UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Marlon Anthony Flores-Sanchez, Petitioner, v. Kristi Noem, Secretary of the Department of Homeland Security, et. al. Respondents.	Civil Action No. 5:26-cv-00026-JKP

ABBREVIATED RESPONSE TO HABEAS PETITION AND REQUEST TO PROCEED WITHOUT ORAL ARGUMENT

Federal Respondents provide the following timely response to Petitioner's habeas petition.[1] Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought, including attorney's fees under the Equal Access to Justice Act ("EAJA").[2] The legal issues presented in this Petition for Writ of Habeas Corpus ("Petition") concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner, whether Petitioner is entitled to a bond hearing. While reserving all rights, including the right to appeal, Respondents submit this abbreviated response to preserve the legal issues and to conserve judicial and party resources.

Respondents acknowledge that this Court's prior rulings concerning similar challenges to the government policy or practice at issue in this case, and the common question of law between

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1 The Department of Justice represents only federal employees in this action.

2 *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

this case and those rulings, would control the result in this case should this Court follow its legal reasoning in its prior decisions. *See Navarro v. Bondi et. al,* No. 5:25CV1468-FB (W.D. Tex. Dec. 2, 2025); *Moradi v. Thompson et al*, No.5:25CV1470-OLG (W.D. Tex. Dec. 18, 2025); *Reyes v. Thomspon et al*, No.5:25CV1590-XR (W.D. Tex. Dec. 12, 2025); *Acosta-Balderas v. Bondi et al*, No.5:25CV1629-JKP (W.D. Tex. Dec. 11, 2025); *Tisighe v. De Anda-Ybarra et al*, 3:25CR593-KC (W.D. Tex. Dec. 5, 2025); *Chauhan v. Noem et al*, 3:25CV574-DB (W.D. Tex. Dec. 8, 2025); *Gvedashvili v. Mooneyham et al*, 6:25CV552-ADA-DTG (W.D. Tex. Dec. 22, 2025); While Respondents respectfully disagree with those decisions, the factual and legal issues presented in the instant habeas petition do not differ in any material fashion from those presented in *Navarro v. Bondi, Moradi v. Thompson, Reyes v. Thomspon, Acosta-Balderas v. Bondi et al, Tisighe v. De Anda-Ybarra et al, Chauhan v. Noem et al;* and *Gvedashvili v. Mooneyham et al* namely, both the instant petition and the cases cited primarily concern whether an alien who is present in the United States without admission is properly subject to mandatory detention (*i.e.*, detention without the prospect of release on bond) during the pendency of his administrative removal proceedings pursuant to 8 U.S.C. § 1225(b). This Court should incorporate the filings in *Navarro v. Bondi, Moradi v. Thompson, Reyes v. Thomspon, Acosta-Balderas v. Bondi et al, Tisighe v. De Anda-Ybarra et al, Chauhan v. Noem et al* and *Gvedashvili v. Mooneyham et al* into the record of this habeas action.

Should the Court prefer to receive a more exhaustive opposition brief, Respondents respectfully request leave to file such a brief upon the Court's request.

Discussion

Petitioner principally seeks an order from this Court directing ICE to immediately release Petitioner from ICE detention. Petitioner argues that Petitioner's detention is governed by INA § 236, 8 U.S.C. § 1226, that Petitioner is being unlawfully detained and deprived of a bond hearing,

and that the detention violates the Fifth Amendment to the United States Constitution, 8 U.S.C. § 1226, and the Administrative Procedures Act ("APA")[3].

Respondents contend that Petitioner's detention is governed by INA § 235, 8 U.S.C. § 1225, because as an alien who entered without inspection or parole was and remains an applicant for admission. As such, Petitioner is subject to mandatory detention and not entitled to a bond hearing before the immigration judge. Respondents further contend Petitioner should be required to exhaust their administrative remedies before bringing a habeas challenge in federal court.

Respondents further rely upon *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). There, the BIA examined the plain language of § 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 respondent, who are present in the United States without admission." 29 I&N Dec. at 225. Respondents contend 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 those at issue in the litigation cited

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[3] Petitioner did not pay the filing fee for non-habeas claims. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). "When a filing contains both habeas and non-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3.

above. Accordingly, while preserving all rights, Respondents incorporate by reference the legal arguments it presented in those cases. Should the Court apply the same reasoning it did in those cases to this one, the legal principles espoused in those cases would likely result in the same outcome here. Because of this, Respondents submit that further briefing on the issues addressed in those cases is not a good use of judicial or party resources. In its current posture and based upon the Court's prior rulings, the Court can decide this matter without delay. If, however, the Court prefers a full opposition brief in this matter, Respondents will provide a brief upon the Court's request.

Should this Court order release of Petitioner, Respondents request that the release order specify a date for release expressed by a calendar day instead of hours. Respondents further request that a time for release not be set. Releases from detention facilities carry unique security considerations for each person being released. It requires coordination within the detention facility and with the Petitioner, their family and/or their counsel. Setting an exact time for release beyond the calendar date can unduly burden the already complicated process.

Conclusion

Respondents appreciate the Court's consideration of this abbreviated response and respectfully request that the Court deny this Petition.

Dated: January 9, 2026

Respectfully submitted,

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By: */s/ Adrian Acosta*

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