

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-20793-CIV-LEIBOWITZ

YOSMAY ACOSTA GARCIA,
Petitioner,

v.

FIELD OFFICE DIRECTOR, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT,
Respondent

NOTICE OF INTENT TO COMPLY WITH ORDER FOR BOND HEARING

Respondent Field Office Director, U.S. Immigration and Customs Enforcement, hereby gives notice of his intent to comply with the Court's Order as set forth in ECF No. 3, that provides Petitioner an individualized bond hearing, consistent with 8 U.S.C. § 1226(a) within fourteen (14) days of the entry of the Order, in that this matter is not materially factually or legally distinguishable from the cases cited to by the Court where petitioners were detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

Respondent construes the Court's order that an "individualized bond hearing" be held to mean a custody redetermination hearing before the Executive Office for Immigration Review ("EOIR"). ICE conducts initial custody determinations. *See* 8 C.F.R. § 1236.1(d)(1). Thereafter, an alien may request a custody redetermination to be conducted by the Immigration Judge. *See id.*; 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 1003.19(a). In turn, the Immigration Judge derives her authority from 8 U.S.C. § 1226(a), which provides that the Attorney General may detain the alien, release the alien, and determine the amount of bond, if any, under which the alien may be released. When an alien files a motion for bond or custody redetermination before the Immigration Judge, EOIR schedules the hearing and notifies the parties of the hearing date, time,

and location. To this end, Respondent will immediately, through the undersigned counsel, advise the United States Department of Justice's Executive Office for Immigration Review (EOIR) of the Court's Order and request that Plaintiff be provided a bond hearing as ordered by the Court. Under delegated authority from the Attorney General, EOIR – not ICE – conducts immigration court proceedings, appellate reviews, and administrative hearings.

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 Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, ___ F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026) (holding that the noncitizen petitioners in removal proceedings were subject to mandatory detention under 28 U.S.C. § 1225(b)(2) because they were present in the United States without being admitted or paroled, despite having entered illegally many years ago); *Morales v. Noem*, et al., No. 25-62598-CIV SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026))(same); *Perez Morales v. Noem*, et al., No.26-60251-CIV DIMITROULEAS, ECF No. 15 (S.D. Fla. Feb. 9, 2026)(same, adopting the analysis of the majority opinion in *Buenrostro*). In *Buenrostro-Mendez*, the Fifth Circuit Court of Appeals recognized that presence without admission renders an individual like Petitioner to be both an "applicant for admission" and "seeking admission" under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention--regardless of how much time the individual has been present in the United States. *Buenrostro-Mendez*, at *4-9.

Nevertheless, Respondent elects to comply with the Court's order for a bond hearing because this case is not materially factually or legally distinguishable from those cited to by the Court, where the alien is an applicant for admission subject to mandatory detention pursuant to 1225(b)(2)(A). To preserve the government's rights on appeal and consistent with its position in

similar cases, Respondent hereby adopts and incorporates by reference the legal arguments made by the respondents to the petitions for writ of habeas corpus filed in *Ocampo Fernandez v. Ripa*, No. 1:25-cv-24981-DSL, ECF No. 17 (S.D. Fla. Nov. 25, 2025); *Landaverde v. Ripa*, No. 0:25-cv-62474-DSL, ECF No. 11 (S.D. Fla. Dec. 18, 2025); *Velasquez v. Diaz, et al.*, No. 1:25-cv-25604-DSL, ECF No. 24 (S.D. Fla. Dec. 18, 2025); *Martinez v. Field Off. Dir.*, No. 1:25-cv-26026-DSL, ECF No. 7 (S.D. Fla. Jan. 14, 2026); *Moncada v. Noem, et al.*, 0:25-cv-62285-DSL, ECF No. 14 (S.D. Fla. Jan. 16, 2026), and *Perez v. Parra*, No. 1:25-cv-24820-KMW, ECF No. 9 at 6–10 (S.D. Fla. Oct. 27, 2025).

Respectfully submitted,
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