

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:26-cv-60297-RS

LUIS VICENTE-GARCIA,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents,¹ through the undersigned Assistant U.S. Attorney and pursuant to the Court's *Order to Show Cause* [DE 4], respond to the *Petition for Writ of Habeas Corpus* [DE 1] (the Petition).

OVERVIEW

Petitioner Alvaro Duran Linares (Petitioner) asks the Court to order his release from immigration detention at the Broward Transitional Center (BTC) or, alternatively, to order Respondents to provide him with a bond hearing. Petition at 29-30. In support, Petitioner argues that his immigration detention is governed by 8 U.S.C. § 1226(a) and not by §

¹ Several of the named respondents are not proper parties-defendant to this habeas action and should be dismissed. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("[I]n habeas challenges to present physical confinement—'core challenges'—the 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."). Petitioner is detained at BTC, a detention facility in Broward County, Florida. His immediate custodian is acting Assistant Field Office Director Carlos Nunez. Accordingly, the only proper respondent to this case is acting AFOD Nunez, in his official capacity. He should be substituted as the sole respondent to this action and all other named respondents should be dismissed. *Mayorga v. Meade*, No. 24-cv-22131, 2024 WL 4298815, at *3 (S.D. Fla. Sept. 26, 2024) (Bloom, J.) (substituting as respondent the Assistant Field Director of facility where petitioner was detained because denial of a habeas petition for failure to name proper respondent would give an unreasonably narrow reading to habeas corpus statute).

1225(b)(2) as that section was interpreted by the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

RESPONSE²

The government has carefully reviewed the Petition. It agrees that its factual and procedural allegations accurately reflect Petitioner's current immigration status. The Petition therefore presents the pure legal issue of whether Petitioner's immigration detention is governed by 8 U.S.C. § 1225(b)(2) or § 1226(a) and, relatedly, whether Petitioner is entitled to a bond hearing conducted by the immigration court.

Respondents submit that Petitioner is subject to detention under Section 1225(b)(2) because he was encountered in the United States without being admitted or paroled, and therefore remains an "applicant for admission" subject to mandatory detention. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025); *see also Morales v. Noem*, No. 25-cv-62598, 2026 WL 236307, *8 (S.D. Fla. Jan. 29, 2026) (Singhal, J.) (denying substantially similar habeas petition, finding petitioner—who had been present in the United States for over 20 years—to still be an "applicant for admission" under the unambiguous language of Section 1225(b)(2)).

Respondents acknowledge, however, that courts within this district—including this Court—have reached the opposite conclusion regarding Section 1225(b)(2) in recent, prior cases. *See e.g. Perez v. Parra*, Case No. 25-cv-24820, DE 9 (S.D. Fla. October 27, 2025); *Fuentes Granados v. Secretary of Homeland Security*, No. 26-cv-60020, DE 7 (S.D. Fla. Jan. 27, 2026) (Smith, J.); *see also* Petition at ¶ 41; *but see Morales*, 2026 WL 236307 at *8.

² In light of the current volume of immigration habeas petitions, Respondents respectfully submit this *truncated* return to Petition, in lieu of a formal memorandum of law and fact. They do so to conserve judicial and party resources, to expedite the Court's consideration of the Petition, and to preserve Respondents' legal arguments for appeal. If the Court prefers to receive a formal memorandum of law and fact, Respondents will prepare and submit one upon request.

The government has appealed at least two such orders emanating from within this district, which appeals have been consolidated and expedited but remain pending. *Alvarez v. Warden*, No. 25-14065 (11th Cir.); *Perez v. Parra*, No. 25-14075 (11th Cir.). Pending resolution by the Eleventh Circuit, the government acknowledges that this Court's decision in *Fuentes Granados* would control the result here, as the facts are not materially distinguishable and Respondents' legal argument as to the applicability of Section 1225(b)(2) remains the same.

Thus, while Respondents do not *consent* to the issuance of a writ or to an order requiring a bond hearing under 8 U.S.C. § 1226(a), in the interest of efficiency they incorporate by reference the legal arguments presented in substantially similar cases filed in this district,³ and submit the Court is positioned rule on the instant Petition without individualized legal briefing. Respondents further suggest that a hearing on the Petition is unnecessary and would not be a productive use of judicial or party resources.

As noted above, should the Court prefer to receive a formal memorandum of law and fact specific to this Petitioner, Respondents will file one upon the Court's request.

Respectfully submitted,

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³ See **Exhibit A**.