

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:26-cv-20426-Bloom

RICARDO CALIHUA TEHUINTLE,

Petitioner,

v.

ACTING WARDEN OF THE MIAMI
FEDERAL DETENTION CENTER,
et al.,

Respondents.

**RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS
AND RESPONSE TO ORDER TO SHOW CAUSE**


Respondents¹ file this Return to Petitioner, Ricardo Calihua Tehuintle's Petition for Writ of Habeas Corpus [D.E. 1] (hereinafter the "Petition") and Response to Court's Order to Show Cause, entered January 23, 2026 [D.E. 4]. As set forth below, this action should be dismissed as Petitioner is properly detained pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2)(A).

I. FACTUAL BACKGROUND

Petitioner, Ricardo Calihua Tehuintle, is a native and citizen of Mexico. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), dated September 18, 2013. Petitioner illegally entered the United States at an unknown location and date. *See* Exh. A, Form



¹ A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Federal Detention Center. *See* Exh. L. Any other named Respondents *i.e.* Garret Ripa, Todd Lyons, Kristi Noem, Pamela Bondi and Executive Office for Immigration Review, must be dismissed as improper parties.

I-213, dated September 18, 2013. On September 18, 2013, Petitioner was encountered by the local law enforcement. *See* Exh. A, Form I-213, dated September 18, 2013. Homeland Security Investigations was notified and determined that Petitioner was inadmissible to the United States. *See* Exh. A, Form I-213, dated September 18, 2013. Petitioner was taken into custody and detained at the Houston Contract Detention Facility. *See* Exh. A, Form I-213, dated September 18, 2013; *see also* Exh. B, Form I-286, Notice of Custody Determination (Form I-286), dated September 18, 2013; *see also* Exh. C, Form I-200, Warrant of Arrest of Alien (Form I-200), dated September 18, 2013; *see also* Exh. D, Detention History. He was processed for a voluntary return to Mexico and removed on September 20, 2013. *See* Exh. E, Form I-94 Departure Record, dated September 20, 2013.

On January 26, 2017, Petitioner was convicted of property damage and leaving the scene without giving information, in violation of Florida Statute 316.061.1. *See* Exh. F, Arrest Affidavit,  On or about February 28, 2017, Petitioner violated his probation and a warrant was issued for his arrest. *See* Exh. G, Arrest Warrant, 53-2016CT-007531-A000BA.

On or about February 2, 2017, Petitioner was encountered by ICE ERO. *See* Exh. H, Form I-213, dated February 2, 2017. At that time, ICE ERO determined Petitioner was inadmissible to the United States and took him into custody. *See* Exh. H, Form I-213, dated February 2, 2017, *see also* Exh. D, Detention History; *see also* Exh. I, Form I-286, dated February 2, 2017; *see also* Exh. J, Form I-200, dated February 2, 2017. On February 6, 2017, DHS filed a Notice to Appear (NTA), with the Executive Office for Immigration Review (EOIR), charging Petitioner with inadmissibility under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). *See* Exh. K, Form I-862, Notice to Appear (NTA), dated February 2, 2017. On February 21, 2017, Petitioner had a master calendar hearing before the Krome Immigration Court. *See* Exh. L, Declaration. During that

hearing, the charge of removability was sustained and Petitioner accepted voluntary departure. *See* Exh. M, Immigration Judge Order, dated February 21, 2017. On March 2, 2017, Petitioner departed the United States pursuant to the voluntary departure order. *See* Exh. N, Form I-210, Voluntary Departure and Verification of Departure, dated March 2, 2017.

On July 25, 2024, Petitioner was convicted of violating Florida Statute 316.061, for leaving the scene of an accident with property damage. *See* Exh. O, Arrest Affidavit,  . On December 29, 2025, Petitioner was encountered by Florida Highway Patrol during a vehicle stop. *See* Exh. P, Form I-213, dated December 29, 2025. Florida Highway Patrol transferred Petitioner to Customs and Border Protection (CBP) custody, who then determined that the Petitioner had unlawfully entered the United States. *See* Exh. P, Form I-213, dated December 29, 2025. On December 31, 2025, Petitioner was transferred to ICE ERO custody. *See* Exh. D, Detention History. On January 12, 2026, an NTA was filed with EOIR, charging Petitioner with inadmissibility under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). *See* Exh. Q, Form I-862, dated December 29, 2025.

Petitioner has not requested a custody hearing before the immigration court. *See* Exh. L, Declaration. His next hearing before the Krome Immigration Court is on March 2, 2026. *See* Exh. R, Notice of Hearing, dated January 26, 2026. He currently has a pending petition for alien relative (Form I-130) with the U.S. Citizenship and Immigration Services, filed by his spouse. *See* Exh. L, Declaration. Petitioner is currently detained at Miami Federal Detention Center (FDC), which is under the docket control of the Krome North Service Processing Center (Krome). *See* Exh. L, Declaration; *see also* Exh. D, Detention History.

On January 22, 2026, Petitioner filed this habeas petition, challenging his continued detention under 8 U.S.C. § 1225(b). Petitioner also refers to *Matter of Hurtado*, 29 I&N Dec. 216

(BIA 2025) as controlling. *See* D.E. 1, ¶4. Plaintiff asserts three counts challenging his continued detention: violation of the INA (Count I); “violation of the Bond Regulations” (Count II); and violation of due process (Count III). Given that none of these positions is meritorious, Petitioner’s Petition should be dismissed.

II. ARGUMENT

A. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is Inapplicable which was Clarified in the BIA’s Decision in *Matter of Yajure Hurtado*.

In this case, Petitioner is properly detained as an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). “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.”).

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’”); *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”). 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 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 also* 8 U.S.C. § 1229a(c)(2)(A) (explaining that an applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under 8 U.S.C. § 1182 in removal proceedings pursuant to § 1229a). “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).

Petitioner did not present himself at a POE but instead entered the United States without having been admitted or paroled after inspection by an immigration officer. *See* Exh. L ¶ 6. Petitioner is, therefore, an alien present in the United States without admission or parole and, consequently, an applicant for admission. The recently published decision issued by the BIA in *Matter of Yajure Hurtado* is instructive here. In *Matter of Yajure Hurtado*, the BIA rejected the

alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" 29 I&N Dec. at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). The BIA's decision is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and subsequent caselaw post *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), recognized that §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission or parole who are placed into expedited removal proceedings are detained under § 1225 even if later placed in § 1229a removal proceedings after establishing a credible fear of persecution or torture. *Id.* at 518-19; *see also* 8 § U.S.C. 1225(b)(1)(B)(ii)(providing that if an alien subject to expedited removal demonstrates a credible fear of persecution or torture, the alien "shall be detained" for further consideration of an asylum application in § 1229a removal proceedings).

Additionally, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that an alien who unlawfully entered the United States between POEs, was arrested and detained without a warrant while arriving, and was previously released from DHS custody pursuant to an 8 U.S.C. § 1182(d)(5)(A) parole is detained under § 1225(b) upon re-detention. 29 I&N Dec. at 70-71. This

ongoing evolution of the law makes clear that all applicants for admission in various procedural postures are subject to detention under § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

B. Petitioner is an Applicant for Admission in 8 U.S.C. § 1229a Removal Proceedings and as such his Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A) is Proper.

Both arriving aliens and aliens present without admission or parole, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under § 1225(b)(1) or removal proceedings before an immigration judge under § 1229a. §§ 1225(b)(1), (b)(2)(A). *See Jennings*, 583 U.S. at 287 (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). For aliens amenable to expedited removal, immigration officers have discretion to apply expedited removal under § 1225(b)(1) or to initiate removal proceedings before an immigration judge under § 1229a. *See also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

Petitioner is currently in § 1229a removal proceedings and is subject to detention under § 1225(b)(2)(A). *See* Ex. D, Notice of Appear. Hence, under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and

beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to § 1225(b)(2)). As the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens as no provision therein refers to “arriving aliens,” or limits that paragraph to arriving aliens. Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. *See, e.g.*, 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(c)(1).

C. Section 1226 does Not Impact the Detention Authority that Governs with respect to Applicants for Admission in removal proceedings.

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are subject to removal proceedings under § 1229 and this does not impact the directive in § 1225(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [8 U.S.C. § 1229a],” § 1225(b)(2)(A). As the Supreme Court explained, § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a “permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225).

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to be released on bond; rather, both DHS and immigration judges

have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). To interpret § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. There would have been no need for Congress to make such a change if § 1226(a) was meant to apply to aliens present without admission.

D. Applicants for Admission may Only be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

DHS has the exclusive authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes temporary release from detention under § 1225(b). 583 U.S. at 300.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor immigration judges have authority to parole an alien into the United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that “parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS” and “reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland

Security”). Lastly, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an immigration judge or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

E. Petitioner failed to Exhaust his Administrative Remedies

Lastly, the Court should dismiss the petition for writ of habeas corpus for failure to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement “aims to provide the agency with a chance to correct its own errors, ‘protect[] the authority of administrative agencies,’ and otherwise conserve judicial resources by ‘limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Petitioner has not availed himself of the administrative remedies available to him, yet seeks a bond determination in the first instance from this Court. Petitioner has not sought a bond determination hearing (*see* Declaration) and any bond determination would first be reviewable upon appeal to the Board of Immigration Appeals. By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). The denial is a decision appealable to the BIA who “plainly has jurisdiction to determine whether an IJ properly denied an alien detainee’s motion for bond redetermination.” *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1349 (M.D. Ga. 2020) (holding that habeas petitioner failed exhaust his administrative remedies in appealing an IJ’s denial of bond redetermination to the BIA). Moreover, contrary to Petitioner’s claim, as set forth in the EOIR Policy Memo 25-45 the

BIA and IJs can consider constitutional challenges to the INA – such could include a Fifth Amendment challenge to the BIA’s interpretation of 235(b)(2) in *Yajure Hurtado*. See <https://www.justice.gov/eoir/eoir-policy-manual/memoranda-pm-list>. Here, Petitioner has not availed himself of the administrative process and remedies available to him before proceeding to this Court in hopes of shopping for a more favorable forum. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

F. CONCLUSION

Based upon the foregoing, the Petition should be dismissed because detention is lawful under § 8 U.S.C. § 1225(b) and Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court. Additionally, given that Respondents are not Petitioner’s immediate custodians, they must be dropped/dismissed as parties.

Dated: January 26, 2026

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: *Monica L. Haddad*
MONICA L. HADDAD
Assistant U.S. Attorney
Florida Bar No. 99426
Email: Monica.Haddad@usdoj.gov
U.S. Attorney's Office
Southern District of Florida
500 S. Australian Avenue, Suite 400
West Palm Beach, Florida 33401
Telephone: (561) 209-1004
Facsimile: (561) 820-8777

Attorney for Respondents