UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case NO. 26-20828-CIV-ALTONAGA

ENRIQUE ENRIQUEZ-GUERRA,

Petitioner,

v.

GARRET RIPA, FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondent.
_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondent Field Office Director, U.S. Immigration and Customs Enforcement hereby responds to the Court's Order to file a memorandum of fact and law to show cause why the Petition [ECF No. 1] should not be granted. [ECF No. 3].

FACTUAL AND PROCEDURAL HISTORY

Petitioner, Enrique Enriquez-Guerra, is a native and citizen of Cuba who entered the United States unlawfully at a time and place other than as designated by the Secretary of the Department of Homeland Security. Exh. A, Form I-213, Record of Deportable/Inadmissible Alien dated October 16, 2025 (I-213). On or about March 5, 2022, Petitioner was encountered by Customs and Border Protection (CBP) agents, who determined that he had entered the United States illegally. Exh. A, I-213. Petitioner was arrested and subsequently released on his own recognizance. Exh. B, Detention History.

On or about March 7, 2022, CBP issued a Notice to Appear (NTA) initiating removal proceedings and charging Petitioner with inadmissibility under INA § 212(a)(6)(A)(i), as an alien

present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Hab. Pet., Document 1, p. 9.

On May 9, 2024, Petitioner appeared for an initial master calendar hearing before an immigration judge. Exh. C, Declaration. On October 16, 2025, Petitioner appeared for a second master calendar hearing. Exh. C, Declaration. On the same date, the immigration judge granted the Department of Homeland Security's (DHS) motion to dismiss proceedings pursuant to 8 C.F.R. § 239.2(a)(7). *See* Hab. Pet., Document 1, pp. 13-14. Petitioner has appealed this order to the Board of Immigration Appeals (BIA); and the appeal is pending. Exh. C, Declaration; *see* Hab. Pet. Document 1, pp. 16-18.

Upon the dismissal of the removal proceedings, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), took Petitioner into ICE custody pursuant to INA § 235, 8 U.S.C. § 1225, issuing a Notice and Order of Expedited Removal. Exh. C, Declaration; Exh. D, I-860. Petitioner is presently detained at the Broward Transitional Center in Pompano Beach, Florida. Exh. C, Declaration. As the appeal of the dismissal is pending, Petitioner is detained under INA § 235(b)(2). Should the BIA dismiss his pending appeal, his detention will be pursuant to INA § 235(b)(1).[1]

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[1] In the event of detention pursuant to INA § 235(b)(1), detention is mandatory. *See id.* § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.") (emphasis added). Accordingly, notwithstanding any determination that a detainee held pursuant to INA § 235(b)(2) is entitled to a bond hearing, if the Petitioner's appeal is dismissed, he will not eligible for bond. *See* Order at ECF No. 22 in *Buriev v. Warden, Broward Transitional Center*, Case No. 25-60459-CIV-ALTMAN (S.D. Fla. September 26, 2025) (finding that 8 U.S.C. § 1225(b)(1) required detention of alien seeking asylum).

On February 9, 2025, Petitioner filed this habeas petition, challenging his continued detention under 8 U.S.C. § 1225(b).

Petitioner argues that as his bond request was not accepted, and as he "has not been afforded a meaningful opportunity to challenge the legality of his detention or to seek release on bond", this court should order his immediate release, or in the alternative a bond hearing. Petition [ECF No. 1] at 3-4.

As explained below, Petitioner has failed to exhaust his administrative remedies, is subject to mandatory detention without eligibility for bond pursuant to 8 U.S.C. § 1225(b)(2), and his detention is not of sufficient length to trigger constitutional concerns.

ARGUMENT[2]

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[2] The government submits the following arguments in good faith, supported by the Fifth Circuit Court of Appeals' recent decision, *Buenrostro-Mendez v. Bondi,* No. 25-20496, 25-40701, ___F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026) and decisions previously rendered in other cases in this District. *See, e.g., Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026) (concluding that habeas petitioner who entered the United States without inspection in 2004 is an "applicant for admission" governed by 8 U.S.C. § 1225(b) and rejecting petitioner's argument the government must grant a bond hearing under 8 U.S.C. § 1226); *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*). Nevertheless, the government acknowledges that Judges in this District have reached the opposite conclusion on the legal issues presented. *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"); *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));

A. Petitioner is an applicant for admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is inapplicable as clarified in the BIA's Decision in *Matter of Yajure Hurtado*.

Petitioner is properly detained as an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Buenrostro-Mendez v. Bondi,* No. 25-20496, 25-40701, ___F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026) (holding that 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; *Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026) (concluding that habeas petitioner who entered the United States without inspection in 2004 is an "applicant for admission" governed by 8 U.S.C. § 1225(b) and rejecting petitioner's argument the government must grant a bond hearing under 8 U.S.C. § 1226); *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 Fifth Circuit majority opinion in *Buenrostro-Medina*).

The Fifth Circuit in *Buenrostro-Mendez* recognized that "[s]ince DHS began to detain

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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., 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., 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."); 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)").

unadmitted aliens under§ 1225(b)(2)(A), well over a thousand aliens have filed habeas corpus petitions seeking bond hearings[] [and,] [i]n most of these cases, the district court found in favor of the petitioner." *Id.* at *3. Nevertheless, the court concluded 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.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . . ." 8 U.S.C. § 1225(a)(1); *see Buenrostro-Mendez,* at 2 ("an alien's status as an applicant for admission does not turn on where or how the alien entered the United States"); *Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.").

By its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'"); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . .");

Matter of E-R-M- & L-R-M-, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted"). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry [("POE")] . . . ." 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . ."). An applicant for admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States." 8 C.F.R. § 235.1(f)(1); *see also* 8 U.S.C. § 1229a(c)(2)(A) (explaining that an applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under 8 U.S.C. § 1182 in removal proceedings pursuant to § 1229a). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Petitioner did not present himself at a POE but instead entered the United States without having been admitted or paroled after inspection by an immigration officer. *See* Exhibit A, Form I-213, Record of Deportable Inadmissible Alien, dated October 16, 2025; Pet. [ECF No. 1] at ¶ 5. Petitioner is, therefore, an alien present in the United States without admission or parole and, consequently, an applicant for admission. *See Buenrostro-Mendez*, at *2, 4-5 (explaining that "an

alien's status as an applicant for admission does not turn on where or how the alien entered the United States" and that an "applicant for admission" is necessarily "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)).

The decision issued by the BIA in *Matter of Yajure Hurtado* is similarly instructive. In *Matter of Yajure Hurtado*, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" 29 I&N Dec. at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). The BIA's decision is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court's decision in *Jennings v. Rodriguez,* 583 U.S. 281 (2018), and subsequent caselaw post *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-,* 27 I&N Dec. 509 (A.G. 2019), recognized that §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission or parole who are placed into expedited removal proceedings are detained under § 1225 even if later placed in § 1229a removal proceedings after establishing a credible fear of persecution or torture. *Id.* at 518-19; *see also* 8 § U.S.C. 1225(b)(1)(B)(ii) (providing that if an alien subject to expedited removal

demonstrates a credible fear of persecution or torture, the alien "shall be detained" for further consideration of an asylum application in § 1229a removal proceedings).

Additionally, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that an alien who unlawfully entered the United States between POEs, was arrested and detained without a warrant while arriving, and was previously released from DHS custody pursuant to an 8 U.S.C. § 1182(d)(5)(A) parole is detained under § 1225(b) upon re-detention. 29 I&N Dec. at 70-71. This ongoing evolution of the law makes clear that all applicants for admission in various procedural postures are subject to detention under § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit"). *Florida's* conclusion "that § 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

B. Applicants for admission may only be released from detention on an 8 U.S.C. § 1182(d)(5) parole.

DHS has the exclusive authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes temporary release from detention under § 1225(b). 583 U.S. at 300.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is "delegated solely to the Secretary of

Homeland Security." *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor immigration judges have authority to parole an alien into the United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that "parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS" and "reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security"). Lastly, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an immigration judge or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

C. Petitioner failed to exhaust his administrative remedies

The Court should dismiss the petition for writ of habeas corpus for failure to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Petitioner has not pursued any of the administrative remedies available to him, as he has not yet properly requested a bond hearing from an immigration judge ("IJ"). *See* Petition [ECF No. 1] at ¶ 9, Exhibit E. Instead, he seeks an order requiring a bond hearing in the first instance from this Court. Even had the Petitioner sought a bond from an IJ, by regulation, the BIA would

then have authority to review IJ custody determinations, not a district court. An Immigration Judge's denial is a decision appealable to the BIA who has jurisdiction to determine whether an IJ properly denied an alien detainee's motion for bond redetermination. The lack of a bond hearing in this case appears to be the result of the request being filed in the wrong forum, not based upon any interpretation of INA § 235 or § 236. *See* Petition [ECF No. 1] at ¶ 9, Exhibit E.[3]

Petitioner's removal proceedings are pending appeal, and he has not availed himself of the administrative process and remedies available to him before proceeding to this Court. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

F. 8 U.S.C. § 1252(g) bars review of Petitioner's claims.

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g) (emphasis added). For this reason, this Court lacks subject matter jurisdiction over the claims of the Petitioner concerning the IJ's decision to grant the motion to dismiss. *See* Petition [ECF No. 1] at ¶¶ 6, 13.

In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), the Supreme Court observed 1252(g) applies to three discrete actions that the Attorney General may take: "her decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Id.* at 482 (emphasis in original). As to its purpose, the Court found that § 1252(g)

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[3] The undersigned has asked the Executive Office of Immigration Review for clarification regarding the rejection of the request for bond and has not yet received additional information. Investigation continues, and if additional information is received, it will be provided to the Court.

"performs the function of categorically excluding from non-final order judicial review ... certain specified decisions and actions of the INS." *Id.* at 483.

Thus, Petitioner's challenge to the decision of the IJ to dismiss proceedings pursuant to 8 C.F.R. § 239.2(a)(7), is not reviewable by this Court, and is now properly before the Board of Immigration Appeals. Any additional review would be conducted by the court of appeals. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("*AADC*") (explaining that Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance.).

In sum, judicial review of the Petitioner's claims is barred by § 1252(g).

G. The Petitioner cannot establish that his detention violates the Constitution.

The Petitioner cannot establish that the length of his detention violates the Constitution, as he has only been detained since October 17, 2025. *See e.g., O.D. Warden, Stewart Detention Ctr.*, 2021 WL 5413968, at *4-5 (M.D. Ga. Jan. 14, 2021) (R&R), *adopted by* 2021 WL 5413966 (M.D. Ga. Apr. 1 2021) (denying habeas relief to petitioner who had been detained for nineteen months); *Signal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing[into account all of the factual circumstances"). Petitioner has not alleged that his detention is for any purpose other than to resolve the pending proceedings.

H. CONCLUSION

Based upon the foregoing, the Petition should be dismissed because detention is lawful under § 8 U.S.C. § 1225(b) and Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court.

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