

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

AMAURY PEREZ-VEGA,

Petitioner,

Case No. 2:26-cv-00762-KCD-NPM

v.

WARDEN, GLADES COUNTY
DETENTION CENTER, U.S.
ATTORNEY GENERAL,

Respondents.

_____ /

**U.S. ATTORNEY GENERAL'S RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Amaury Perez-Vega challenges his detention by U.S. Immigration and Customs Enforcement, arguing that his “detention is unlawfully prolonged and violates [his] Fifth Amendment Due Process rights.” (Doc. 1 at ¶ 13). While reserving all rights, including the right to appeal, Respondents submit this abbreviated brief in lieu of an exhaustive memorandum to preserve the Respondent’s arguments and to conserve judicial resources. Should the Court prefer a more exhaustive discussion, Respondent requests leave to submit additional briefing.

FACTS

Amaury Perez-Vega is a national and citizen of Cuba who claims to have last entered the United States from Cuba in 2016. (Doc. 1-2). On July 22, 2016 Petitioner

was apprehended after having entered through Tavernier, Florida and was processed at the Marathon Border Patrol Station. (Composite Exhibit A at 3.) ICE advises that he was then released on his own recognizance. On or about November 20, 2025 Petitioner was encountered by Border Patrol near Black Point Marina, placed under arrest, taken into custody, and transported to the Marathon Border Patrol Station for processing. *Id.* He was served with a Notice to Appear on or about November 20, 2025 and placed into 240 removal proceedings. *Id.* at 4. As an applicant for admission who has not been admitted or inspected, he is held under 8 U.S.C. § 1225. Amaury Perez-Vega is currently detained at the Glades County Detention Center. (Doc. 1).

At an immigration court hearing on January 5, 2026, the immigration judge sustained the charge contained in the notice to appear and found Amaury Perez-Vega removable. At a bond hearing on March 11, 2016, the immigration judge denied bond. Composite Exhibit B at 3. On March 13, 2026, Amaury Perez-Vega filed a petition for writ of habeas corpus alleging his custody violates the Due Process Clause of the Fifth Amendment. (Doc. 1.). Amaury Perez-Vega's next immigration hearing is set for April 27, 2026. Exhibit B at 1.

CERTIFIED HABEAS RETURN

ICE is detaining Amaury Perez-Vega 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."). Amaury Perez-Vega 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 (BIA 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.

Respondent acknowledges 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 Enft & Removal Operations*, No. 3:25-CV-1313-

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.). 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).

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, 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); see also *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 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.).

Respondent respectfully disagrees 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, Respondent makes the following arguments for preservation purposes:

1. Title 8 U.S.C. § 1252(g) bars review of Amaury Perez-Vega'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 Amaury Perez-Vega's claims. *Id.* at 7-8.
3. Amaury Perez-Vega failed to exhaust his administrative remedies. *Id.* at 8.
4. Amaury Perez-Vega is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

Finally, Respondent contends that should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226, outright release is inappropriate. Moreover, Amaury Perez-Vega has already been denied release by the immigration court (Ex. B) and has another hearing scheduled for April 27, 2026. To the extent the Court orders another 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—Respondent avers 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

Amaury Perez-Vega's Petition for Writ of Habeas Corpus should be denied

DATED April 3, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on April 3, 2026, 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.

I further certify that I caused a copy of the foregoing documents and any exhibits referenced therein to be sent via FedEx to Amaury Perez Vega, at the address listed in the Petition (Doc. 1).

s/ Stephanie S. Leuthauser
STEPHANIE S. LEUTHAUSER
Assistant United States Attorney