UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 26-cv-20890-WILLIAMS

EDDY MARTINEZ DE MOYA,

Petitioner,

v.

GARRETT J. RIPA, *et al.*,

Respondent(s).

_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondents[1] file this Return to Plaintiff's Verified Petition for Writ of Habeas Corpus [DE 1] (hereinafter the "Petition") and respond to Court's Order dated February 11, 2026 [DE 3]. As set forth below, this action should be dismissed as Petitioner is properly detained.

I. FACTUAL BACKGROUND

Petitioner Eddy Martinez De Moya (Petitioner), is a native and citizen of Cuba. *See* Petition at Exhibit B. On or about December 7, 2022, at or near San Luis, Arizona, Petitioner, then an unaccompanied seventeen-year-old minor, was encountered by U.S. Customs and Border Protection (CBP). *See* Petition at ¶ 23. CBP determined Petitioner illegally crossed the international boundary and that he did not possess the necessary documents to enter, pass

[1] 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 the Broward Transitional Center. DE 1 at ¶ 32. Therefore, the Proper Respondent and immediate custodian at the Broward Transitional Center is acting Assistant Field Office Director (AFOD) Carlos Nunez. *See Rumsfeld v. Padilla*. Accordingly, all other Respondents should be dismissed as improper parties.

through, or remain in the United States. Petitioner became subject to a Notice to Appear (NTA), which charges 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* Petition at Exhibit B. Petitioner, as an Unaccompanied Minor Child (UAC), was then placed in temporary custody of the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR). *See* Petition at ¶ 24. On December 31, 2022, Petitioner was released to his aunt's custody. *See* Petition at Exhibit A.

On January 9, 2026, Petitioner was taken into immigration custody after a traffic stop near Lakeland, Polk County, Florida. *See* Petition at ¶ 31. To date, Petitioner remains in ICE custody at the Broward Transitional Center (BTC). *See* Petition at ¶ 32. Petitioner is detained pursuant to 8 U.S.C. 1225(b)(2).

II. ARGUMENT

A. Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2) because he is present in the United States without being admitted or paroled.

The government has carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated response to the Court's Order to Show Cause in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law, the government submit one upon request.

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.

The government acknowledges, however, that several Judges in this District have reached the opposite conclusion. *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"); *Hernandez Alvarez v. Acting Warden Roger Morris*, et al., Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that "detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen "applicant[s] for admission" to the United States.); *Cerro Perez v. Parra*,

et al., Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *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); *Duvallon Boffill*, et al., Case No. 25-25179-CIV-BECERRA, ECF No.9 (Nov. 20, 2025) (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)); *Ocampo Fernandez v. Ripa*, No. 25-24981-CIV-LEIBOWITZ, ECF No. 17 (S.D. Fla. Nov. 25, 2025) (declining to follow BIA order in *Hurtado* and holding that "Petitioner is detained pursuant to Section 1226 and is therefore entitled to a bond hearing"); *Espinal Encarnacion v. ICE Field Office Director*, et al., Case 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., Case 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)").

The government is appealing the judgment that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b), governs detention under the facts presented in the cases above appealing to the Eleventh Circuit in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, et al., No. 25-14065 (11th Cir.) and *Cerro Perez v. Assistant Field Office Director*, et al., No. 25-14075 (11th Cir.). Until the foregoing appeals are resolved, however, the government acknowledges that this Court's recent decision in *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"); *Hernandez Alvarez v. Acting Warden Roger Morris*, et al., Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that "detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen "applicant[s] for admission" to the United States.); *Cerro Perez v. Parra*, et al., Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same), would control the result here if the Court adheres to that decision, as the legal arguments are not materially distinguishable for purposes of the Court's decision on the issue of which statutory provision authorizes Petitioner's detention.

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented in *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"); *Hernandez Alvarez v. Acting Warden Roger Morris*, et

al., Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that "detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen "applicant[s] for admission" to the United States.); *Cerro Perez v. Parra*, et al., Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same).

B. The fact that Petitioner entered the United States as an Unaccompanied Minor in 2022 does not exempt him from mandatory detention or entitle him to a bond hearing.

Under the Homeland Security Act of 2002 ("HSA"), a UAC is someone who: "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2) ("Section 279"). The HSA transferred the responsibility for care of UACs in Federal custody by reason of their immigration status to the Office of Refugee Resettlement ("ORR") within the Department of Health and Human Services ("HHS"). *Id.* § 279(a), (b)(1)(A). The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), provides that "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1) ("Section 1232"). Although the TVPRA transferred responsibility for care and custody of UACs to ORR, "it did not alter their immigration status." *Mendez Ramirez v. Decker*, et al., 612 F.Supp.3d 200, 206 (S.D.N.Y. 2020).

An individual is not a UAC if and when he is released to a parent's custody. *Id.* Moreover, a UAC ceases to be a UAC when he turns eighteen. *Id.* at 212 (citing 6 U.S.C. § 279(g) (2)(B) and *Matter of Castro-Tum*, 27 I. & N. Dec. 271, 277 n.4 (2018)). Petitioner here was released to his

aunt's custody in 2022 and thus ceased being a UAC. *See* Petition at Exhibit A. Further, Petitioner does not, and cannot, allege that he was under the age of eighteen at the time of his arrest in January of 2026. As such, despite the fact that he was an UAC when he arrived in the United States in 2022, he was not an UAC when he was detained in January of 2026.

Petitioner also argues that because he entered the country as an unaccompanied minor and that because Petitioner has had no material changes in circumstances since his original release from ORR custody at age 17, Respondents violated the TVPRA. Petition at ¶ 38. In support of his assertion, Petitioner cites 8 U.S.C. § 1232(c)(2)(B) and the Garcia Ramirez Nationwide Injunction. As correctly noted in Petition, the Garcia Ramirez Nationwide injunction requires ICE to comply with age-out protections listed in Section 1232(c)(2)(B). Petition at ¶ 39. However, Section 1232(c)(2)(B) of Title 8 addresses aliens transferred from Department of Health and Human Services to Department of Homeland Security Custody. This is not the issue here. Petitioner was transferred from Department of Health and Human Services to his aunt's custody in 2022. *See* Petition at Exhibit A. None of the provisions he cites concerning the care and custody of UAC's would apply to him. Therefore, the fact Petitioner entered the United States as an Unaccompanied Minor in 2022 does not exempt him from mandatory detention or entitle him to a bond hearing.

III. CONCLUSION

Petitioner is properly detained under 8 U.S.C. § 1225(b). Accordingly, the Court should deny Petitioner's habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 2026, I electronically filed the foregoing with the Clerk of Court using CM/ECF.

Respectfully submitted,

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By: */s/ Brittany Brock*
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