

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

REQUELMER MARIN ALVARADO ALVAREZ,

Petitioner,

Case No. 2:26-cv-828-SPC-DNF

v.

Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security;¹ U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Warden of SOUTH FLORIDA DETENTION FACILITY,

Respondents.

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RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Requelmer Marin Alvarado Alvarez 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.

¹ The current DHS Secretary is Markwayne Mullin.

FACTS

Requelmer Marin Alvarado Alvarez is a national and citizen of Guatemala who last entered into the United States on an unknown date and location. Exhibit 1 (I-213); *see* ECF 1 at ¶ 27 (“on or about 2015). Alvarado Alvarez was placed in immigration custody on February 9, 2026, after a vehicle stop in Ft. Lauderdale. Exhibit 1. Alvarado Alvarez was served with a Notice to Appear the same date, February 9, 2026, and requested a hearing with the immigration judge. Exhibit 2.

Requelmer Marin Alvarado Alvarez is currently detained at Florida Soft Side Facility. On March 20, 2026, Requelmer Marin Alvarado Alvarez filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, Administrative Procedures Act (APA), the Suspension Clause, and the Due Process Clause of the Fifth Amendment, requesting release or an individualized bon hearing. ECF 1.

CERTIFIED HABEAS RETURN

ICE is detaining Requelmer Marin Alvarado Alvarez 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.”). Requelmer Marin Alvarado Alvarez 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. Bond Request

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) and

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.). This order has been temporarily stayed pending a ruling on the government’s emergency motion for a stay pending 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. 5. The Federal Respondents submit *Yajure Hurtado* remains persuasive authority in this Court regarding the proper interpretation of 8 U.S.C. § 1225(b)(2) and further, 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).

Vasquez Carcamo v. Noem, 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 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).

The Fifth Circuit, and recently the Eighth Circuit, 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. *See 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) (“just as an alien is an “applicant for admission” even though no literal “application” is filed, so too is an alien “seeking admission” even when the alien does not literally “request” or “ask for” admission into the country) (*citing Buenrosta-Mendez*). At least four circuits—including the Eleventh, *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.)³—have active appeals on the matter.

³ Oral arguments took place before the Eleventh Circuit on March 26, 2026.

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.).

Respondents respectfully disagree with the Court's decision in *Garcia v. Noem* and *Vasquez Carcamo 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 Requelmer Marin Alvarado Alvarez'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).⁴
2. Title 8 U.S.C. § 1252(b)(9) bars review of Requelmer Marin Alvarado Alvarez's claims. *Id.* at 6-7.
3. Requelmer Marin Alvarado Alvarez failed to exhaust his administrative remedies. *Id.* at 7-8.
4. Requelmer Marin Alvarado Alvarez is properly detained under 8 U.S.C. § 1225. *Id.* at 9-14. His detention was not close to the time period that may implicate the due process concerns noted in *Zadvydas*.

⁴ 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.

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”).

B. Petitioner's APA claim is not properly before the Court.

Petitioner does not have standing to bring his APA claim. By the APA's terms, it is available only for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another

adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234–35 (1953)); *see also Tran v. Warden, Florida Soft Side South*, No. 2:25-cv-1224-KCD-NPM (M.D. Fla. Mar. 10, 2026), Dkt. 16 at pp. 16-17.

The APA provides, that “[a]gency action made reviewable by statute and final agency action *for which there is no other adequate remedy* in a court are subject to judicial review.” (emphasis added). As Judge Dudek recently noted, a petitioner such as Alvarado Alvarez has an adequate remedy—“the very habeas petition he filed to get through the courthouse doors.” *See Gomez- Alcina v. Noem, Garret*, No. 2:25-CV-1164-KCD-DNF, 2026 WL 607614, at *5 (M.D. Fla. Mar. 4, 2026) (citing *Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring)).

Further, because habeas corpus actions and non-habeas corpus actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *Burnam v. Marberry*, 313 F. App’x 455, 456 n.2 (3d

Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedure Act in a single case); *accord Malcom v. Starr*, No. 20-cv-2503 (MJD/LIB), 2021 U.S. Dist. LEXIS 45387, 2021 WL 931213, at *2 (D. Minn. Mar. 11, 2021) (“As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees.”).

Thus because habeas corpus review provides Alvarado Alvarez an adequate judicial remedy for his allegations of unlawful detention, he cannot state a claim for relief under the APA (which Respondents submit is based on Petitioner’s same arguments underlying Petitioner’s claims that Respondents violated his due process, the INA, and the suspension clause).

C. Pending U Visa Application Does Not Preclude Removal.

Petitioner argues that he has a “viable path to lawful status. . . as the beneficiary of a U visa currently pending before the USCIS and for which a Bona Fide Determination issued” on or around June 26, 2024. ECF 1 at ¶¶ 3, 26. To the extent Petitioner claims his detention pending removal is somehow a due process or INA violation, it is significant to note that Petitioner has not yet been granted a U visa, as there are only a limited number of U visas available. Congress capped the number of principal U-Visas available each year at 10,000. 8 U.S.C. § 1184(p)(2)(A);

8 C.F.R. § 214.14(d)(1).⁵ If USCIS determines a petitioner is eligible for a U-visa in all respects but for the annual cap, they are placed on the waiting list, and USCIS may consider those on the waiting list for two benefits: employment authorization and deferred action. *See* 8 U.S.C. § 1184(p)(6); 8 C.F.R. § 214.14(d)(2).

To summarize, U visa petition adjudication currently involves three steps. First, a preliminary discretionary decision is made on whether a petition is bona fide. The second step takes one of two paths: if the petitioner receives a bona fide determination, they may be granted employment authorization at USCIS's discretion, at which time deferred action attaches; or if the petitioner is not given a bona fide determination, the petitioner will then be considered for placement on the waiting list. Third, for all petitioners who have received either a bona fide determination or placement on the waiting list, the final adjudication of the U visa petition is made once visas become available under the statutory cap. If and when a U visa should become available, Petitioner's eligibility would be reviewed again, but it is not dispositive of his removal proceedings and is not relevant to his detention.

⁵ And although USCIS originally estimated it would receive approximately 12,000 principal U-Visa petitions per year, the actual number of U-Visa petitions received has far exceeded that estimate consistently. *See New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,033. Accordingly, USCIS created the "waiting list" in 2007. 72 Fed. Reg. 53,033. In 2008, after the waiting list regulations were promulgated, Congress amended the INA to provide, "The Secretary [of USCIS] may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title." 8 U.S.C. § 1184(p)(6).

Moreover, Petitioner has *not* been granted deferred action or employment authorization to date.

CONCLUSION

The federal respondents respectfully request that Requelmer Marin Alvarado Alvarez's Petition for Writ of Habeas Corpus should be denied based on the arguments set forth herein.

DATED this 27th day of March, 2026.

Respectfully submitted,

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