

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 1:26-cv-21010-KMW

Melvin Axcel Rayo Garcia,  
Petitioner,

v.

Kristi Noem, Secretary, U.S. Department  
of Homeland Security, *et al.*,  
Respondent(s).

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**RESPONSE TO ORDER TO SHOW CAUSE**

Respondents,<sup>1</sup> hereby respond to the Court's Order to Show Cause (ECF No. 4). Petitioner Melvin Axcel Rayo Garcia ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). On February 16, 2026, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1). The Court has ordered the government to show cause why the petition should not be granted.

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

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<sup>1</sup> The Petition names Respondents as the Secretary of the U.S. Department of Homeland Security; the Acting Director of U.S. Immigration and Customs Enforcement; the Acting Executive Associate Director, of Homeland Security Investigations, U.S. Immigration and Customs Enforcement; the Acting Executive Associate Director, Enforcement And Removal Operations, U.S. Immigration And Customs Enforcement; the Director of Executive Office for Immigration Review; and the Warden of the Krome North Service Processing Center (ECF No. 1). The proper respondent in the instant case is the custodian of the Krome North Service Processing Center, Assistant Field Office Director Charles Parra in his official capacity, *see* 28 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 438 (2004). Any remaining Respondents should be dismissed as parties to the instant action. *See Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024). "In challenges to present physical confinement...the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Padilla*, 542 U.S. at 435-40, 439; *see also Diaz v. United States*, 580 Fed. Appx. 716, 717 (11th Cir. 2014) (stating the Eleventh Circuit "emphasized that there was not a single case in which it had deviated from the rule that a habeas petitioner challenging his present physical custody was required to name his immediate custodian as respondent and file his petition in the district of his confinement.")

(“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 will 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* Exhibit A, I-200; Exhibit B, I-213. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025); *see further 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); *Iraheta Morales v. Noem, et al.*, Case No. 25-62598-CIV-SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026) (concluding that petitioners are “applicants for admission” as contemplated by 8 USC 1225(b) and are subject to section 1225’s mandatory detention and removal scheme); *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*). However, the government acknowledges that 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); *Duvalon 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.”); *Acosta v. Ripa*, et. al., Case No. 25-62360-CIV-DIMITROULEAS, ECF No. 19 at 7 (S.D. Fla. Dec. 26, 2025) (“§ 1226(a) and its implementing regulations govern Petitioner’s detention, not § 1225(b)(2)(A)”); 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 decisions 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); *Hernandez Alvarez v. Acting Warden Roger Morris*, et al., Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025); and *Cerro Perez v. Parra*, et al., Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) would control the result here if the Court adheres to those decisions, 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, (S.D. Fla. Oct. 10, 2025); *Hernandez Alvarez v. Acting Warden Roger Morris, et al.*, Case No. 25-24806-CIV-WILLIAMS, (S.D. Fla. Oct. 27, 2025); and *Cerro Perez v. Parra, et al.*, Case No. 25-24820-CIV-WILLIAMS, (S.D. Fla. Oct. 27, 2025), and the Court can decide this issue without further briefing. However, as noted above, should the Court prefer to receive a formal opposition brief in this matter, the government will file such a brief upon the Court's request.

**CONCLUSION**

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

**JASON A. REDING QUIÑONES**  
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**CERTIFICATE OF COMPLIANCE**

I certify that on February 20, 2026, I uploaded the attached document to the Court's PACER system.

By: /s/ John Ghannam  
John Ghannam  
Assistant United States Attorney