

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

MAURO VARGAS BRIONES,
Petitioner,

v.

Case No. 2:26-cv-1120-KCD-DNF

MARCOS CHARLES, ET AL.
Respondents.

FEDERAL RESPONDENTS' RESPONSE TO HABEAS PETITION

Petitioner Mauro Vargas Briones 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

Vargas Briones is a national and citizen Mexico who purports to have last entered the United States without inspection in 1997. Petition for Writ of Habeas Corpus, Glades County detention center. Petition, ¶¶ 2, 8, 19; *see also* Composite Exhibit A, p. 12 (Detention History).

On October 7, 2025, Petitioner was arrested in Polk County, Florida. Composite Exhibit A, p. 6. An immigration detainer was lodged and on November 15, 2025, ICE assumed custody. *Id.* at 14, 16-19 (detainer and Polk County documentation confirming release to ICE custody). That same day Vargas Briones was issued a Notice to Appear placing him in removal proceedings. *Id.* at 1-4 (Notice to Appear). Removal proceedings remain ongoing with Petitioner scheduled for a merits hearing on any and all applications for relief from removal tomorrow. *Id.* at 25-26 (Notice of Hearing).

On April 10, 2026, Vargas Briones filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act (“INA”) and the Fifth Amendment to the United States Constitution. *See generally* Petition. On April 14, 2026, this Court issued an order to show cause why Petitioner should not be released from custody. ECF No. 4. The government now timely responds.

CERTIFIED HABEAS RETURN

ICE is detaining Vargas Briones 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.”). Vargas Briones 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

I. Arguments Previously Addressed By This Court in *Hernandez-Lopez*.

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. 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 *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). Three Courts of Appeals have conclusively reached the merits of the issue of whether § 1225(b)(2)(A) or § 1226(a) governs detention of aliens who are present without admission or inspection.¹ In *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th

¹ Appeals are also pending in the First, Third, Fourth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits. See *Guerrero-Orellana v. Moniz*, No. 25-2152 (1st Cir.) (oral argument set for May 4, 2026); *Lopes de Andrade v. Dir., Philadelphia Field Off. Immig.*, No. 26-1454 (3rd Cir.) (oral argument set for May 11, 2026); *Lopez Garcia v. Guadian*, No. 25-7044 (4th Cir.) (oral argument set for May 5, 2026); *Pizzaro Reyes v. Raycraft*, No. 25-1982 (6th Cir.) (argued Mar. 18, 2026); *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050 (7th Cir.) (argued Feb. 3, 2026); *Cirrus Rojas v. Olson*, No. 25-3127 (7th Cir.) (fully briefed; no argument scheduled); *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir.) (argued Mar. 4, 2026); *Mendoza Gutierrez v. Baltasar*, No. 25-1460 (10th Cir.) (briefing in progress);

Cir. 2026), and *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), the Fifth and Eighth Circuits held that such aliens are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). However, in *Da Cunha v. Freden*, No. 25-3141-pr, --- F.4th ---, 2026 WL 1146044, at *1 (2d Cir. Apr. 28, 2026), the Second Circuit rejected the Government's position and found that aliens present in the United States after entering the country without inspection and admission, and who were not apprehended at or near the border at the time of entry are subject to detention under 8 U.S.C. § 1226(a). The Government believes that the Fifth and Eighth Circuit decisions reflect the correct interpretation of the law.

In *Buenrostro-Mendez*, the Fifth Circuit held that unadmitted applicants for admission apprehended within the United States are seeking admission and are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). 166 F.4th at 498. The Fifth Circuit concluded that “[f]ollowing the passage of IIRIRA, then, an alien’s status as an applicant for admission does not turn on where or how the alien entered the United States[.]” *id.* at 499, and that “an applicant for admission to the United States is ‘seeking admission’ to the same, regardless whether the person actively engages in further affirmative acts to gain admission[.]” *id.* at 502.

The Eighth Circuit determined that “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

Cerro Perez v. Assist. Dir., Krome North Serv. Processing Ctr., No. 25-14075 (11th Cir.) (argued Mar. 26, 2026).

the country.” *Avila*, 170 F.4th at 1135. The Eighth Circuit found that the statutory purpose of 8 U.S.C. § 1225 was to ensure that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed “on equal footing” in removal proceedings. *Id.* at *1135-36 (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

Federal Respondents acknowledge the split within the appellate courts and within district courts across the country regarding whether § 1225(b)(2)(A) or § 1226(a) applies to aliens present in the United States without admission or inspection but note that an increasing number of district courts have agreed with the Government’s position. *See, e.g., Diaz Lopez v. Dir. of Enft and Removal Operations*, --- F. Supp. 3d ----, No. 3:25-CV-1313-JEP-SJH, 2026 WL 261938, at *1 (M.D. Fla. Jan. 26, 2026); *Lourival Dos Santos Lopes v. Sec’y, Dep’t of Homeland Sec.*, No. 3:25-cv-1522-WWB-LLL, 2026 WL 776158 (M.D. Fla. Mar 19, 2026); *Iraheta Morales v. Noem*, --- F. Supp. 3d ----, No. 25-62598-CIV-SINGHAL, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026); *but see, e.g., Ordonez Cinto v. Warden, Fla. Soft Sided Facility S.*, No. 2:26-cv-00459-SPC-NPM, 2026 WL 657091, at *1 n.1 (M.D. Fla. Mar. 9, 2026) (rejecting the reasoning of *Buenrostro-Mendez*); *Garcia v. Warden, Fla. Soft Side S. Det. Facility*, No. 2:26-cv-636-JES-DNF, 2026 WL 828923, at *2 (M.D. Fla. Mar. 26, 2026) (rejecting the analyses of the Fifth and Eighth Circuits); *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 506 (S.D.N.Y. 2025) (listing 350 decisions rejecting the Government’s position regarding the applicability of 8 U.S.C. § 1225(b)(2)(A) to aliens present in the United States without inspection or admission).

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 Vargas Briones'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 Vargas Briones's claims. *Id.* at 7-8.
3. Vargas Briones failed to exhaust his administrative remedies. *Id.* at 8.
4. Vargas Briones 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”).

II. Arguments Distinct From *Hernandez Lopez*.

Petitioner also asserts that he is eligible for release on bond pursuant to 8 U.S.C. § 1226(a) as a member of the Bond Eligible Class certified in *Maldonado Bautista*, 813 F. Supp. 3d at 1127. *See* Petition, ¶¶ 48-52. He is not.

Absent the application of res judicata or collateral estoppel, a district court is not bound by the judgment of another district court. *See Stone v. First Union Corp.*, 371 F.3d 1305, 1310 (11th Cir. 2004). Res judicata applies only when the cases “involve the same parties or their privies.” *See S. River Watershed All., Inc. v. Dekalb Cnty.*, 69 F.4th 809, 815 n.1 (11th Cir. 2023) (quoting *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001)). As Petitioner was not a party to the *Maldonado Bautista* case, res judicata does not apply. Moreover, offensive collateral estoppel is not available against the Government. *See Morales v. Noem*, No. 25-62598-CIV-SINGHAL, --- F. Supp. 3d ---, 2026 WL 236307, at *8 (S.D. Fla. Jan. 29, 2026) (citing *Demaree v. Fulton Cnty. Sch. Dist.*, 151 F. App’x 859, 863 (11th Cir. 2013)). And even if *Maldonado Bautista* did apply, the Ninth Circuit Court of Appeals has stayed the district court’s class certification order and final judgment “insofar as they extend beyond the Central District of California[,]” and the district court’s post-judgment order vacating *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *Maldonado Bautista v. United States Dep’t of Homeland Sec.*, No. 26-1044 (9th Cir. Mar. 6, 2026).² As such, Petitioner’s

² Even the district court acknowledged the limitations of its jurisdiction. *See Maldonado Bautista*, 813 F. Supp. 3d at 1125 (“The court cannot order nationwide release or bond hearings for Bond Eligible class members, especially so to those confined outside this judicial district.”).

claim that he is entitled to a bond hearing pursuant to *Maldonado Bautista* is without merit.

Finally, to the extent Petitioner requests attorneys' fees under the Equal Access to Justice Act—Petition, ¶ 53—such relief is premature and the Court should decline to grant it unless and until it is properly briefed in full after a decision on the merits of the instant petition is reached. *See* 28 U.S.C. §§ 2412(b), (d)(1) (providing that relief is available to the prevailing party and a request for relief must include the amount sought with an itemized statement of the time expended and rate, among other things).

CONCLUSION

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

DATED: May 4, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: May 4, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney