

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 26-cv-60351-RS

SANCHEZ CRUZ, JOSE,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

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**RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS**

Kristi Noem, *et al.*, (“Respondents”)<sup>1</sup>, through the undersigned counsel, maintain that Jose Sanchez Cruz’s (“Petitioner”) Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (“Petition”) (DE 1) should be denied. Petition should be denied because Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii) because he is in expedited removal proceedings and therefore detained pursuant to a valid statutory authority and ineligible for bond.

**I. BACKGROUND**

Petitioner is a native and citizen of Cuba. *See* Exhibit B, Form I-213, Record of Deportable/Inadmissible Alien, at 1).

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<sup>1</sup> 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 ¶ 22. The only appropriate respondent is Acting Assistant Field Office Director Carlos Nunez. All other respondents should be dismissed.

On or about June 19, 2023, Petitioner entered the United States without admission or parole near the Tecate, California. *See* Exhibit A, Notice to Appear (“NTA”), at 1. Petitioner admitted that he did not possess the proper immigration documents that would allow him to be in, pass through, or remain in the United States legally. *See* Exhibit B, at 3.

On June 21, 2023, Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (ERO), served upon Petitioner an expedited removal order. *See* Exhibit D, Form I-860, Notice and Order of Expedited Removal, at 1. Petitioner claimed fear of returning to Cuba and ICE ERO referred the matter to the United States Citizenship and Immigration Services (“USCIS”). *See* Exhibit F, Declaration of Deportation Officer, at 2.

On June 22, 2023, USCIS determined Petitioner did not have a credible fear of persecution or torture upon his return to Cuba. *Id.* Petitioner requested review by an immigration judge. *Id.* On July 3, 2023, an immigration judge vacated USCIS’s negative credible fear determination. *Id.* On June 23, 2023, Petitioner became subject to an NTA and was released from custody. *Id.*

On June 23, 2025, Border Patrol Agents encountered Petitioner during a traffic stop. *See* Exhibit B, at 3. Petitioner stated he is a Cuban citizen and did not have any documents to be in, pass through, or remain in the United States legally. *Id.* Petitioner was subsequently arrested and transported to Orlando Border Patrol Station for further processing. *Id.*

On July 27, 2025, ICE ERO issued an NTA 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* Exhibit A, at 1.

On November 26, 2025, Petitioner had a hearing on the merits of his asylum claim. *See* Exhibit F, at 3. The immigration judge denied all relief and found that the Petitioner did not testify

credibly. *Id.* On the same day, the immigration judge ordered Petitioner removed to Cuba. *Id.* On December 30, 2025, Petitioner filed an appeal of the immigration judge’s decision. *Id.* The appeal is pending with the Board of Immigration Appeals. *Id.*

To date, Petitioner remains in ICE custody at Broward Transitional Center. *See* Exhibit E, Detention History; Exhibit F, at 3. Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1).

## II. ARGUMENT

### A. Petitioner’s Due Process Claim fails because he is detained pursuant to a valid statutory authority.

Petitioner’s constitutional claim fails as a matter of law. Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. The Fifth Amendment does not require bond hearings for aliens detained pursuant to valid statutory authority, nor does Petitioner possess a protected liberty interest in release on bond where Congress has mandated detention. The Due Process Clause does not prohibit Congress from imposing categorical detention rules in the immigration context. *See Demore v. Kim*, 538 U.S. 510, 528 (2003).

Petitioner’s reliance on *Zadvydas v. Davis* is misplaced. To the extent that Petitioner argues that his detention violates his Due Process rights, as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (ECF No. 1 at ¶¶ 28-33), this Court should reject that claim because *Zadvydas* governs post-removal-order detention under § 1231, not pre-removal detention under § 1225.<sup>2</sup>

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<sup>2</sup> Petitioner was served with a NTA, placing him in removal proceedings, after an immigration judge determined he presented a credible fear of persecution or torture if returned to Cuba. While in detention, he had a merits hearing with an Immigration Judge on November 26, 2025. Despite being in 1229a removal proceedings by virtue of the NTA, his proceedings are premised on the expedited removal statutory scheme at 1225(b)(1)(B). If an alien who is subject to expedited removal under 1225(b)(1)(A)(ii) expresses a fear of persecution, “the officer shall refer the alien

**B. Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii) because he is in expedited removal proceedings.**

(i) *The expedited removal process*

8 U.S.C. § 1225(b)(1) is the statutory scheme that governs the expedited removal process and consequent detention. The Supreme Court has explained:

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 . . . )” is deemed “an applicant for admission.” §1225(a)(1). An applicant is subject to expedited removal if, as relevant here, the applicant (1) is inadmissible because he or she lacks a valid entry document; (2) has not “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal. §§ 1225(b)(1)(A)(i), (iii)(I)-(II). Once “an immigration officer determines” that a designated applicant “is inadmissible,” “the officer [must] order the alien removed from the United States without further hearing or review.” §1225(b)(1)(A)(i).

Applicants can avoid expedited removal by claiming asylum. If an applicant “indicates either an intention to apply for asylum” or “a fear of persecution,” the immigration officer “shall refer the alien for an interview by an asylum officer.” §§1225(b)(1)(A)(i)-(ii). The point of this screening interview is to determine whether the applicant has a “credible fear of persecution.” §1225(b)(1)(B)(v).

If the asylum officer finds an applicant’s asserted fear to be credible, the applicant will receive “full consideration” of his asylum claim in a standard removal hearing. 8 CFR § 208.30(f); *see* 8 U. S. C. § 1225(b)(1)(B)(ii). If the asylum officer finds that the applicant does not have a credible fear, a supervisor will review the asylum officer’s determination. 8 CFR § 208.30(e)(8). If the supervisor agrees with it, the applicant may appeal to an immigration judge, who can take further evidence and “shall make a de novo determination.” §§1003.42(c), (d)(1); *see* 8 U. S. C. §1225(b)(1)(B)(iii)(III).

*Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-110 (2020) (citations in original). The immigration judge, then, may concur with the asylum officer’s determination, and return the case to DHS for removal; or may disagree with the determination, find the alien possesses a credible

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for an interview by an asylum officer. 1225(b)(1)(A)(ii). The interview is conducted in conformity with 1225(b)(1)(B).

fear, vacate the order of the asylum officer on the Form I-860, and return the case to the agency for issuance of a Notice to Appear. *See* 8 C.F.R. § 208.30(g)(2), 1208.30(g)(2)(iv)(A), (B). At all relevant times, however, the alien, who is in removal proceedings “for further consideration of the application for asylum” is subject to mandatory detention. *See* INA § 235(b)(1)(B)(ii); *see also* 8 C.F.R. § 1208.30(g)(2)(iv)(B).

*(ii) The Petitioner is subject to mandatory detention under § 1225(b)(1)(B)(ii) and is ineligible for bond*

Petitioner argues that because he is not an “arriving alien under Section 1225(b)(1)(A)(i), his detention is not governed by Section 1225(b)(1). *See* (DE 1 ¶¶ 26-27). Petitioner further argues that his detention authority is governed by 8 U.S.C § 1226(a), which requires access to a bond determination consistent with due process. *See* (DE 1 ¶ 31). Petitioner requests a bond redetermination hearing or immediate release from detention. *See* (DE 1 ¶ 7). Petitioner, however, is ineligible for a bond hearing because he is in expedited removal proceedings and detained under the authority provided in 8 U.S.C. § 1225(b)(1) – not § 1226(a).

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. Further, under § 1225, “[i]f immigration officials determine that [an] alien is inadmissible because of certain misrepresentations or lack of proper documentation, the alien is to be removed without further hearing or review unless the alien indicates an intention to apply for asylum or a fear of persecution.” *Florida v. United States*, 2022 WL 2431414, at \*2 (N.D. Fla. May 4, 2022)

(Wetherell, J.) (cleaned up). In such cases, an alien who enters the country intending to apply for asylum is referred “for an interview by an asylum officer.” 8 U.S.C. § 1225(b)(1)(A)(ii). “If the officer determines at the time of the interview that [the] alien has a credible fear of persecution[,] the alien shall be detained for further consideration of the application for asylum.” Id. § 1225(b)(1)(B)(ii) (emphasis added). This 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, Petitioner is ineligible for bond. *See Order at ECF No. 22 in Buriev v. Warden, Broward Transitional Center, Case No. 25-60459-CIV-ALTMAN* (entered September 26, 2025) (finding that 8 U.S.C. § 1225(b)(1) required detention of alien seeking asylum).

### III. CONCLUSION

Petitioner is properly detained under 8 U.S.C. § 1225(b)(1) and ineligible for bond. Accordingly, the Court should deny Petitioner’s habeas petition.

**Respectfully submitted,**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Respondent's Return to Habeas Corpus was served on Petitioner's counsel, as listed on the Petition, through CM/ECF.

**Brittany Brock**  
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