

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MILTON CRUZ JUC,

Petitioner,

v.

Case No.: 3:26-cv-1042-MMH-PDB

TODD BLANCHE, Acting U.S.
Attorney General, in his official capacity;
KELEI B. WALKER, Orlando Field
Office Director; **U.S IMMIGRATION
AND CUSTOMS ENFORCEMENT**;
MARKWAYNE MULLIN, Secretary,
DEPARTMENT OF HOMELAND
SECURITY; **TODD LYONS**, Acting
Director, U.S IMMIGRATION AND
CUSTOMS ENFORCEMENT; and
Warden, **BAKER CORRECTIONAL
INSTITUTION**, in their official
capacities,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS¹

Petitioner Milton Cruz Juc challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"), arguing he is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a). Doc. 1. The Federal Respondents acknowledge that the Eleventh Circuit Court of Appeals' decision issued in *Fidencio Hernandez Alvarez v.*

¹ The undersigned acknowledges that the Federal Respondents' response was due Friday, May 8, 2026. However, the undersigned neglected to properly calendar the due date for this response. The undersigned just realized the calendaring error today and sought to correct the mistake as quickly as possible.

Warden, Fed. Det. Center Miami et al., --- F.4th ---, 2026 WL 1243395 (11th Cir. May 6, 2026), controls the issue in this case. Specifically, the Eleventh Circuit held that the Immigration and Nationality Act (INA) does not “authorize the detention of unadmitted aliens who are simply present in the country.” *Id.* at *2. Further, the Court held that “[t]he text of [8 U.S.C.] § 1225(b)(2)(A) is clear that mandatory detention applies only to a narrower category of applicants for admission: those seeking lawful entry into the United States . . . [not] to other present aliens not seeking admission.” *Id.* at *13. In short, “§ 1225 applies to arriving aliens seeking entry at the border, whereas § 1226 applies to aliens unlawfully in the interior.” *Id.* at *14. Thus, in light of the Eleventh Circuit’s decision in *Hernandez Alvarez*, Cruz Juc is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a). However, to preserve the Federal Respondents’ arguments for purposes of any appellate review and conserve judicial resources, the Federal Respondents make the following arguments.

FACTUAL BACKGROUND

Cruz Juc is a native and citizen of Guatemala. Doc. 1, ¶ 11; Exhibit 1 (Notice to Appear) at 1. Petitioner entered the United States without inspection and admission or parole on at an unknown place and time. *Id.*

On March 14, 2026, Florida Highway Patrol officers encountered Petitioner during a traffic stop, concluded he was not legally present in the United States, and took him into custody. Doc. 1, ¶ 15; Exhibit 1 at 1. On March 16, 2026, Cruz Juc was transferred to ICE custody and served with a Notice to Appear, charging

Petitioner with being present in the United States without being admitted or paroled, or arriving in the United States at any time or place other than as designated by the Attorney General in violation of § 212(a)(6)(A)(i) of the INA, as amended 8 U.S.C. §1182(a)(6)(A)(i), and being present in the United States without possession of valid documents in violation of § 212(a)(7)(A)(i)(I) of the INA, as amended 8 U.S.C. §1182(a)(7)(A)(i)(I). *See* Exhibit 1 at 1, 4.

At the time Cruz Juc filed the instant Petition on April 28, 2026, he had been in ICE custody for 44 days and, as of today, has been in custody for 57 days.

ARGUMENT

1. Preservation of Federal Respondents' § 1225(b)(2) argument.

In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216, 2025 WL 2674169 (B.I.A. Sept. 5, 2025), the Board of Immigration Appeals (“BIA”) examined the plain language of 8 U.S.C. § 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, Pub L. No. 104-208, and prior practices of DHS. 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 respondent, who are present in the United States without admission.” 29 I&N Dec. at 225.

In the interest of judicial economy and to expedite the Court's consideration of this matter, the Federal Respondents make the following arguments to preserve any appellate review:

1. Title 8 U.S.C. § 1252(g) bars review of Cruz Juc's claims.² Exhibit 2 (*Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR (Doc. 11 at 4-7) (M.D. Fla. Dec. 8, 2025)).
2. Title 8 U.S.C. § 1252(b)(9) bars review of Cruz Juc's claims. *Id.* at 8.
3. Cruz Juc is properly detained under 8 U.S.C. § 1225(b)(2). *Id.* at 10-17.
2. **TRO should not be converted to preliminary injunction**

"A TRO or preliminary injunction is appropriate where the movant demonstrates that: (a) there is a substantial likelihood of success on the merits; (b) the TRO or preliminary injunction is necessary to prevent irreparable injury; (c) the threatened injury outweighs the harm that the TRO or preliminary injunction would cause to the non-movant; and (d) the TRO or preliminary injunction would not be averse to the public interest. *Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001). "The preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant 'clearly carries the burden of persuasion' as to the four prerequisites." *United States v. Jefferson Cnty.*, 720 F.2d 1511,

²Federal 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); see also Fed. R. Civ. P. 1.

1519 (11th Cir. 1983). The burden to prove entitlement to a TRO is on the petitioner, and respondent bears no burden to prove that petitioner is not entitled to a TRO. See *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 443 (1974).

Based on *Hernandez Alvarez*, the Federal Respondents acknowledge that Cruz Juc is detained pursuant to §1226(a) and, thus, his argument will succeed on the merits.

Next, Petitioner has not demonstrated that he will suffer irreparable harm absent injunctive relief. “A showing of irreparable harm is ‘the *sine qua non* of injunctive relief.’” *NE Fla. Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir. 1990). Merely showing a “possibility” of irreparable harm is insufficient. See *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. “Although removal is a serious burden for many aliens, it is not categorically irreparable.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Cruz Juc has not made such a showing here. “[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm . . .” *Leiva-Perez v. Holder*,

640 F.3d 962, 969 (9th Cir. 2011). And, here, he has not made the requisite showing that he will suffer irreparable harm.

Finally, the balance of equities and the public interest weigh decisively against Cruz Juc's request for injunctive relief. It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (stating "[t]he Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases).

CONCLUSION

Based on the Eleventh Circuit's decision in *Hernandez Alvarez*, Cruz Juc is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a). As a result, a preliminary injunction is not necessary.

Dated: May 11, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send notice of filing and a downloadable copy of the filed document to the following CM/ECF participant listed below:

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EXHIBITS

- 1 Notice to Appear
- 2 *Juan Miguel Gomez-Pena v. Secretary, DHS*, No. 3:25-cv-1287-MMH-MCR
(Doc. 11) (M.D. Fla. Dec. 8, 2025)