

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-62393-CIV-SMITH

WOSBELY ISAAC VAZQUEZ GONZALEZ,

Petitioner,

v.

EXECUTIVE OFFICE OF IMMIGRATION
REVIEW, *et al.*,

Respondents.

ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS

This matter is before the Court upon Petitioner's *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 [DE 1]. Upon consideration of the parties' submissions, the pertinent portions of the record, and the applicable law, the Court finds that Petitioner is being unlawfully detained due to his improper classification as "an alien who is an applicant for admission" pursuant to 8 U.S.C. § 1225(b)(2)(A). The Court finds that Petitioner's proper classification is a detainee pursuant to 8 U.S.C. § 1226(a). *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1062 n.13 (7th Cir. 2025) (noting that "Defendants' recent reliance on § 1225(b)(2)(A) to detain noncitizens discovered within the United States upends decades of practice. Before July 8, 2025, DHS's long-standing interpretation had been that § 1226(a) applied to those who have crossed the border between ports of entry and are shortly thereafter apprehended." (internal marks omitted; citation omitted)). Mandatory detention of all persons illegally in the United States only became official DHS policy when Acting Director of ICE Todd M. Lyons issued an internal memorandum on July 8, 2025 (the "ICE Internal Memo"), explaining that the agency "revisited its legal position" on the applicability of §§ 1225(b) and 1226(a). *Castañon-Nava*, 161 F4th at

1062 n.13 (citation omitted); *see also Gonzalez v. Sec'y, Dep't of Homeland Sec.*, No. 2:25-CV-1047-KCD-DNF, 2025 WL 3677101, at *1 (M.D. Fla. 2025) (finding that federal regulations provide that aliens detained within the United States who have been here for years before their detention are entitled under § 1226(a) to receive a bond hearing at the outset of their detention).

Additionally, Respondent's argument that Petitioner has failed to fully exhaust his administrative remedies is not persuasive. *See Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015) (holding that courts reviewing § 2241 petitions may not "disregard a failure to exhaust and grant relief on the merits if the respondent properly asserts the defense"). Specifically, Respondent argues that Petitioner "fails to address that immigration judges and the Board of Immigration Appeals ('BIA') may consider" constitutional challenges such as those Petitioner presently raises. However, courts in this circuit have recognized that "exhaustion in the § 2241 context can be excused" if a petitioner can demonstrate that "pursuing such remedies would be futile or unable to afford the petitioner the relief he seeks." *Alarcon v. Gallagher*, No. 19-cv-04447, 2021 WL 9385236, at *3 (N.D. Ga. 2011) (collecting cases). And courts across the nation have ruled that (1) an "administrative appellate record is not necessary to resolve the purely legal question" "of whether a non-citizen is entitled to a bond hearing under 8 U.S.C. § 1226(a)," *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 966–67 (D. Minn. 2025) (alterations adopted), and (2) the text of § 2241 does not mandate exhaustion, leaving "the decision to require exhaustion . . . within the sound discretion of the court," *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 778 (E.D. Mich. 2025) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) and *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013)). *See generally* 28 U.S.C. § 2241. Respondent's claim that immigration judges and the BIA "may consider constitutional challenges" is insufficient to show that the administrative process could "afford [Petitioner] the relief he seeks," as the existence of

the ICE Internal Memo indicates that “administrative review is not likely to change Respondent[’s] position that Section 1225(b)(2)(A) applies in this context.” *Lopez-Campos*, 797 F. Supp. 3d at 778. The Court thus concludes that any attempt at exhaustion by Petitioner would be “futile.” *Alarcon*, 2021 WL 9385236 at *3. Therefore, Petitioner’s alleged failure to exhaust is excused in this matter.

Accordingly, it is **ORDERED** that the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 [DE 1] is **GRANTED**:

1. Within 10 days of the date of this Order, Respondents shall provide Petitioner an individualized bond hearing consistent with 8 U.S.C. § 1226(a).
2. Respondents are enjoined from denying bond to Petitioner on the basis that he is detained pursuant to 8 U.S.C. § 1225(b)(2).
3. Respondents shall, within 24 hours of the bond hearing, file a status report indicating the outcome of the bond hearing and, if release on bond is denied, the reason(s) for the denial.
4. All pending motions are **DENIED as moot**.
5. This case is **CLOSED**.


DONE and ORDERED in Fort Lauderdale, Florida, this 26th day of January, 2026.



RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: counsel of record

Wosbely Isaac Vazquez Gonzalez, pro se

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Broward Transitional Center
Inmate Mail/Parcels
3900 North Powerline Road
Pompano Beach, FL 33073