

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

GERMAIN MARTINEZ GARCIA,

Petitioners,

v.

PAMELA BONDI, ET AL.,

Respondents.

Case No. 2:25-cv-1158-SPC-NPM

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**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF  
HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Oswaldo Germain Martinez Garcia (“Petitioner”) seeks the grant of a petition for writ of habeas corpus (“Petition”) pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement (“ICE”) and seeking his immediate release from custody. Petitioner also brings challenges pursuant to the Immigration and Nationality Act (“INA”). His petition must be denied.

Petitioner is currently detained under 8 U.S.C. § 1225(b)(2) and is therefore ineligible for release under 8 U.S.C. § 1226(a) as he so alleges. He seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing that he is not entitled to. Petitioner argues that—contrary to

the plain language of 8 U.S.C. § 1225(b)(2)—the authority for his detention is better understood to arise under 8 U.S.C. § 1226(a), a detention statute that allows for release on bond or conditional parole. That argument fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(2).

### **BACKGROUND**

Petitioner is an alien “applicant for admission.” He is a native and citizen of Mexico who unlawfully entered the United States at an unknown location on or about May 1996. Petition, ¶ 13; Exhibit A, Notice to Appear (“NTA”). Petitioner was issued an NTA on November 18, 2025, placing him in removal proceedings. Ex. A at 1; Petition, ¶¶ 16-17. On November 19, 2025, Petitioner was taken into custody by immigration authorities. Petition, ¶ 14. He requested and received a bond redetermination hearing before an immigration judge who concluded that Petitioner was subject to the mandatory detention. Petition, ¶¶ 18-19; ECF No. 1-2. On December 12, 2025, Petitioner filed the instant action in the U.S. District Court seeking habeas relief pursuant to the INA. *See generally* Petition. On December 16, 2025, the Court issued an order instructing Respondents to respond to Petitioner’s habeas petition and show cause why the petition should not be granted. ECF No. 3. Respondents have until December 22, 2025 to comply. *Id.*

In response to this Court’s order, ECF No. 3, and for the reasons set forth below, Respondents respectfully request that this Court deny habeas relief.

## LEGAL STANDARD

The Court has the power to grant a writ of habeas corpus where a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). “The burden rests on the person in custody to prove his detention is unlawful.” *Benito Vasquez v. Moniz*, No. 25-11737-NMG, 2025 WL 1737216, at \*1 (D. Mass. June 23, 2025).

## ARGUMENT

### **I. All Respondents Except the Warden of Glades County Detention Center Should Be Dismissed as Improper.**

The only appropriate respondent to a habeas case is the official with physical custody of petitioner. 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (“[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”). Accordingly, all Respondents with the exception of the Warden of the Glades County Detention Center, are improper parties to this action.

As a practical matter, it typically makes little difference when petitioners also name the Department of Homeland Security (“DHS”) or ICE in cases like this one which challenges detention authority. However, Respondents flag the issue of improper parties for two reasons. First, Petitioner has gone beyond even DHS to

include the Attorney General of the United States, and individual not involved in the challenged custody determination here. Second, the fact that improper parties have been included creates an administrative predicament should the Court find in Petitioner's favor. Here, Petitioner seeks immediate release or a bond hearing. Petition, Prayer for Relief at (c). Immediate release is inappropriate relief because the INA confers discretion to DHS to determine whether to detain and alien and under what circumstances. *See* 8 U.S.C. § 1226(a)(1). And an order to conduct a bond hearing directs conduct outside the scope of what Petitioner's custodians can provide. Bond hearings are scheduled and conducted by the Executive Office for Immigration Review ("EOIR"). When ICE makes a detention determination, an alien dissatisfied with that determination may seek a bond redetermination hearing before an immigration judge ("IJ"). 8 C.F.R. § 1003.19(a). IJs are employed by EOIR and they conduct those bond hearings—not the Warden of the detention facility, ICE, DHS, or the Attorney General. EOIR endeavors to schedule bond redetermination hearings for the earliest possible date and time after receiving an alien's oral or written request. *See* 8 C.F.R. § 1003.19(b); EOIR Immigration Court Practice Manual, Ch. 9.3(c)-(d).<sup>1</sup>

EOIR is not party to this action, nor should they be under *Padilla v. Rumsfeld*.

What's more, the remaining Respondents—even were they proper respondents in a habeas action—have no power to direct how EOIR, a separate federal agency,

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<sup>1</sup> Available at <https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3> (last accessed Dec. 18, 2025).

manages its docket. If a bond hearing is ordered, Respondent ICE can promptly redetermine bond—as ordered—and forward that documentation to EOIR upon Petitioner’s request for a redetermination hearing before an IJ. However, the actions that follow—scheduling the requested bond redetermination hearing—are within EOIR’s realm of responsibility and again, EOIR is a separate entity from ICE and DHS and is an inappropriately named party here.

Given these realities, if the Court were to deny dismissal of the Respondents and ultimately grant relief, that relief should be limited to actions and deadlines within Respondents ICE and DHS’s control (i.e. an order compelling ICE to conduct a new bond determination under the appropriate statutory scheme within a specified period of time and compelling that any resulting request for redetermination of that decision be submitted to EOIR within a specific, reasonable time period). This would allow Respondents to promptly comply with Court orders in a manner consistent with their actual authority while also ensuring that scheduling of any subsequent hearing or release occurs promptly. It would also avoid any future compliance disputes stemming from actions over which ICE has no control.

## **II. The Court Lacks Also Jurisdiction Over Petitioner’s Claims.**

Respondents acknowledge that this Court’s prior rulings concerning jurisdiction pursuant to 8 U.S.C. §§ 1252(b)(9) and 1252(g) as well as those related to exhaustion in similar challenges to the government policy or practice at issue in this case would control the result in this case should the Court adhere to its legal reasoning

in those prior decisions and find the facts sufficiently common. *See Hinojosa Garcia v. Dep't of Homeland Sec.*, No. 2:25-cv-879, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025).

While Respondents respectfully disagree with those decisions, in the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents hereby rely upon and incorporate by reference<sup>2</sup> the legal arguments regarding jurisdiction under Sections 1252(b)(9) and 1252(g) and exhaustion as presented in *Hinojosa Garcia*.<sup>3</sup> Should the Court prefer to receive a more exhaustive and fulsome opposition brief on these issues, Respondents respectfully request leave to file such a brief and will do so upon the Court's request.

### **III. Petitioner is an "Applicant for Admission" and Subject to Section 1225(b)'s Detention Criteria.**

In his Petition, Petitioner argues that his detention should be governed by 8 U.S.C. § 1226 and that he is being unlawfully detained due to an erroneous interpretation of the INA. *See generally* Petition. Respondents contend that Petitioner's

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<sup>2</sup> Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of judicial economy, Respondents respectfully request the Court to suspend application of the rule. *See* Local Rule 1.01(a) and 1.01(b).

<sup>3</sup> It should be noted, however, that several courts have recently ruled in Respondents' favor on similar issues. *See e.g., Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at \*3-7 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, at \*2-5 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972, at \*2-7 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, \*2-7 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at \*2-10 (E.D. Wis. Oct. 30, 2025); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646, at \*1-2 (W.D. La. Oct. 22, 2025), *report and recommendation adopted by* 2025 WL 3113644 (W.D. La. Nov. 6, 2025); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at \*7-10 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250-CAB-SBC, 2025 WL 2730228 at \*4-5 (S.D. Cal. Sept. 24, 2025). *Cf. Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H, (Doc. 9), (N.D. Tex. Oct. 24, 2025).

detention is governed by 8 U.S.C. § 1225, because he is an alien who entered without inspection or parole, was—and remains—an applicant for admission, and is treated, for constitutional purposes, as if stopped at the border. As such, he is subject to mandatory detention and not entitled to a bond hearing. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 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 respondent, who are present in the United States without admission.” 29 I&N Dec. at 225.

“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 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.”). Accordingly, 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’” (citing 8 U.S.C. § 1225(a)(1)); *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” (citing 8 U.S.C. § 1225(a)(1))). 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 seeking admission at a United States point of entry “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* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “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).

Here, Petitioner did not present himself at a point of entry but instead entered the United States in 1996 without having been admitted after inspection by an immigration officer. Petition, ¶ 13; Exhibit A, NTA. Petitioner is, therefore, an alien present without admission and an applicant for admission.

### CONCLUSION

Habeas relief should be denied. All Respondents but the Warden of the Glades Detention Center are improper parties in this habeas action. Nonetheless, they have shown that Petitioner’s detention pursuant to Section 1225 is lawful because the INA mandates his detention. Even so, this Court lacks jurisdiction to act on Petitioner’s claims.

DATED: December 18, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on December 18, 2025, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice to all counsel of record.

Dated: December 18, 2025

Signed:

*/s/ Amanda Saylor*

Amanda Saylor

Assistant United States Attorney