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

JESUS HUMBERTO LANDAVERDE GARCIA, Petitioner, v. GARRETT RIPA, ET AL., Respondents.	Case No. 2:26-CV-008-KCD-DNF

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

Petitioner Jesus Humberto Landaverde 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.[1] 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 detention is better understood to arise under 8 U.S.C. § 1226(a), a detention statute that allows for release on bond or conditional

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

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).[2]

BACKGROUND

Petitioner is an alien "applicant for admission." He is a native and citizen of Honduras who purports to have unlawfully entered the United States in 2018. Petition, ¶¶ 28, 55. Petitioner has an asylum application pending. *Id.*, ¶57. Petitioner was detained by immigration enforcement on December 11, 2025. Petition, ¶¶ 28, 56. On January 2, 2026, Petitioner filed the instant action in the U.S. District Court seeking habeas relief and on January 5, 2026, the Court issued an order instructing Respondents to respond. *See* ECF Nos. 1, 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

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[2] The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec'y, Fla. Dep't of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. *See, e.g., Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE either to bring petitioner for a bond hearing or release by a specific date).

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*.[3] *See Cetino*, No. 2:25-cv-830-JES-DNF, 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

Petitioner's detention is governed by 8 U.S.C. § 1225, as 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

[3] 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).

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 2018 without having been admitted after inspection by an immigration officer. Petition, ¶ 55. He has since applied for asylum *Id.* at ¶ 57. Petitioner is, therefore, an alien present

without admission and an applicant for admission.

CONCLUSION

Petitioner's claims must be dismissed. Respondents have shown that Petitioner's detention pursuant to Section 1225 is lawful because the INA mandates it. Even so, this Court lacks jurisdiction to act on Petitioner's claims. All relief should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: January 22, 2026

Signed:

/s/ Amanda Saylor
Amanda Saylor
Assistant United States Attorney