

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:26-cv-20550-CMA**

BAUDILIO RAMOS RAMIREZ,
Petitioner,

v.

KRISTI NOEM, Secretary of
Department of Homeland
Security, et al.,
Respondents.

_____ /

RESPONSE TO ORDER TO SHOW CAUSE

Respondents Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security; Pam Bondi, in her official capacity as United States Attorney General; Todd M. Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement; E.K Carlton, his in official capacity as Warden of Miami Federal Detention Center; and DaveE Kerner, in his official capacity as Executive Director of the Florida Department of Highway Safety and Motor Vehicles, hereby responds to the Court's Order to Show Cause. [D.E. 4]

Petitioner Baudilio Ramos Ramirez ("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. The Court has ordered the government to show cause why the petition should not be granted.

The government has carefully reviewed this 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 Petitioner is subject to mandatory detention under § 1225(b), because he was present in the United States without being admitted or paroled. *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). 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 subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Penagos Quintero v. Ripa, et al.*, Case No. 25-25746-CIV-BECERRA, ECF NO.14 (Jan. 5, 2026) (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)); *Martinez v. Field Off. Dir.*, No. 25-26026-CIV-LEIBOWITZ, ECF No. 7 (S.D. Fla. Jan. 14, 2026) ("Pending the Eleventh Circuit's resolution of this issue, the Court continues to side with the clear weight of existing authority in finding that Petitioner here is entitled to a prompt, individualized bond hearing under 8 U.S.C. § 1226(a)"); *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 decision in *Alvarez Puga v. Assistant Field Office Director Krome*, et al., No. 25-24535-CIV-ALTONAGA, would control the result here if the Court adheres to that decision, as the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention.

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 *Puga v. Assistant Field Office Director Krome*,¹ 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.

¹ Specifically, the government incorporates by reference all arguments raised in its opposition brief in *Alvarez Puga v. Assistant Field Office Director Krome*, et al., No. 25-24535-CIV-ALTONAGA. A copy of that brief is attached as Exhibit A hereto.

Dated: February 3, 2026

Respectfully submitted,

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/s/ David Werner

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List via CM/ECF.

/s/ David Werner

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