UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

EDGAR MUNOZ AVENDANO, Petitioner, v. WARDEN, FLORIDA SOFT SIDE SOUTH, ET AL., Respondents.	Case No. 2:25-CV-1221-SPC-NPM

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

Petitioner Edgar Munoz Avendano ("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.[1] Petitioner also asserts that his ongoing detention violates orders issued in *Lazaro Maldonado Bautista et al., v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873 (C.D. Cal. 2025). 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). 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

[1] In the alternate, Petitioner seeks a bond hearing within seven days.

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 alleges to have unlawfully entered the United States in 2006 though government reflect an unknown date of entry. Petition, ¶¶ 1, 19; *see also* Record of Deportable/Inadmissible Alien, Form I-213 ("Exhibit A"). On November 6, 2025, Petitioner was involved in a traffic accident to which the Boca Raton Police Department responded. *See* Arrest/Notice to Appear, Probable Cause Affidavit ("Exhibit B"). Petitioner was placed under arrest by local law enforcement and charged with driving without a driver's license causing serious bodily injury or death. Exhibit B at 2-3. Shortly thereafter, immigration enforcement became aware of his detention and he was processed for inclusion in ICE's Criminal Apprehension Program ("CAP"). Exhibit A at 2; *see also* https://www.ice.gov/identify-and-arrest/criminal-alien-program (last accessed Jan. 13, 2026). He was subsequently issued a Notice to Appear placing him in removal proceedings. *See* Notice to Appear ("Exhibit C"). On December 18, 2025, Petitioner's criminal charges were resolved with a guilty plea to driving without a license. See Fifteenth Judicial Circuit Plea ("Exhibit D"). Petitioner's criminal sentence is complete, and ICE has assumed

custody. *Id.*; *see also* Petition, ¶ 19. On December 30, 2025, Petitioner filed the instant action in the U.S. District Court seeking habeas relief pursuant to the Immigration and Nationality Act ("INA") and bond regulations. *See* Petition. On January 6, 2026, the Court issued an order instructing Respondents to respond to Petitioner's habeas petition no later than January 13, 2026. ECF No. 5. In response to this Court's order, ECF No. 5, and for the reasons set forth below, Respondents respectfully request oppose the relief Petitioner seeks.

ARGUMENT

I. Jurisdiction

Respondents acknowledge that this Court's prior rulings concerning jurisdiction pursuant to 8 U.S.C. §§ 1252(b)(9) and 1252(g) 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 e.g.*, *Cetino v. Hardin, et al.*, No. 2:25-cv-1037-JES-DNF, 2025 WL 3558138 (M.D. Fla. Dec. 12, 2025). While Respondents respectfully disagree, in the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents hereby rely upon and incorporate by reference the legal arguments regarding jurisdiction under Sections 1252(b)(9) and 1252(g) as presented in *Cetino*.[2] *See Cetino*, No. 2:25-cv-830-JES-DNF, ECF No. 9. Should the Court prefer

[2] 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).

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.

II. Petitioner's Detention is Lawful

In his Petition, Petitioner argues that his detention should be governed by 8 U.S.C. § 1226. *See generally* Petition. Respondents contend that Petitioner's 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. *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 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* 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 purports to have entered the United States in 2006 between points of entry, without having been admitted after inspection by an immigration officer. Petition, ¶¶ 1, 19. Petitioner is, therefore, an alien present without admission and an applicant for admission.

III. *Maldonado Bautista* Lacks Preclusive Effect

Petitioner effectively asks the Court to impose *res judicata* effect on a class-wide basis while the declaratory judgment issued in *Maldonado Bautista* remains pending on appeal. *See* Petition, ¶¶ 1-3, 8-10; *see also Maldonado Bautista*, 5:25-cv-01873 at ECF Nos. 94, 95. However, doing so would be improper, as this District has already

recognized. *See e.g.*, *Martinez Chavez v. Ripa, et al.*, No. 2:25-cv-01088-KCD-DNF (ECF No. 10), FN 4. In many circumstances, a declaratory judgment will have preclusive effect as between the parties in future litigation. *See* Restatement (Second) of Judgments § 33. But the treatises recommend caution in imposing *res judicata* based on a declaratory judgment that remains subject to appeal. *See* 9 A.L.R.2d 984 ("both the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences"). Not applying *res judicata* will result in delay of applying the final judgment. But by applying *res judicata* during the pendency of an appeal, the "evil result[]" is that if the first judgment is ultimately reversed, it could meanwhile lead to another judgment "from which it may be impossible to obtain relief notwithstanding such reversal." *Id.*; *see also* Federal Practice & Procedure § 4044 ("Awkward problems can result from the rule that preclusive effects attach to the first judgment" while that judgment is subject to an appeal). Here, it would not be proper to impose *res judicata* effect on a class-wide basis while the declaratory judgment is pending on appeal. *See* 9 A.L.R.2d 984 (the "only one safe way of avoiding conflicting judgments on the same cause . . . [is for] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered").

IV. Any Relief Ordered Should Take into Consideration Respondents' Role In Custody Redetermination Hearings.

Should the Court ultimately find that Petitioner's custody is more appropriately considered under Section 1226, Respondents flag the administrative struggles in

similar cases when a bond hearing is ordered because bond hearings are scheduled and conducted by the Executive Office for Immigration Review ("EOIR"). *See, e.g.*, *Hinojosa Garcia v. Noem, et al.*, No. 2:25-cv-879-SPC, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025). When ICE makes a detention determination—under either Section 1225 or 1226—the alien may seek a bond redetermination hearing before an immigration judge ("IJ") challenging ICE's decision. 8 C.F.R. § 1003.19(a). IJs are employed by EOIR and they conduct those bond hearings—not the Warden or even ICE. 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).

EOIR is not a party to this action, nor should it be under *Padilla v. Rumsfeld*. What's more, ICE—even were it a proper party—has no power to direct how a separate federal agency manages its docket. If a bond hearing is ordered, 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—is wholly within EOIR's realm of responsibility and again, EOIR is a separate entity from ICE.

Given these realities, if the Court were to grant relief here, that relief should be limited to actions and deadlines within ICE'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—if unfavorable—be submitted to EOIR within a specific time period). This would allow ICE to promptly comply with Court orders in a manner consistent with ICE's actual authority while also ensuring that scheduling of any subsequent hearing or release occurs promptly. It would also avoid any future disputes about compliance with an order that is ultimately attributable to an entity not a party to the litigation.

CONCLUSION

This Petition must be denied. Respondents 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 and he has failed to exhaust otherwise available administrative remedies. Petitioner fails to state a claim for relief under the Due Process Clause and fails to establish that this Court has subject matter jurisdiction.

DATED: January 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 13, 2026, 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: January 13, 2026

Signed:

/s/ Amanda Saylor
Amanda Saylor
Assistant United States Attorney