

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

JACINTO ANGEL RIVERA BRITO,

Petitioner,

v.

Case No. 2:26-cv-865-SPC-DNF

U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT, et al.,

Respondents.

RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jacinto Angel Rivera Brito challenges his detention by U.S. Immigration and Customs Enforcement, arguing he is entitled to immediate release or, alternatively, a bond hearing under 8 U.S.C. § 1226. While reserving all rights, including the right to appeal, the Federal 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

Petitioner is a national and citizen of Guatemala. Dkt. 1 at ¶ 39. He previously entered the United States without inspection on or about October 18, 2016, with his mother and was encountered by Border Patrol about three miles east of San Luis, Arizona. *See* Ex. A. Petitioner was a minor at the time. *See id.* Petitioner apparently thereafter left the United States, though it is not presently known when or how.

Petitioner again entered the United States without inspection on or about February 26, 2019, and was encountered by Border Patrol about 14 miles northeast of San Luis, Arizona. *See* Ex. B. Petitioner was also a minor at the time. *See id.* Petitioner was served with a Notice to Appear. *See id.* Petitioner was apparently thereafter released, though it is not presently known when or how. *See* Dkt. 1 at ¶ 41.

Petitioner was detained again following a March 17, 2026, traffic stop in the Florida Keys. *See* Ex. C. Petitioner is currently detained at the Folkston D Ray ICE Processing Center, in Georgia. *See* Ex. D. As of the date of this Response, Petitioner has been detained for 16 days.

The undersigned presently has no information regarding the status of Petitioner's asylum application, as alleged in his Petition. *See* Dkt. 1 at ¶ 44.¹

On March 25, 2026, Petitioner filed this petition for writ of habeas corpus alleging his custody violates the INA and bond regulations. *See generally* Dkt. 1. He seeks release from custody or, alternatively, a bond hearing. *See id.*

CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A), as an applicant for admission present within the United States with no lawful basis to be admitted. *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."). 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

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,

¹ It is presently unknown when Petitioner's asylum application was filed, thus what the status of that application is, and thus whether he could be detained under 8 § U.S.C. 1225(b)(1)(B)(ii) (requiring detention following asylum officer's finding of credible fear) or 8 § U.S.C. 1225(b)(1)(B)(iii)(IV) (requiring detention where asylum officer does not find credible fear). If additional information and/or documents can be obtained prior to any ruling, the undersigned will seek such leave as may be available to file same and present argument thereon.

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-SJH, 2026 WL 261938, at *1 (M.D. Fla.

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). 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.).

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.).

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 Petitioner'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 Petitioner's claims. *Id.* at 6-7.
3. Petitioner failed to exhaust his administrative remedies. *Id.* at 7-8.
4. Petitioner 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

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.

Respondents is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official”).

CONCLUSION

Wherefore, Jacinto Angel Rivera Brito’s Petition for Writ of Habeas Corpus should be denied.

April 2, 2026

Respectfully submitted,

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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
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