IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

OMILIO ANTONIO TERAN PEREZ,

Petitioner,

vs. Case no. 2:26-cv-205-KCD-DNF

DAVID HARDIN, WARDEN,
et al.,

Respondents.
_____/

RESPONSE TO PETITION FOR HABEAS CORPUS

Petitioner Omilio Antonio Teran Perez challenges his detention by U.S. Immigration and Customs Enforcement, arguing his detention violates 8 U.S.C. § 1226, certain bond regulations, and the Fifth Amendment of the United States Constitution. While reserving all rights, including the right to appeal, Respondents submit this abbreviated brief in lieu of an exhaustive memorandum to preserve the Respondents' arguments and to conserve judicial resources. Should the Court prefer a more exhaustive discussion, Respondents request leave to submit additional briefing.[1]

[1] By statute, the only appropriate respondent to a habeas case is the official with physical custody of the petitioner. 28 U.S.C. § 2243 ("The writ, or

FACTS

The petitioner is a 40-year-old male, who is a national and citizen of Venezuela. Doc. 1 at 2. He last entered the U.S. on or about January 26, 2023, as an arriving alien with travel authorization approved until April 14, 2023. See id. at 2-3 and Ex. A. He was paroled into the country until January 25, 2025. Id. at 3 and Ex. A. On January 24, 2024, petitioner filed his asylum relief application with USCIS which remains pending. Id.

On June 3, 2024, petitioner applied for temporary protected status which was granted until April 2, 2025. Id. at Ex. D. On July 22, 2025, the petitioner reapplied for temporary protected status, which was terminated on November 20, 2025. See id. at 4.

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order to show cause shall be directed to the person having custody of the person detained."); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) ("[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."). Accordingly, the only proper respondent in this case would be the warden of the Glades County detention facility where he is detained. *See e.g.*, *Vandersnick v. Sec'y, Fla. Dep't of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). We acknowledge that the Court has considered and rejected this argument in *Rubio v. Hardin*, Case no. 2:26-cv-125-KCD-NPM (M.D. Fla.) (Doc. 13 at 6, n.2), preferring to keep all respondents in that action to ensure compliance with any order that is ultimately entered.

On November 21, 2025, the Petitioner was encountered by Brevard County Sheriff Deputies during a traffic stop. Id. at 2. He was arrested and taken into ICE custody. Id. On November 23, 2025, he was served with a Notice To Appear (NTA), charged under INA § 212 (a) (7) (A) (i) (I), and placed in removal proceedings. Id. at 4 and Ex. E. Petitioner's final merits hearing is scheduled for March 19, 2026.

On January 13, 2026, the petitioner appeared for a bond hearing but was denied relief because the immigration judge determined it lacked jurisdiction to consider a bond request by an arriving alien. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). See Doc. 1 at 5 and Ex. F.

On February 2, 2026, the Petitioner filed a petition for writ of habeas corpus alleging that his detention violates federal statute and regulations, as well as the Fifth Amendment of the federal constitution. Doc. 1.

CERTIFIED HABEAS RETURN

ICE is detaining the petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). *See* 28 U.S.C. § 2243 ("The person to whom the writ or order is directed shall make a return certifying the true cause of the detention."). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

ARGUMENT

The circumstances alleged in the instant petition present a classic case for mandatory detention under 8 U.S.C. § 1225(b)(2) due to the petitioner's manner of entry into the country as an "arriving alien." As noted above, and confirmed in both the Notice to Appear and the I-213 attached hereto as Exhibit A, Mr. Teran Perez arrived in this country at the Miami Airport on Jan. 26, 2023 and encountered the immigration authorities at that time. He was paroled into the country, but parole was terminated on January 24, 2025. Doc. 1 at 3 and Ex. A

Consequently, mandatory detention applies and the only possible vehicle for petitioner's release would be parole (which ICE initially granted for a limited duration but did not extend). See 8 U.S.C. § 1225(b)(2)(A). As this Court has recently found in other cases, an encounter with ICE at entry requires dismissal of a habeas petition. *See e.g. Alfonso Parra v. DHS*, No. 2:25-cv-1116-KCD-DNF, 2026 WL 21243, at *2 (M.D. Fla. Jan. 5, 2026); *Aranda Garcia v. Attorney General*, No. 2:25-cv-1053-KCD-DNF, 2025 WL 3537592, at *1 (M.D. Fla. Dec.10, 2025); *Duenas Garcia v. Imm. And Customs Enforcement*, No. 2:25-cv-1004-KCD-NPM, 2025 WL 3277163, at *2 (M.D. Fla. Nov. 25,

2025); *Pirto v. Warden*, No. 2:25-cv-966-KCD-DNF, Doc. 13 (M.D. Fla. Nov. 13, 2025).

The heart of the petitioner's argument seems to be that he has been mischaracterized by the authorities as an "arriving alien," and he appears to point to the immigration judge's decision in refusing to consider his bond application as evidence of this. See Doc. 1 at ¶ 19. The IJ's decision simply confirms that Mr. Teran Perez is indeed an "arriving alien" under the facts of his entry. See Doc. 1 at Ex. F.

Finding that Mr. Teran Perez qualifies as an "arriving alien" would be consistent with the language used by Congress in Title 8 of the United States Code. As one immigration judge observed in another context,

> "Arriving alien" is a long-standing term of art under the immigration laws. Congress apparently has never defined the term "arriving alien," despite its use in immigration law for over a century. But while there may be uncertainty as to the exact parameters of the term prior to its definition by the legacy Immigration and Naturalization Service in 1997, it has traditionally referred to aliens who appear at a port of entry.

Matter of M-D-C-V-, 28 I.&N. 18, 24 (BIA, July 14, 2020) (citations omitted). Since Mr. Teran Perez appeared at a port of entry (Miami Airport), he can be properly characterized as an "arriving alien" seeking admission for purposes of mandatory detention under 8 U.S.C. § 1225(b).

To the extent that the petitioner argues that he was not actively "seeking admission" for purposes of section 1225(b) on arrival at the Miami Airport, see Doc. 1 at 12-15, he joins the chorus of petitioners seeking relief under the alternative detention authority of 8 U.S.C. § 1226(c). This Court is certainly familiar with these arguments. *See Rubio, supra,* Doc. 13 at pp. 2-5. To conserve judicial resources, the undersigned will not present these arguments again at length here.

Respondents acknowledge that questions of law in this case, and the challenges to the government's detention policy and practice, overlap with *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). It should be noted, however, that courts (including this Court) have recently ruled against petitioners in similar cases. *See, E.g., Lopez v. Dir. of Enf't & Removal Operations*, No. 3:25-CV-1313-JEP-SJH, 2026 WL 261938, at *1 (M.D. Fla. Jan. 26, 2026); *Iraheta Morales v. Noem*, No. 25-62598-CIV-SINGHAL, 2026 WL 236307, at *3-9 (S.D. Fla. Jan. 29, 2026). Some decisions have begun to recognize that there is no jurisdiction over this question to begin with. *Munoz Nataren v. Raycraft*, No. 4:26-cv-212, 2026 WL 214368, at *2 (N.D. Ohio Jan. 28, 2026); *Amaya-Velis v. Raycraft*, No. 4:26-cv-73, 2026 WL 100596, at *2-3 (N.D. Ohio Jan. 14, 2026). Nevertheless, we acknowledge that the great weight of authority at the district

court level (including by judges in this Court) weighs against the Respondents' position here. *See Guaiquiere v. Quinones*, No. 6:26-cv-169-RBD-RMN (M.D. Fla.)(Doc. 19) (citing cases).

Significantly, the circuit courts have begun to join the fray as well, with the Fifth Circuit having recently ruled that aliens who have not been admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of whether the alien is already present in the United States. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). *Cf. Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-63 (7th Cir. 2025) (preliminarily concluding that the government is unlikely to succeed on the merits of the statutory construction question).

We acknowledge that the Court has considered and declined to follow *Buenrostro*. *See, e.g., Rubio, supra,* Doc. 13 at 5. However, a number of other circuits—including the Eleventh—have active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.); *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.); *Avila v. Bondi,* Case no. 25-3248 (8th Cir.). The Eighth Circuit heard oral argument in *Avila* on February 19, 2026, and the Eleventh Circuit will hear oral argument in *Alvarez* in the last week of April, 2026.

Respondents respectfully disagree with the Court's decision in

Hernandez-Lopez. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments for preservation purposes:

1. Title 8 U.S.C. § 1252(g) bars review of Petitioner's claims. *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM (M.D. Fla. Oct. 29, 2025) (Doc. 19 at 5-6).
2. Title 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims. *Id.* at 7-8.
3. Petitioner failed to exhaust his administrative remedies. *Id.* at 8.
4. Petitioner is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

Finally, Respondents contend that should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226, outright release is inappropriate. This has been the Court's approach in other prior cases. *See Rubio, supra,* Doc. 13 at 5. To the extent the Court orders a bond hearing before an Immigration Judge for the express purpose of determining whether Petitioner is a flight risk or danger to the community—s*ee, e.g., Hernandez-Lopez,* 2025 WL 3022245, at *5—Respondents aver that such bond hearings are not conducted or managed by ICE, rather by the Executive Office for Immigration Review, which is not a party to this suit. It goes without saying that compliance with Court orders is obviously vital in these cases and in every case. The U.S.

Attorney's Office will do everything in its power to ensure compliance with any order entered in this matter.

Respectfully submitted,

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