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

JOSE LUIS DONAYRE-FLORES,

Petitioner, Case No. 2:26-cv-01283-JES-NPM

v.

WARDEN, et al.,

Respondents.
_____/

**FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Jose Luis Donayre-Flores 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, 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**

Jose Luis Donayre-Flores is a national and citizen of Peru. (Doc. 1). He entered the United States on or about December 9, 2022 at or near Eagle Pass, Texas without inspection or admission. (Composite Exhibit A at 7-9.) He was released on parole at that time and an NTA was filed on April 26, 2024. *Id.* He filed an application for

asylum relief, married a United States Citizen, and has a pending I-130. (Doc. 1). Jose Luis Donayre-Flores was encountered on March 2, 2026 at the Turner Gilford Knight Correctional Center in Miami, Florida, after his arrest for a domestic violence incident with his wife. *Id.* at 12-14. He was taken into ICE custody on April 12, 2026. *Id.* at 20. Petitioner is currently detained at Florida Soft Side South. *Id.* at 9. On April 21, 2026, Jose Luis Donayre-Flores filed a petition for writ of habeas corpus alleging his custody violates the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act. (Doc. 1.)

**CERTIFIED HABEAS RETURN**

ICE is detaining Jose Luis Donayre-Flores 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."). Jose Luis Donayre-Flores 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. Mandatory Detention**

In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 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 *Patel v. Hardin*, No. 2:25-cv-00870-JES-NPM (M.D. Fla.) (Doc. 22) (granting habeas in part). It should be noted, however, that courts have recently ruled against petitioners in similar cases. *See, E.g., Lopez v. Dir. of Enf't & 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).

Federal Courts disagree on whether § 1225(b)(2)(A) or § 1226(a) governs detention of aliens who are present without admission or inspection. *Contrast 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) with *Da Cunha*

*v. Freden,* No. 25-3141-pr, --- F.4th ----, 2026 WL 1146044, at *1 (2d Cir. Apr. 28, 2026). Other 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 *Patel* and maintain that Petitioner, having not been admitted after inspection, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) during the pendency of his removal proceedings. 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 Jose Luis Donayre-Flores' claims. *Patel v. Hardin*, No. 2:25-cv-00870-JES-NPM, Doc. 15 at 4-7 (M.D. Fla. Oct. 22, 2025).[1]
2. Title 8 U.S.C. § 1252(b)(9) bars review Jose Luis Donayre-Flores' claims. *Id.* at 7-8.
3. Jose Luis Donayre-Flores failed to exhaust his administrative remedies. *Id.* at 8-9.

[1] 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.

4. Jose Luis Donayre-Flores is properly detained under 8 U.S.C. § 1225. *Id.* at 10-16.

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").

**B. Conditions of Confinement**

Petitioner also challenges his conditions of confinement. *See* Doc. 1, pp. 16-17. To the extent he is alleging his conditions of confinement are unconstitutional, release from custody is not available in this habeas action. "[R]elease from imprisonment is not an available remedy for a conditions-of-confinement claim." *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015 (per curiam)); *see also Hidalgo v. Parra*, No. 2:25-cv-01214-SPC-NPM, 2026 WL 113587, at *1 (M.D. Fla. Jan. 15, 2026)

("Claims challenging the conditions of confinement, rather than the fact or duration of confinement, are not grounds for habeas relief."). Indeed, in *Gomez v. United States*, the Eleventh Circuit stated that if conditions of confinement violate a prisoner's constitutional rights, "[t]he appropriate Eleventh Circuit relief . . . is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Gomez v. United States*, 899 F.2d 1124, 1126-27 (11th Cir. 1990). The Eleventh Circuit has further indicated that its holding in *Gomez* applies to civil detainees in ICE custody. *See Vaz*, 634 F. App'x at 781-82 (noting that a detained alien could not obtain release based on his conditions of confinement claim). This district has further refused to permit any exception for civil detainees in ICE custody. In *St. Louis v. Martin*, the court found "release under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner's confinement." No. 2:20-cv-349-FTM-60-NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020). Because Eleventh Circuit precedent precludes the Court from ordering release from custody, the petitioner's arguments on the basis of his conditions of confinement should also be rejected.

## CONCLUSION

Jose Luis Donayre-Flores' Petition for Writ of Habeas Corpus should be denied.

DATED May 1, 2026.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 1, 2026, 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/ Stephanie S. Leuthauser*
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