

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

MAMMADOU LAMINE BARRY,

Petitioner,

Case No. 2:26:cv-065-KCD-DNF

v.

DAVID HARDIN, WARDEN OF
GLADES DETENTION CENTER, *et al.*,

Respondents.

RESPONDENTS' OPPOSITION TO PETITION FOR HABEAS CORPUS

Respondents, by and through undersigned counsel, hereby respond to the Court's January 20, 2026 Order to Show Cause (ECF No. 7). Petitioner—an inadmissible alien initially detained at the border—is an applicant for admission and thus his detention is governed by 8 U.S.C. § 1225(b)(2), as an Immigration Judge recently determined. Furthermore, the Immigration Judge also determined that even under the statutory framework set forth at 8 U.S.C. § 1226, he does not merit bond due to his criminal record. Petitioner has not demonstrated that his detention is in any way unlawful and his petition should be denied.

BACKGROUND

Petitioner is a citizen and national of Guinea who entered the United States without admission or parole on September 11, 2023 near San Ysidro. *See* Petition for Writ of Habeas Corpus, ECF No. 1 ("Petition"); *see also* ECF No. 1-3 at 1. Two days following his entry he was issued a Notice to Appear placing him in immigration

removal proceedings. ECF No. 1-3; *see also* Form I-213, Record of Deportable/Inadmissible Alien, attached as “Exhibit A” at 2. On September 1, 2025, Petitioner was arrested in Hoboken, New Jersey for the offense of “circulating false report.” *Id.* On October 22, 2025 he was convicted of disorderly conduct. Petitioner’s immigration removal proceedings remain ongoing, albeit on the detained docket, and he is scheduled for an individual hearing—at which he will argue in favor of any applications he has pending—is scheduled for February 17, 2026. *See* Notice of Hearing, attached as “Exhibit B.” Given the manner in which Petitioner entered the United States, ICE’s detention determination is governed by 8 U.S.C. § 1225. Petitioner sought review of ICE’s bond determination in bond proceedings before an Immigration Judge. *See* ECF No. 1-2. The Immigration Judge agreed with ICE’s determination that Petitioner’s detention was properly considered under 8 U.S.C. § 1225(b)(2) but made the alternative finding that his release is improper given his criminal history. *Id.*

On January 14, 2026, Petitioner filed the instant Petition seeking habeas relief from this Court. ECF No. 1. On January 20, 2026, the Court ordered respondents to show cause as to why the Petition should not be granted. ECF No. 7. In response to this Court’s order, ECF No. 7, and for the reasons set forth below, Respondents oppose the Petition and ask that it be denied.

LEGAL STANDARDS

The Court has power to grants writs 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

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 petitioner, who are present in the United States without admission.” 29 I&N Dec. at 225. This Court should rule the same.

Respondents acknowledge that questions of law in this case, and the challenges to the government’s policy and practice, substantially overlap with *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). It should be noted, however, that courts have recently ruled against petitioners in similar cases. *See, E.g., Lopez v. Dir. of Enft & Removal Operations*, No. 3:25-CV-1313-JEP-SJH, 2026 WL 261938, at *1 (M.D. Fla. Jan. 26, 2026); *Iraheta Morales v. Noem*, No. 25-62598-CIV-SINGHAL, 2026 WL 236307, at *3-9 (S.D. Fla. Jan. 29, 2026). Some decisions have started recognizing that there is no jurisdiction over this

question to begin with. *Munoz Nataren v. Raycraft*, No. 4:26-cv-212, 2026 WL 214368, at *2 (N.D. Ohio Jan. 28, 2026); *Amaya-Velis v. Raycraft*, No. 4:26-cv-73, 2026 WL 100596, at *2-3 (N.D. Ohio Jan. 14, 2026).

Significantly, the Fifth Circuit recently ruled that aliens who have not been admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of whether the alien is already present in the United States. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). At least four circuits—including the Eleventh—have active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.); *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).

Respondents respectfully disagree with the Court's decision in *Hernandez-Lopez*. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments for preservation purposes:

1. Title 8 U.S.C. § 1252(g) bars review of Barry's claims. *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM (M.D. Fla. Oct. 29, 2025) (Doc. 19 at 5-6).
2. Title 8 U.S.C. § 1252(b)(9) bars review of Barry's claims. *Id.* at 7-8.
3. Barry is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

Finally, Respondents contend that should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226, outright release is inappropriate.

To the extent the Court orders a bond hearing before an Immigration Judge for the purpose of determining whether Petitioner is a flight risk or danger to the community—*see, e.g., Hernandez-Lopez*, 2025 WL 3022245, at *5—Respondents aver that such bond hearings are not conducted or managed by ICE, rather by the Executive Office for Immigration Review, which is not a proper party to this suit. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (noting that for habeas petitions challenging detention, “the 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”).

Furthermore, even under a Section 1226 analysis, the Immigration Court has already made clear that Petitioner does not merit a bond.¹ *See* ECF No. 1-2.

CONCLUSION

Petitioner is not entitled to habeas relief. He is an applicant for admission given his entry into the United States without authorization and his apprehension at or near the border. Section 1225(b)(2) applies and his detention remains mandatory. Even were it not, an Immigration Judge has already considered his eligibility for discretionary bond, declining to find it appropriate.

¹ Petitioner retains the ability to appeal the Immigration Judge’s bond determination, however to date, has not sought appeal.

DATED: February 11, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Amanda B. Saylor
AMANDA B. SAYLOR
Assistant United States Attorney
FL Bar No. 1031480
400 N. Tampa St. Ste. 3200
Tampa, Florida 33602
Telephone: (813) 274-6020
Fax: (813) 274-6198
Email: Amanda.Saylor@usdoj.gov
Counsel for Respondents