

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

MARIO BENITO GUTIERREZ
GUTIERREZ,

Petitioner,

v.

MIAMI FIELD OFFICE DIR., ET AL.,

Respondents.

Case No. 2:25-cv-1223-JES-DNF

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

Petitioner Mario Gutierrez Gutierrez (“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 Nicaragua who unlawfully entered the United States on or about March 30, 2021. Petition, ¶¶ 5, 52. Petitioner was placed in removal proceedings with the issuance of a Notice to Appear (“NTA”) shortly thereafter. *Id.* Petitioner asserts that he has filed an application seeking asylum with the immigration court which remains pending at this time. Petition, ¶ 60. Petitioner was initially released on bond in June 2021, however, Respondents detained him again on December 21, 2025. 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. The following day, the Court issued an order instructing Respondents to respond to Petitioner’s habeas petition no later than January 9, 2026. ECF No. 3.

In response to this Court’s order, ECF No. 3, and for the reasons set forth below, Respondents respectfully request that this Court dismiss Petitioner’s Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

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-KCD-NPM, ECF No. 9. 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.

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

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).

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 entered the United States on or about March 30, 2021 between points of entry, without having been admitted after inspection by an immigration officer. Petition, ¶ 5. He was apprehended and issued a notice to appear in immigration proceedings. *Id.* He has since applied for asylum in those proceedings, an application that remains pending at this time. *Id.* at ¶ 60. Petitioner is, therefore, an alien present without admission and an applicant for admission. *See Pirto v. Warden of Glades County Detention Center, et al.*, No. 2:25-cv-966-KCD-DNF (Doc. 13, pp. 3-4) (finding detention pursuant to 8 U.S.C. § 1225 appropriate where petitioner was apprehended at the border and he thereafter sought admission through asylum); *see also Duenas Garcia v. Immigr. and Customs Enforcement, et al.*, No. 2:25-cv-1004-KCD-NPM (Doc. 15, pp 3-4) (same).

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, ¶¶ 2-4; *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 these actions, nor should they 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

Petitioner's claims must be dismissed. 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. All counts should be dismissed.

DATED: January 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 8, 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 8, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney