at ¶ 23, at or near San Luis, Arizona. See Ex. A at 2. This places Petitioner "squarely under § 1225" detention authority, despite the fact he "spent time in the United States after being released on an order of recognizance" See Alfonso Parra v. DHS, No. 2:25-cv-1116-KCD-DNF, 2026 WL 21243, at *2 (M.D. Fla. Jan. 5, 2026); see also Aranda Garcia, 2025 WL 3537592, at *1; Duenas Garcia, 2025 WL 3277163, at *2; Pirto v. Warden, No. 2:25-cv-966-KCD-DNF, Doc. 13 (M.D. Fla. Nov. 13, 2025). Likewise, the Court should deny Petitioner's Petition in the present case.

CONCLUSION

The Federal Respondents thus request Petitioner's Petition be denied.

Respectfully submitted,

April 3, 2026

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s/ Charles T. Harden III
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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). 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.).

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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