

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-cv-60229-DMM

Cristian Midael Cardona Marroquin,
Petitioner,

v.

Kristi Noem, in her official capacity
as Secretary of the Department of
Homeland Security, *et. al.*,
Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Respondents¹, by and through the undersigned Assistant United States Attorney, hereby responds to the Court's Order to Show Cause (ECF NO. 6).

Petitioner, Cristian Midael Cardona Marroquin, ("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.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Guatemala, who entered the United States at or near Eagle Pass, Texas, on or about June 6, 2023, without being inspected, admitted, or paroled. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), dated June 6,

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 Broward Transitional Center. *See* Petition at ¶ 13. The only appropriate respondent named is Assistant Field Office Director (AFOD) Carlos Nunez. All other respondents should be dismissed.

2023. He was an unaccompanied child (UAC) at this time. *See* Exh. A, Form I-213, dated June 6, 2023. On that same date, Petitioner was encountered by Customs and Border Protection (CBP), who then determined that Petitioner had no lawful status in the United States. *See* Exh. A, Form I-213, dated June 6, 2023; *see also* Exh. B, Form I-200, Warrant for Arrest of Alien, dated June 6, 2023. On or about June 8, 2023, Petitioner was transferred to the custody of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). *See* Exh. C, Detention History. On August 15, 2023, Petitioner was released to Health and Human Services – Office of Refugee Resettlement, who released him to a sibling. *See* Exh. D, Declaration.

On September 29, 2025, Petitioner was encountered by ICE ERO and taken into custody. *See* Exh. E, Form I-213, dated September 29, 2025. On October 21, 2025, DHS filed the Notice to Appear (NTA), with the Executive Office for Immigration Review (EOIR) Miami Immigration Court, charging him with inadmissibility under INA § 212(a)(6)(A)(i). *See* Exh. F, Notice to Appear, dated June 6, 2023. At a master calendar hearing, Petitioner admitted allegations and conceded the charge of removability. *See* Exh. F, Notice to Appear, dated June 6, 2023.

Petitioner requested a custody hearing and on December 19, 2025, the Immigration Judge issued an order stating no action. *See* Exh. G, Immigration Judge Order, dated December 19, 2025. The Petitioner requested another custody hearing and on December 30, 2025, the Immigration Judge denied the Petitioner's request, citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exh. H, Immigration Judge Order, dated December 30, 2025. Petitioner did not appeal either decision. *See* Exh. D, Declaration.

The Petitioner is currently detained at Broward Transitional Center (BTC). *See* Exh. C, Detention History. Petitioner's next hearing is on February 18, 2026. *See* Exh. I, Notice of Hearing, dated January 7, 2026.

ARGUMENT

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 shall submit one upon request.

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b)(2), 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); *Banchi v. Diaz*, 25-62341-CIV-SINGHAL, ECF No. 23 (S.D. Fla. Feb. 2, 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); *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 decision in the *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) decision would control the result here if the Court adheres to that decision, as the legal arguments are not materially distinguishable for purposes of the Court’s decision on the issue of which statutory provision authorizes Petitioner’s detention.

Finally, Petitioner’s prior status as an unaccompanied minor does not foreclose the application of 8 U.S.C. § 1225(b). Contrary to his allegations in this case, Petitioner here is an “applicant for admission” subject to the removal and detention provisions at § 1225(b)(2). Petitioner was an UAC at the time he entered the United States in June 2023, without being inspected, admitted, or paroled. Under the Homeland Security Act of 2002 (“HSA”), an UAC is someone who: “(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.” 6 U.S.C. § 279(g)(2) (“Section 279”). The HSA transferred the responsibility

for care of UACs in Federal custody by reason of their immigration status to the Office of Refugee Resettlement (“ORR”) within the Department of Health and Human Services (“HHS”). *Id.* § 279(a), (b)(1)(A). The TVPRA provides that “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.” 8 U.S.C. § 1232(b)(1) (“Section 1232”). Although the TVPRA transferred responsibility for care and custody of UACs to ORR, “it did not alter their immigration status.” *Mendez Ramirez v. Decker, et al.*, 612 F. Supp. 3d 200, 206 (S.D.N.Y. 2020).

An individual is not an UAC if and when he is released to a parent’s custody. *Id.* Moreover, an UAC ceases to be an UAC when he turns eighteen. *Id.* at 212 (citing 6 U.S.C. § 279(g) (2)(B) and *Matter of Castro-Tum*, 27 I&N Dec. 271, 277 n.4 (2018)). Petitioner does not, and cannot, allege that he was under the age of eighteen at the time of his arrest in September 2025. Despite the fact that he was an UAC when he arrived in the United States in 2023, he was not an UAC when he was detained in September 2025. Consequently, he is in the same position as any “applicant for admission,” as contemplated by § 1225. Thus, Plaintiff is subject to the statute’s mandatory removal and detention provisions.

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 *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) and states 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,

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