

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MONTIEL FERNANDEZ,
JOSE DEMETRIO

Petitioner,

Case No. 2:26-cv-770-KCD-DNF

v.

MARKWAYNE MULLIN
Et Al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jose D. M. Fernandez [Fernandez] 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

Fernandez is a national and citizen of either Venezuela or Columbia who last entered the United States without inspection on or about date and location February

20, 2022, at an unknown place and time. (Composite Exhibit, Ex. 1 at 1.) He applied for TPS on March 3, 2024, which has not been granted. *Id.*

Fernandez came to the attention of ICE ERO when a picture that was posted in a Spanish chat group which similarly situated Petitioners had created to circulate information pertaining to ICE operations. *Id.* at 6. The picture illustrates the tag number of one ICE Agent vehicles during movement on an operation. *Id.* (See I-213). On the January 7, 2026, he was encountered and arrested without incident by Immigration and Customs Enforcement and Removal Operations (ERO) at 212 Altona St, Thomas USVI. *Id.* at 7. Further investigation revealed that the petitioner is 

An NTA was provided to him on March 30, 2026, which he signed acknowledging receipt. *Id.* Respondents' systems show Fernandez has not requested a bond hearing. Petitioner is being detained in Florida Soft Sided Facility - South and has been in custody for approximately 77 days. *Id.*

On March 18, 2026, Fernandez filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and a Ninth Circuit case (*Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). (Doc. 1.)

CERTIFIED HABEAS RETURN

ICE is detaining Fernandez 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.”). [Fernandez] 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

a. 1225/1226

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.

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). Respondents nevertheless note that on March 6, 2026, the Ninth Circuit temporarily stayed the *Bautista*

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 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.).

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.).

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:

1. Title 8 U.S.C. § 1252(g) bars review of Fernandez'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 Fernandez's claims. *Id.* at 7-8.
3. Fernandez failed to exhaust his administrative remedies. *Id.* at 8.
4. Fernandez 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”).

b. Ninth Circuit class case is misapplied

Petitioner also seeks relief under a California case that certified a class action of aliens who, like Petitioner, are in immigration detention and being denied access to a bond hearing. *See* Dkt. 1; *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). The Court has not found *Bautista* controlling here. *See, e.g., Sanchez-Morales v. Field Off. Dir., Miami Field Off., U.S. Immigr. & Customs Enft*, No. 26-CV-20217-JB, 2026 WL 496726, at *2 (S.D. Fla. Feb. 23, 2026); *Pascual R Abreu v. U.S. Atty. General et al.*, No. 2:26-CV-420-KCD-DNF, 2026 WL 746408, at *2 (M.D. Fla. Mar. 17, 2026); *Ervin T. Batz AJ v. Warden, et al.*, No. 2:26-CV-00564-KCD-DNF, 2026 WL 809535, at *2 (M.D. Fla. Mar. 24, 2026). But even if it was, Petitioner would apparently need to return to this Ninth Circuit to obtain the habeas relief sought. *See, e.g., Alli v. Decker*, 650 F.3d 1007, 1015 (3d Cir. 2011); *J.E.F.M. v. Holder*, 107 F. Supp. 3d 1119, 1144 (W.D. Wash. 2015). For the reasons stated, the Court would order no further relief than granted above.

CONCLUSION

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

DATED this 7th day of April 2026.

Respectfully submitted,

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