

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ALVARO JOSE ACOSTA SANCHEZ,

Petitioner,

Case No. 2:26-cv-765-SPC-DNF

v.

PAMELA JO BONDI, et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Alvaro Jose Acosta Sanchez (“Acosta 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

ICE advises that Acosta Sanchez is 47-year-old national and citizen of Nicaragua who last entered the United States on or about August 9, 2021.

(Composite Exhibit, Ex. A at 1, 9.)¹ He was not admitted or paroled after inspection and did not possess a visa or other valid entry document. (*Id.* at 1) Further, ICE advises that Acosta Sanchez was in ICE custody in Texas from August 16 to September 15, 2021, until he was released on an order recognizance. (*See Id.* at 6-8) The 2021 detention totaled 32 days.

Acosta Sanchez was served with a Notice to Appear on or about April 30, 2026. (*Id.* at 1-3). ICE further advises that Acosta Sanchez entered ICE custody on March 2, 2026, at the Florida Soft Side Facility, after an encounter with CBP, and has since been transferred to the California City Corrections Center. Currently, Acosta Sanchez's 2026 detention totals 24 days.

On March 16, 2026, Acosta Sanchez filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment (Doc. 1. at 6)

CERTIFIED HABEAS RETURN

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

¹ The undersigned has requested additional documentation related to Acosta Sanchez. As of the time of this filing, Exhibit A contains all documents received from ICE. If the undersigned receives additional documentation before the Court rules on the petition, the undersigned will supplement this filing.

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

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, 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

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

Dated: March 26, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

/s/ Christopher J. Emden
CHRISTOPHER J. EMDEN
Assistant United States Attorney
USA No. 158
400 North Tampa St., Suite 3200
Tampa, FL 33602
Telephone No.: (813) 274-6000
Facsimile No.: (813) 274-6198
E-mail: Christopher.Emden@usdoj.gov
Lead Counsel for Federal Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 26, 2026, I sent a copy of the foregoing via
U.S. Mail to the following non-CM/ECF participants:

Alvaro Jose Acosta Sanchez
South Florida Detention Facility
54575 Tamiami Trail E.
Ochopee, FL 34141

and

Alvaro Jose Acosta Sanchez
California City Corrections Center
P.O. Box 2513
California City, CA 93505

/s/Christopher J. Emden
CHRISTOPHER J. EMDEN
Assistant United States Attorney