

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

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

MARIO BENITO GUTIERREZ
GUTIERREZ,

Petitioner,

v.

MIAMI FIELD OFFICE DIRECTOR, ET AL.

Respondents

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

COMES NOW, Petitioner, MARIO BENITO GUTIERREZ GUTIERREZ, by and through the undersigned counsel, hereby files his Reply to the Respondent, MIAMI FIELD OFFICE DIRECTOR, ET AL's Opposition to Petition for Writ of Habeas Corpus under 29 U.S.C. §2241, in compliance with this Honorable Court's Order dated December 31, 2025, and responds as follows:

I. This Court has Jurisdiction

Respondents concede that this Court's prior rulings rejecting jurisdiction stripping under 8 U.S.C. §§ 1252(g) and 1252(b)(9) control here if the Court adheres to its reasoning in analogous cases. The Petitioner respectfully asserts that the Court's previously rulings on this issue control, and therefore jurisdiction is proper.

II. Petitioner's Detention is Unlawful

Respondents' core argument that Petitioner is an "applicant for admission" and subject to mandatory detention under 8 U.S.C. § 1225(b)(2) has been overwhelmingly rejected by federal courts nationwide and by courts within this District. Petitioner has provided an exhaustive list of cases that support this contention and respectfully references those cases herein. Petition, ¶¶8, 42.

The Petitioner at issue was apprehended upon arrival on or about March 30, 2021, and was released **on bond** around June 2021. Therefore, the relevant arrest for detention purposes is December 21, 2025, not Petitioner's initial encounter in 2021 that resulted in his release on bond. At the time of his current detention, Petitioner has lived at liberty in the United States for nearly five (5) years. Therefore, Petitioner is not "seeking admission" and should not be classified under § 1225(b)(2).

Further, courts have uniformly held that § 1225 applies to arriving aliens or recent entrants, not individuals long present in the United States after release. As adopted in *Gutierrez-Ortiz*, the Court therein determined the default detention statute for individuals such as the Petitioner is 8 U.S.C. § 1226. See *Gutierrez-Ortiz v. Noem*, 3:25-cv-01386 (M.D. Fla. Dec. 17, 2025).

While Respondents rely heavily on *Yajure*, federal courts are not bound by BIA interpretations that conflict with the INA's text and structure, See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). As in *Gutierrez-Ortiz*, *id.*, and many other decisions cited herein, *Yajure*'s interpretation has been widely rejected as inconsistent with the statute.

Therefore, the Petitioner is not an “arriving alien” and not subject to mandatory detention under §1225 and is eligible for a bond under §1226(a).

III. Maldonado Bautista does confirm Petitioner’s Entitlement to Relief

Respondents’ argument that the Maldonado declaratory judgment lacks effect because of a pending appeal is unavailing. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). A declaratory judgment has operative effect unless stayed. Respondents cite no stay and identify no authority permitting them to disregard a nationwide class judgment they remain bound to obey.

IV. This Court does have Jurisdiction to Order the Relief Sought

Respondents’ attempt to shift responsibility to EOIR does not excuse continued unlawful detention. ICE controls Petitioner’s custody classification and must comply with the law. Therefore, as previously ordered by this Honorable Court, this Court has jurisdiction to order the relief sought in the Petition for Habeas Corpus.

CONCLUSION

For the reasons stated herein, the Petition should be granted. The Court has jurisdiction to grant the relief sought in the Petition. The Petitioner is not an “arriving alien” under 8 U.S.C. §1225 and thus should be classified under 8 U.S.C. §1226(a) and given a bond hearing. Maldonado Bautista and the cases cited in the Petition and this Response provide ample support that Habeas relief is warranted herein and the Petitioner respectfully requests that the relief sought in the Petition be granted forthwith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 8, 2026, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. Which will send notice to all counsel of record.

/s/ Allison Rub, Esq.
Allison Rub, Esq.
Fla. Bar No. 105529