

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 25-CV-25548-FAM

DOMINGO BATEN PASTOR,

Petitioner,

v.

CHARLES PARRA, in his official
Capacity as Assistant Field Office
Director, Krome Noth Service
Processing Center, *et. al.*

Respondents.

**RESPONDENTS' RESPONSE TO PETITION FOR A WRIT OF HABEAS
CORPUS AND REQUEST FOR ORDER TO SHOW CAUSE**

Respondents by and through the undersigned Assistant United States Attorney hereby file its Response to Petition for a Writ of Habeas Corpus and Order to Show Cause (the "Petition") and request that it be denied stating in support thereof as follows:

I. INTRODUCTION


Petitioner, Domingo Baten Pastor ("Petitioner") attempts to circumvent 8 U.S.C. § 1225(b)(2)(A), the statute under which he is lawfully detained by virtue of filing this Petition and requesting that he be released or provided a bond hearing under 8 U.S.C. § 1226(a). *See* [DE 1 ¶ 7]. Petitioner argues that the authority for his detention instead arises under § 1226(a) because "he previously entered" and is "now residing in the United States." *See id.* at ¶ 5. Moreover, Petitioner's argument overlooks that he falls squarely within the statutory definition of aliens subject to detention under § 1225(b)(2)(A), which is also consistent with the Board of Immigration Appeal's

(“BIA”) decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).¹ See *Morales v. Noem et al.*, No. 25-62598-CIV SINGHAL (S.D. Fla. Jan. 29, 2026); see also *Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, ___ F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026). Accordingly, the Petition should be denied.

¹ Respondents recognize that adverse district court decisions from the Southern District of Florida have been issued with respect to this argument but maintain and preserve its position for appellate purposes. See, e.g., *Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *3, 8 (S.D. Fla. Oct. 15, 2025) (“§ 1226(a), not § 1225(b)(2), governs Petitioner’s detention”); *Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41 (S.D. Fla. Oct. 10, 2025) (“§ 1226 governs Petitioner’s detention”); *Hernandez Alvarez v. Acting Warden Roger Morris, et al.*, Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that “detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen “applicant[s] for admission” to the United States.); *Cerro Perez v. Parra, et al.*, Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that “prudential exhaustion requirements are excused for futility” and finding that “section 1226(a) and its implementing regulations govern Petitioner’s detention, not section 1225(b)(2)(A)”; *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025) (finding good cause to excuse Petitioner’s failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner’s request for a bond hearing or release and that Petitioner is subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Duvallon Boffill, et al.*, Case No. 25-25179-CIV-BECERRA, ECF No.9 (Nov. 20, 2025) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner’s detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)); *Ocampo Fernandez v. Ripa*, No. 25-24981-CIV-LEIBOWITZ, ECF No. 17 (S.D. Fla. Nov. 25, 2025) (declining to follow BIA order in *Hurtado* and holding that “Petitioner is detained pursuant to Section 1226 and is therefore entitled to a bond hearing”); *Espinal Encarnacion v. ICE Field Office Director, et al.*, Case No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”; *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) (“Having concluded that Petitioner’s detention is governed by 8 U.S.C. § 1226(a), Petitioner is entitled to an individualized bond hearing before an immigration judge.”); *Acosta v. Ripa, et. al.*, Case No. 25-62360-CIV-DIMITROULEAS, ECF No. 19 at 7 (S.D. Fla. Dec. 26, 2025) (“§ 1226(a) and its implementing regulations govern Petitioner’s detention, not § 1225(b)(2)(A)”; and *Fuentes Granados v. Secretary of Homeland Security*, Case No. 26-60020-CIV-SMITH, ECF No. 7 (S.D. Fla. Jan. 27, 2026) (“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)[;] . . .Petitioner’s proper classification is a detainee pursuant to 8 U.S.C. § 1226(a)”).

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Guatemala. *See* Ex. 1, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), dated September 4, 2025. Petitioner entered the United States without being admitted or inspected at an unknown place and unknown date. *Id.*

On or about August 8, 2025, Petitioner was encountered and detained by Collier County Sheriff's Office following his arrest for driving without a valid driver's license in Naples, Florida. *See id.*; *see also* Ex. 2, Judgment and Sentence,  dated September 3, 2025. Petitioner was ultimately convicted of violating Florida Statute § 322.03(1)(a), No Valid Drivers License, 3rd or Subsequent Conviction. *Id.*

On September 4, 2025, Petitioner was transferred to U.S. Immigration and Customs Enforcement (ICE), Removal and Enforcement Operations (ERO) custody. Ex. 1, Form I-213; Ex. 3, Form I-200 Warrant for Arrest of Alien, dated August 8, 2025; Ex. 4, Detention History.

On September 25, 2025, Petitioner was transferred to Krome North Service Processing Center. On September 27, 2025, DHS filed a Notice to Appear with Executive Office for Immigration Review ("EOIR") charging the Petitioner with inadmissibility under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). *See* Ex. 5, Notice to Appear (NTA), dated September 4, 2025.

On October 30, 2025, Petitioner requested a custody hearing before the EOIR. *See* Ex. 6, Declaration of Deportation Officer (Declaration), ¶ 11. On October 31, 2025, Petitioner admitted the allegations and conceded the charge of removability. *Id.* at ¶ 12. On November 6, 2025, the Immigration Judge denied bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Ex. 7, Immigration Judge Order, dated November 6, 2025. Petitioner did not appeal the Immigration Judge's Order. *See* Ex. 6, Declaration, ¶ 14.

Petitioner's removal proceedings are ongoing before the immigration court and the next hearing is presently set for March 19, 2026. *See* Ex. 8, Notice of Hearing, dated January 9, 2026. Petitioner remains detained at Krome North Service Processing Center (Krome). *See* Ex. 4, Detention History.

III. ARGUMENT

A. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is Inapplicable which was Clarified in the BIA's Decision in *Matter of Yajure Hurtado*.

Petitioner is properly detained as an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, ___ F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026); *Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026) (concluding that habeas petitioner who entered the United States without inspection in 2004 is an "applicant for admission" governed by 8 U.S.C. § 1225(b) and rejecting petitioner's argument the government must grant a bond hearing under 8 U.S.C. § 1226)). The Fifth Circuit in *Buenrostro-Mendez* recognized that "[s]ince DHS began to detain unadmitted aliens under § 1225(b)(2)(A), well over a thousand aliens have filed habeas corpus petitions seeking bond hearings[] [and,] [i]n most of these cases, the district court found in favor of the petitioner." *Id.* at *3. Nevertheless, the court concluded that presence without admission renders an individual like Petitioner to be both an "applicant for admission" and "seeking admission" under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention--regardless of how much time the individual has been present in the United States. *Buenrostro-Mendez*, at *4-9.

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)” 8 U.S.C. § 1225(a)(1); see *Buenrostro-Mendez*, at *2 (“an alien’s status as an applicant for admission does not turn on where or how the alien entered the United States”); *Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”).

By its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted”). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or attempting to come into the United States at a port-of-entry [(“POE”)]” 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); see also 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United

States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . .”). An applicant for admission at a United States POE “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see also* 8 U.S.C. § 1229a(c)(2)(A) (explaining that an applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under 8 U.S.C. § 1182 in removal proceedings pursuant to § 1229a). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

Petitioner is a native and citizen of Guatemala. *See* Ex. 1, Form I-213. Petitioner entered the United States without being admitted or inspected at an unknown place and unknown date. *Id.* Petitioner is, therefore, an alien present in the United States without admission or parole and, consequently, an applicant for admission. *See Buenrostro-Mendez*, at *2, 4-5 (explaining that “an alien’s status as an applicant for admission does not turn on where or how the alien entered the United States” and that an “applicant for admission” is necessarily “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2))).

The recently published decision issued by the BIA in *Matter of Yajure Hurtado* is instructive here. In *Matter of Yajure Hurtado*, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” 29 I&N Dec. at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the

alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and subsequent caselaw post *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), recognized that §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission or parole who are placed into expedited removal proceedings are detained under § 1225 even if later placed in § 1229a removal proceedings after establishing a credible fear of persecution or torture. *Id.* at 518-19; *see also* 8 § U.S.C. 1225(b)(1)(B)(ii) (providing that if an alien subject to expedited removal demonstrates a credible fear of persecution or torture, the alien “shall be detained” for further consideration of an asylum application in § 1229a removal proceedings).

Additionally, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that an alien who unlawfully entered the United States between POEs, was arrested and detained without a warrant while arriving, and was previously released from DHS custody pursuant to an 8 U.S.C. § 1182(d)(5)(A) parole is detained under § 1225(b) upon re-detention. 29 I&N Dec. at 70-71. This ongoing evolution of the law makes clear that all applicants for admission in various procedural postures are subject to detention under § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that “no amount of policy-talk can overcome a plain statutory command”); *see*

generally *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

B. Petitioner is an Applicant for Admission in 8 U.S.C. § 1299a Removal Proceedings and Properly Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A).

There is no question that Petitioner failed to present any valid entry documents and was neither admitted nor paroled into the United States. *See* Ex. 5, NTA. Therefore, Petitioner is an applicant for admission, as defined by § 1225(a)(1), was determined to not be clearly and beyond a doubt entitled to be admitted, thus subjecting Petitioner to detention under § 1225(b)(2)(A). Petitioner is an applicant for admission in § 1229a removal proceedings. Under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to § 1225(b)(2)). As the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. There is also no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens as no provision therein refers to “arriving aliens,” or limits that paragraph to arriving aliens. Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. *See, e.g.*, 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(c)(1).

C. Section 1226 does Not Impact the Detention Authority that Governs with respect to Applicants for Admission in Removal proceedings.

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are subject to removal proceedings under § 1229 and this does not impact the directive in § 1225(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [8 U.S.C. § 1229a],” § 1225(b)(2)(A). Petitioner is unlawfully in the United States, and he is not in possession of documentation allowing him to remain here lawfully. Ex. 16, Declaration, ¶ 14. As the Supreme Court explained, § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a “permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225).

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to be released on bond; rather, both DHS and immigration judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, bond issued under § 1226(a) may be revoked at any time. *See* 8 U.S.C. § 1226(b); *see also* 8 CFR 1236.1(c)(9). Lastly, to interpret § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded § 1225(b) in 1996 to apply to a broader category of aliens, including those

aliens who crossed the border illegally. There would have been no need for Congress to make such a change if § 1226(a) was meant to apply to aliens present without admission.

D. Applicants for Admission may Only be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

DHS has the exclusive authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes temporary release from detention under § 1225(b). 583 U.S. at 300.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor immigration judges have authority to parole an alien into the United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that “parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS” and “reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security”). Moreover, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an immigration judge or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

E. Petitioner’s Due Process Rights have not been Violated.

Petitioner asserts the government’s decision of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates due process. *See* [DE 1, ¶ 60]. The Court should reject such arguments because “detention during deportation proceedings is a constitutionally valid aspect of the deportation process.” *See Demore v. Kim*, 538 U.S. 510 (2003). Additionally, an individualized bond hearing need not be conducted to determine individualized flight risk; instead, detention may be mandated to combat flight. *See id.* 538 U.S. at 528.

IV. CONCLUSION

Based upon the foregoing, the Petition should be denied as detention is lawful under § 8 U.S.C. § 1225(b)(2).

Dated: February 6, 2025

Respectfully submitted,

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