

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

CASE NO.: 2:26-cv-00125-KCD-NPM

BRAYAN RUBIO RUBIO,

Petitioner,

v.

DAVID HARDIN, Warden, Glades
County Detention Center, *et al.*,

Respondents.

PETITIONER'S TRAVERSE ON HABEAS PETITION

Petitioner, through undersigned counsel, offers this abbreviated traverse pursuant to 28 U.S.C. § 2243.¹ Respondents' response brief raises two matters warranting reply: (1) the effect of Petitioner's recent non-final removal order on the pending habeas petition; and (2) recent case law purportedly supporting the government's detention authority under 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

I. Petitioner's Non-Final Removal Order Does Not Alter the Detention Analysis

Respondents claim that this case is in "an atypical posture," because Petitioner recently received a removal order. Doc. 11 at 3. However, Respondents concede, as they must, that the removal order is not yet administratively final. *Id.*; see Exhibit A

¹ Petitioner's counsel acknowledges that the Court's Local Rules do not permit a reply as a matter of right. See M.D. Fla. L.R. 3.01(e). However, Petitioner submits this abbreviated Traverse pursuant to 28 U.S.C. § 2243.

(reflecting that Petitioner reserved his right to appeal and has until March 2, 2026, to do so). Under 8 U.S.C. § 1231(a)(1)(B)(i), the removal period triggering post-final order detention does not begin until “the date the order of removal becomes administratively final.” 8 U.S.C. § 1231(a)(1)(A)-(B). A removal order becomes administratively final only “[u]pon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time.” 8 C.F.R. § 1241.1(c). In the event that Petitioner files an appeal, which he intends to do, his removal order would only become administratively final “upon dismissal of an appeal by the Board of Immigration Appeals.” *Id.* § 1241.1(c). Because Petitioner’s appeal period has not yet expired, his removal order is not administratively final and § 1231 does not govern his detention.²

II. The Fifth Circuit’s Decision in *Buenrostro-Mendez* is Unpersuasive and Does Not Control

Respondents rely on the Fifth Circuit’s recent decision in *Buenrostro-Mendez v. Bondi*, --- F.4th ----, 2026 WL 323330 (5th Cir. Feb. 6, 2026), and a handful of district court decisions agreeing with the government’s position. *See* Doc. 11 at 4.

² Respondents invite the Court to find Petitioner’s detention better considered by 8 U.S.C. § 1231. Doc. 11 at 3 n.3. The Court should decline the invitation. Section 1231 applies only after a removal order becomes “administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). Treating Petitioner’s detention as governed by § 1231 before a removal order is administratively final would directly contravene the plain text of the statute and implementing regulations. *See id.*

This Court is not bound by the Fifth Circuit, and that decision is unpersuasive for several reasons.

The interpretation followed by the majority of courts, including this Court, is more faithful to the statutory text. *First*, it gives independent meaning to Congress’s deliberate use of both “applicant for admission” and “seeking admission” in § 1225(b)(2)(A), rather than treating these terms as one phrase as surplusage in violation of fundamental canons of construction. *Patel v. Hardin*, No. 2:25-CV-870-JES-NPM, 2025 WL 3442706, at *5 (M.D. Fla. Dec. 1, 2025). The Fifth Circuit’s holding that “applicant for admission” and “seeking admission” are functionally identical collapses these distinct statutory terms, rendering “seeking admission” mere surplusage. *Buenrostro-Mendez*, 2026 WL 323330, at *4.

Second, the majority interpretation aligns with the statutory definition of “admission” in § 1101(a)(13)(A) as “lawful entry . . . after inspection and authorization,” reading “seeking admission” to refer to noncitizens actively pursuing this process at or near the border. *Carcamo v. Noem*, No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *3 (M.D. Fla. Nov. 7, 2025). *Third*, it respects the Supreme Court’s distinction in *Jennings v. Rodriguez* between § 1225(b), which applies to “aliens seeking admission into the country,” and § 1226, which governs “aliens already in the country.” *Id.* at *4. *Finally*, it avoids rendering the recently enacted Laken Riley Act and other § 1226(c) mandatory detention provisions largely

superfluous, as would result if all inadmissible noncitizens in the interior were already subject to mandatory detention under § 1225(b)(2)(A). *Puga v. Assistant Field Off. Dir.*, No. 25-24535-CIV, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025).

Respondents' remaining arguments regarding §§ 1252(g) and 1252(b)(9), are preserved for the Court's consideration but have been squarely addressed and rejected in this Court's prior decision. *See Hernandez-Lopez*, 2025 WL 3022245, at *2-3.

CONCLUSION

Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a).³

Dated: February 20, 2026

Respectfully submitted,

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³ Respondents seem to suggest that because bond hearings are conducted by the Executive Office for Immigration Review ("EOIR"), which is not a party to this suit, the Court cannot order such a hearing. Doc. 11 at 6. To the extent this is Respondents' argument, it is without merit. The Director of EOIR was named in this action. Either way, EOIR need not be a party for ICE to effectuate an order for an individualized custody redetermination hearing under § 1226(a) before an Immigration Judge; courts routinely order custodians to comply with such relief without joining EOIR as a respondent. *See, e.g., Hernandez-Lopez*, 2025 WL 3022245, at *5 (ordering bond hearing).