

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-20534-CIV-WILLIAMS

DANILO MARTINEZ ARIAS,
Petitioner,

v.

E.K. CARLTON, Warden of Federal
Detention Center Miami,
Respondent.

_____ /

RESPONSE TO ORDER TO SHOW CAUSE

Respondent E.K. Carlton, Warden of Federal Detention Center Miami, hereby responds to the Court's Order to Show Cause (ECF No. 6).

Petitioner Danilo Martinez Arias ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). On January 28, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. *See* ECF No. 3. The Court has ordered the

PETITIONER'S IMMIGRATION HISTORY

Petitioner is a native and citizen of Cuba who first entered the United States without admission or inspection on or about October 29, 2022, at the Dry Tortugas National Park. *See* Exhibit B, Form I-213, Record of Deportable/Inadmissible Alien ("Form I-213"), dated August 24, 2025. On October 31, 2022, U.S. Customs and Border Protection ("CBP") encountered Petitioner and placed him into expedited removal proceedings, pursuant to 8 U.S.C. § 1225(b)(1). *See* Exh. J, Form I-860, Notice and Order of Expedited Removal, dated October 31, 2022. Petitioner departed the United States on April 14, 2023. *See* Exh. G, Declaration of Deportation Officer Ricardo J. Herrero, ¶ 9

Petitioner re-entered the United States without inspection on September 17, 2024, near Marathon, Florida, and CBP encountered him and issued an NTA on September 18 2024, charging him with inadmissibility pursuant to 8 U.S.C. § 1182 (a)(6)(A)(i), in that Petitioner was an alien present in the United States without being admitted or paroled, or who arrived in the United States at a time or place other than as designated by the Attorney General. *See* Exhibit A, Form I-862, Notice to Appear (“NTA”), dated September 17, 2025. On that same date, CBP filed the NTA with the Miami Immigration Court. *See id.* CBP released Petitioner on his own recognizance upon the issuance of the NTA. *See* Exhibit K, Form I-220A, Order of Release on Recognizance, dated September 18, 2024.

On August 24, 2025, U.S. Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations (“ERO”) encountered Petitioner at the Turner Guilford Knight Correctional Center (TGK) after he was arrested for aggravated battery. *See* Exhibit B, Form I-213. On that same date, ICE ERO issued an Immigration Detainer to TGK, requesting notification prior to Petitioner’s release from TGK’s custody. *See* Exh. G, Declaration of Deportation Officer Ricardo J. Herrero, ¶ 16. Petitioner’s aggravated battery charge was subsequently dropped. *See id.*, ¶ 17. Petitioner was transferred to the custody of ICE ERO on September 26, 2025. *See* Exh. C, Form I-286, Notice of Custody Determination, dated August 24, 2024; Exh. D. Detention History. The venue of Petitioner’s removal proceedings was changed to the Krome Immigration Court. *See* Exh. E, Form I-830E, Notice to EOIR: Alien Address, dated August 24, 2025; Exh. G, Declaration of Deportation Officer Ricardo J. Herrero, ¶ 19.

At a master calendar hearing on December 2, 2025, Petitioner, through written pleadings, admitted the factual allegations in the NTA and conceded the charge of inadmissibility. *See* Exh.

F, Written Pleadings, dated November 26, 2025. The Immigration Judge sustained the charge of inadmissibility pursuant to 8 U.S.C. § 1182 (a)(6)(A)(i). *See* Exh. G, Declaration of Deportation Officer Ricardo J. Herrero, ¶ 21. On December 10, 2025, at Petitioner’s custody hearing, the Immigration Judge denied Petitioner’s request for a change in custody status due to lack of jurisdiction, pursuant to *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exh. H, Order of the Immigration Judge, dated December 10, 2025. Petitioner did not file an appeal of the custody determination with the Board of Immigration Appeals. *See* Exh. G, Declaration of Deportation Officer Ricardo J. Herrero, ¶ 23.

Petitioner is currently detained by ICE at the Federal Detention Center in Miami, Florida. *See* Exh. D, Detention History. His next hearing is scheduled for March 23, 2026, at the Krome Immigration Court. *See* Exh. I, Notice of Hearing in Removal Proceedings, dated January 8, 2026. Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

The government has carefully reviewed the Petition and determined that the legal issues presented concern the statutory authority for U.S. Immigration and Customs Enforcement’s (“ICE”) detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated response to the Court’s Order to Show Cause in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court’s consideration of this matter. If the Court prefers to receive a formal memorandum of law, the government will submit one upon request.

It is the government's position that because Petitioner is present in the United States without being admitted or paroled, he is an applicant for admission in removal proceedings subject to mandatory detention under § 1225(b)(2). See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025); *Morales v. Noem*, et al., No. 25-62598-CIV SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026)).¹ However, the government acknowledges that Judges in this District have reached the opposite conclusion. See, e.g., *Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *3, 8 (S.D. Fla. Oct. 15, 2025) ("§ 1226(a), not § 1225(b)(2), governs Petitioner's detention"); *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41 (S.D. Fla. Oct. 10, 2025) ("§ 1226 governs Petitioner's detention"); *Hernandez Alvarez v. Acting Warden Roger Morris*, et al., Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that "detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen "applicant[s] for admission" to the United States.); *Cerro Perez v. Parra*, et al., Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome*, et al., No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that "prudential exhaustion requirements are excused for futility" and finding that "section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A)"); *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025) (finding good cause to excuse Petitioner's failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner's request for a bond hearing or release and that Petitioner is

¹ Although Petitioner was subject to an expedited removal order in 2022, DHS subsequently filed a NTA in 2024 and Petitioner remains in those removal proceedings, pursuant to the NTA.

subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Duvallon Boffill*, et al., Case No. 25-25179-CIV-BECERRA, ECF No.9 (Nov. 20, 2025) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner’s detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)); *Ocampo Fernandez v. Ripa*, No. 25-24981-CIV-LEIBOWITZ, ECF No. 17 (S.D. Fla. Nov. 25, 2025) (declining to follow BIA order in *Hurtado* and holding that “Petitioner is detained pursuant to Section 1226 and is therefore entitled to a bond hearing”); *Espinal Encarnacion v. ICE Field Office Director*, et al., Case No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”); *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) (“Having concluded that Petitioner’s detention is governed by 8 U.S.C. § 1226(a), Petitioner is entitled to an individualized bond hearing before an immigration judge.”); *Acosta v. Ripa*, et. al., Case No. 25-62360-CIV-DIMITROULEAS, ECF No. 19 at 7 (S.D. Fla. Dec. 26, 2025) (“§ 1226(a) and its implementing regulations govern Petitioner’s detention, not § 1225(b)(2)(A)”)”; and *Fuentes Granados v. Secretary of Homeland Security*, Case No. 26-60020-CIV-SMITH, ECF No. 7 (S.D. Fla. Jan. 27, 2026) (“Petitioner is being unlawfully detained due to his improper classification as “an alien who is an applicant for admission” pursuant to 8 U.S.C. § 1225(b)(2)(A)[;]Petitioner’s proper classification is a detainee pursuant to 8 U.S.C. § 1226(a)”).

The government is appealing the judgment that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b), governs detention under the facts presented in the cases above to the Eleventh Circuit in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, et al., No. 25-14065 (11th Cir.) and *Cerro Perez v. Assistant Field Office Director*, et al., No. 25-14075 (11th Cir.). Until

the foregoing appeals are resolved, however, the government acknowledges that this Court's recent decisions in *Gil-Paulino*, *Hernandez Alvarez* and *Cerro Perez*, would control the result here if the Court adheres to that decision, as the underlying legal arguments are not materially distinguishable for purposes of the Court's decision on the issue of which statutory provision authorizes Petitioner's detention.²

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Gil-Paulino*, *Hernandez Alvarez* and *Cerro Perez*, and the Court can decide this issue without further briefing. However, as noted above, should the Court prefer to receive a formal opposition brief in this matter, the government will file such a brief upon the Court's request.

Respectfully submitted.
JASON REDING QUINONES
UNITED STATES ATTORNEY

By: /s/ Carlos Raurell
Assistant U.S. Attorney
Florida Bar No. 529893

² Although not at issue upon the instant Petition, Petitioner's arrest for aggravated battery resulting may render him ineligible for release on bond even if the Court decides that his detention is governed by 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1226(c) (which is referenced by 1226(a)), the Attorney General is required to take into custody any alien who is arrested for any crime that results in serious bodily injury. The Attorney General may release such an alien from detention "only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(1)(E)(4).

United States Attorney's Office
Southern District of Florida
99 NE 4th Street, Florida 33132
Telephone: (305) 961-9243
E-mail: carlos.raurell@usdoj.gov
Counsel for Respondents