

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:26-cv-60431-MD

DIDIE ESPINOSA FONT,

Petitioner,

vs.

KRISTI NOEM ET. AL.,

Respondents.

**RESPONDENTS' RETURN/RESPONSE TO PETITION FOR WRIT OF HABEAS
CORPUS AND MEMORANDUM OF FACT AND LAW IN SUPPORT OF SAME**

Respondents¹ file this Return to Petitioner's Petition for Writ of Habeas Corpus [DE 1] (hereinafter the "Petition") and response to this Court's Order to Show Cause [DE 3]. This action should be dismissed as Petitioner was properly detained pursuant to 8 U.S.C. § 1225(b).

I. FACTUAL BACKGROUND

Petitioner Didie Espinosa-Font (Petitioner) is a native and citizen of Cuba. **Exhibit A:** Form I-213 dated June 16, 2025. Petitioner entered the United States without inspection at or near Calexico, California on or about May 22, 2022. *Id.* Border Patrol Agents arrested and released the Petitioner the same day. *Id.* On January 6, 2023, the Department of Homeland Security (DHS) filed a Notice to Appear (NTA) with the Executive Office for Immigration Review (EOIR)

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. D.E. 1 at ¶ 15. The Proper Respondent and immediate custodian at the Broward Transitional Center is Carlos Nunez. *See Rumsfeld v. Padilla*. Accordingly, Respondents Kristi Noem, Pamela Bondi, Todd M. Lyons, Cynthia Swain and Garret J. Ripa must be dismissed as improper parties.

charging Petitioner with inadmissibility pursuant to 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* DE 1-4 (NTA).

On June 16, 2025, the Immigration Judge granted the DHS's motion to dismiss Petitioner's removal proceedings. **Exhibit B:** Order on Motion to Dismiss dated June 16, 2025. On the same date, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), took Petitioner into custody. Ex A; **Exhibit C:** Detention History. On June 16, 2025, the Petitioner was placed in expedited removal proceedings. Ex A; **Exhibit D:** Form I-860 Notice and Order of Expedited Removal.

USCIS subsequently determined that Petitioner had a credible fear of persecution and placed him in removal proceedings by filing of a Notice to Appear. **Exhibit E:** Notice to Appear dated January 8, 2026. Petitioner was charged with inadmissibility under INA § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. Ex E. On February 20, 2026, Petitioner was ordered removed. **Exhibit F:** Removal Order.

Petitioner is currently detained at the Broward Transitional Center (BTC) in Pompano Beach, Florida. Ex C. His next master calendar hearing is scheduled for March 4, 2026. **Exhibit G:** Notice of Hearing dated January 26, 2026.

II. ARGUMENT

A. Petitioner is an Applicant for Admission² subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is Inapplicable as Clarified by the Fifth Circuit Court of Appeal in *Buenrostro-Mendez*.

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,

² The government submits the following arguments in good faith, supported by the Fifth Circuit Court of Appeals' recent decision in *See 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, including by this Court. *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., Case No. 26-60251-CIV-DIMITROULEAS, ECF No. 15 (S.D. Fla. Feb. 9, 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). 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)); *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."); *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)").

___ F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026) (holding that aliens who evaded inspection at a port of entry were necessarily “applicants for admission” and fell within § 1225(b)); *Perez Morales v. Noem*, et al., Case No. 26-60251-CIV-DIMITROULEAS, ECF No. 15 (S.D. Fla. Feb. 9, 2026) (adopting *Buenrostro-Mendez* and 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) attached as **Exhibit H**; *Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, ECF No. 10, 2026 WL 236307 (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))³. The Fifth Circuit in *Buenrostro-Mendez* recognized that “[s]ince DHS began to detain 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.* 2026 WL 323330 at *3. Nevertheless, the court concluded that such decisions ignored the plain language of § 1225, because 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 court noted that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)’s legislative history explained that the IIRIRA aimed to

³ Although the opinion mainly relied upon the plain language and legislative intent, Judge Singhal noted separately that accepting Petitioner’s reasoning would “create a perverse incentive to enter ... [the United States] unlawful[ly]” because it would give an alien who unlawfully entered a bond hearing while an alien who entered lawfully would be denied such relief. *Morales*, 2026 WL 236307 at * 7. This is precisely what the IIRIRA was intended to do away. *Id.* In other words, Petitioner’s reading is not only contrary to the plain language of §1225, but also contrary to Congress’ stated intent in passing the IIRIRA.

reduce the incongruity in the legislative scheme that afforded aliens who evaded inspection and were apprehended months or years later greater procedural protections than aliens who lawfully presented themselves for inspection at a point of entry. *Id.* at 1 citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Hence, Congress noted the previous incongruity in its legislative scheme that inadvertently afforded aliens who entered illegally a greater protection and aimed to rectify such incongruity through the IIRIRA. Thus, according to *Buenrostro-Mendez* not only did the plain language of the statute clearly require that aliens who entered illegally be treated as applicants for admissions, but also that, based on statutory history, this was Congress’s expressed intent. *Id.*

“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. 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)). 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.

B. Petitioner is an Applicant for Admission in 8 U.S.C. § 1229a Removal Proceedings and as such his Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A) is Proper.

Both arriving aliens and aliens present without admission or parole, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under § 1225(b)(1) or removal proceedings before an immigration judge under § 1229a. §§ 1225(b)(1), (b)(2)(A). *See Jennings*, 583 U.S. at 287 (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). For aliens subject to expedited removal, immigration officers have discretion to apply expedited removal under § 1225(b)(1) or to initiate removal proceedings before an immigration judge under § 1229a. *See also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

Petitioner is in § 1229a removal proceedings and subject to detention under § 1225(b)(2)(A). Hence, under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to § 1225(b)(2)). As the Supreme Court observed in

Jennings, nothing in § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens as no provision therein refers to “arriving aliens,” or limits that paragraph to arriving aliens. Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. *See, e.g.*, 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(c)(1).

In *Morales*, a recent decision by another court in this district denying a habeas petition under similar facts, Judge Singhal explained that petitioner’s reading of 1225(a) as it relates to removal proceedings under 1229a creates an “interpretive conundrum”, because it requires the Court conclude “that Petitioner is simultaneously *not* an applicant for admission as it concerns his detention, but *is* an applicant for admission for purposes of his removal proceedings.” 2026 WL 236307 at * 7 (emphasis in original). This is because petitioner is under removal proceedings under § 1229a and, as a matter of law, can only succeed in those proceedings if he proves that either he is “lawfully present” (an impossibility given his admitted illegal entry), or “if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 1182 of this title”. *Id.* quoting § 1229a(c)(2)(A)-(B). In other words, Petitioner is necessarily and implicitly taking the position that he is an “applicant for admission” for the purpose of his removal proceedings, which he challenges, while arguing to this Court that he is not an “applicant for admission” for the purpose of obtaining a bond hearing. These positions and reasoning are irreconcilable. *Id.* Given this interpretive conundrum, Petitioner’s proposed reading is unpersuasive.

C. Section 1226 does Not Impact the Detention Authority that Governs with respect to Applicants for Admission in removal proceedings.

Petitioner urges the Court to find that his detention authorized only by 8 U.S.C. § 1226(a), but that is incorrect. Section 1226(a) is the applicable detention authority for aliens who have been

admitted and are subject to removal proceedings under § 1229, and it does not impact the directive in § 1225(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A). Section § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a “permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225). As the Fifth Circuit observed in *Buenrostro-Mendez*, § 122(a) “does work independent from § 1225(b)(2)(A) because only § 1226(a) applies to admitted aliens who overstay their visas, become deportable on many different grounds, or were admitted erroneously due to fraud or some other error.” *Buenrostro-Mendez*, at *7.

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to be released on bond; rather, both DHS and immigration judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). To interpret § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally.

There would have been no need for Congress to make such a change if § 1226(a) was meant to apply to aliens present without admission.

D. 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).

E. Because Petitioner is Awaiting a Determination on his Removability *Zadvydas v. Davis* is Inapplicable.

Petitioner conclusively claims that his detention is unreasonable and violates due process because he has been held since June 15, 2025 citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (holding that while the government cannot indefinitely detain an alien **post removal** order and that a post removal period of detention is “presumptively reasonable” for up to six months). However, the Supreme Court in *Demore v. Kim*, 538 U.S. 510, 531 (2003) explained that the 6-month presumption of reasonableness set forth in *Zadvydas* only applies to aliens who are awaiting removal after a removal order is entered, but does not apply to aliens detained pending removal proceedings. *Id.* The fact that the detention in *Demore* occurred during removal proceedings is key because detaining noncitizens during ongoing immigration proceedings serves a valid immigration purpose, while detaining functionally non-deportable noncitizens when there are no more immigration proceedings to be had does not necessarily do so. *Id.* The Supreme Court reasoned that although the Fifth Amendment entitles aliens to due process during removal proceedings, detention during this process “necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings” and has “a definite termination point....” *Id.* at 528-29. As a result, the Supreme Court held, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Id.* at 531. Following *Demore*, in *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018), the Supreme Court refused to find any implicit temporal limitations while removal proceedings are pending and held that periodic bond hearings are not required for individuals who are properly detained pending removal proceedings.

Here, Petitioner is subject to detention while his removal proceedings are resolved. This detention did not violate due process. *See Demore*, 538 U.S. at 531. As noted above, the Supreme Court specifically rejected expanding the due process detention time limitation presumptions of

Zadvydas to aliens in removal proceedings, and has found that aliens in removal proceedings are not subject to periodic bond hearings. *Demore*, 538 U.S. at 531; *Jennings*, 583 U.S. at 286.

Although Petitioner claims a balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976) should be applied, neither the *Demore* nor *Jennings* applied such a test when addressing pre-removal detention. In fact, Courts in this district do not apply such a test. See *Jean-Henriquez v. Dep't of Homeland Sec.*, No. 4:05-CV-00304-MP-WCS, 2006 WL 1687853, at *4 (N.D. Fla. June 15, 2006) (“In sum, Petitioner's *current* detention is lawful under *Demore v. Kim*, *supra*. Petitioner also cannot state a claim under *Zadvydas* because the removal period has neither expired nor begun.”); *Noel-Jeune v. Barr*, No. 19-21246-CV, 2020 WL 13548575, at *2 (S.D. Fla. May 28, 2020), *report and recommendation adopted*, No. 1:19-CV-21246-KMM, 2020 WL 13548573 (S.D. Fla. June 25, 2020) (holding that because “Petitioner's removal proceedings have not come to an end..., a challenge to his continued detention fails because there is nothing unconstitutional about detention during removal proceedings, as there is a definitive stopping point.”). Accordingly, the Petition must be denied because the pre-order of removal detention was constitutional. *Id.*

Notably, relying on Justice Kennedy's concurrence in *Demore*⁴, some courts in this district have suggested that that “[i]t is conceivable that a protracted [pre-removal] detention[] could amount to a due process violation [if] there be “unreasonable delay” in his removal proceedings”. *Hamilton v. Acosta*, No. 20-21318-CV, 2020 WL 3036782, at *6 (S.D. Fla. May 8, 2020), *report and recommendation adopted*, No. 20-21318-CIV, 2020 WL 3035350 (S.D. Fla. June 4, 2020) (denying habeas relief under similar circumstances, but noting Justice Kennedy's concurrence left the door open to a due process challenge where there is an unreasonable delay in removal

⁴ Given that he did not have a majority signing on, Kennedy's concurrence lacks precedential value. Nevertheless, because some courts in this district suggest the possibility that a detention pending removal could prolong to the point where it could be constitutionally infirm, the reasoning is address here.

proceedings); *S.C. v. Warden, Stewart Det. Ctr.*, No. 4:23-CV-64-CDL-MSH, 2024 WL 796541, at *5 (M.D. Ga. Jan. 5, 2024), *report and recommendation adopted*, No. 4:23-CV-64 (CDL), 2024 WL 790377 (M.D. Ga. Feb. 26, 2024)(explaining that district court may look at why the removal proceedings have been prolonged, but denying writ of habeas corpus because no unreasonable delay was shown and because there was evidence that the government was facilitating deportation). Although these decisions suggest that there is a constitutional limit to pre-removal detention, neither found a constitutional violation nor gave guidance as to what an unreasonable delay would look like. Moreover, *Hamilton* and *S.C.* both denied habeas relief because the petitioners did not present sufficient evidence to show facts supporting an unreasonable delay. Similarly, Petitioner here does not argue any unreasonable delay occurred in his Petition and offers no facts, other than the time of detention, for this Court to make a determination of whether the period of pre-removal detention was unreasonable such as to trigger a potential due process inquiry. Consequently, the Petition is legally insufficient to present a due process challenge even under Kennedy's concurrence in that it gives no facts that if proven true could result in a finding of an "unreasonable delay" in what is otherwise a constitutionally valid detention.⁵

F. Petitioner failed to Exhaust his Administrative Remedies

Lastly, 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

⁵ Petitioner was ordered removed on February 20, 2026, and he has until March 23, 2026 to appeal the order of removal. Ex F. If Petitioner does not appeal or waives his right to appeal, then this decision would become final. 8 CFR § 1003.39L. Consequently, the time period for his pre-removal detention is imminently coming to a close rendering his detention pending removal proceedings reasonable.

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.).

The Petition does not address why Petitioner failed to avail himself of the administrative remedies available to him, and makes no argument to the Court why this requirement should be obviated in this instance. By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.38. The BIA and IJs can consider constitutional challenges to the INA – such could include a Fifth Amendment challenge to the BIA’s interpretation of 235(b)(2). Here, Petitioner’s removal proceedings are pending, thus he has not availed himself of the administrative process and remedies available to him before proceeding to this Court in hopes of shopping for a more favorable forum. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

III. CONCLUSION

As mentioned above, the Petition should be dismissed because detention is lawful a under § 1225 (b) and because Petitioner has failed to exhaust him administrative remedies before seeking relief from the Court. Regardless, given that Respondents Field Office Director, Pamela Bondi, Kristi Noem, Todd M Lyons, Cynthia Swain and Garret J. Ripa are not Petitioner’s immediate custodians, they must be dropped/dismissed as parties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 23, 2026, I electronically filed the foregoing with the Clerk of Court using CM/ECF.

Respectfully submitted,

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