

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

CASE NO. 0:26-cv-60474-DMM

CARLOS MANUEL SANCHEZ-SILVA,

Petitioner,

vs.

MITCHELL DIAZ, ET. AL.,

Respondents.

**RESPONDENTS' RETURN/RESPONSE TO PETITION FOR WRIT OF HABEAS
CORPUS AND MEMORANDUM OF FACT AND LAW IN SUPPORT OF SAME AND
MOTION TO DISMISS OR TRANSFER DUE TO IMPROPER VENUE**

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 5]. Given that Petitioner admits he is confined in the Middle District of Florida, this Court lacks jurisdiction over the Petition and must dismiss the same or transfer this matter to the Middle District of Florida. To the extent this Court reaches the merits, this action should be dismissed as Petitioner is properly detained pursuant to § 8 U.S.C. § 1225(b)(2).

I. FACTUAL BACKGROUND

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 admits to being detained at Glades Detention Center, which is located in Moore Haven, Florida, but does not name the warden of that institution as a respondent. DE 1 ¶¶ 5, 13. Accordingly, respondents Mitchell Diaz, Garrett Ripa, Todd Lyons, Kristi Noem, Pamela Bondi and Executive Office for Immigration Review United States Department of Justice are not Petitioner's immediate custodians. Therefore, they should be dismissed as improper parties.

Petitioner Carlos Manuel Sanchez Silva is a native and citizen of Cuba. **Exhibit A:** Form I-213 dated July 25, 2025; **Exhibit B:** Form I-213 dated February 18, 2022. On February 18, 2022, Petitioner entered the United States through El Paso, Texas without inspection and was subsequently encountered by Border Patrol (BP). *Id.* On February 19, 2022, Petitioner was released on an order of release on his own recognizance. **Exhibit C:** Order of Release on Recognizance.

On July 19, 2022, Immigration and Customs Enforcement (ICE) issued Petitioner a Notice to Appear (NTA) charging him as inadmissible to the United States pursuant to § 212(a)(6)(A)(i), as amended, in that he is 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. **Exhibit D:** Notice to Appear. On July 20, 2022, Petitioner filed a benefits application with U.S. Citizenship and Immigration Services (USCIS). **Exhibit E:** Declaration from Deportation Officer Faustin Cherubin.

On July 25, 2025, the Department of Homeland Security (DHS) dismissed removal proceedings against Petitioner. **Exhibit F:** Immigration Judge order dated July 25, 2025. Petitioner reserved appeal of the dismissal of his removal proceedings. *Id.* On the same day, Petitioner was encountered by the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) and taken into custody. Ex A. ERO issued and served Petitioner with a Notice and Order of Expedited Removal, placing Petitioner in expedited removal proceedings. **Exhibit G:** Form I-860, Notice and Order of Expedited Removal. On July 25, 2025, Petitioner was transferred to the Glades County Detention Center in Moore Haven, Florida. **Exhibit H:** Detention History. On August 4, 2025, Petitioner appealed the dismissal of his removal proceedings to the Board of Immigration Appeals (BIA). **Exhibit I:** Receipt of BIA appeal dated August 04, 2025. The appeal remains pending. Ex E.

On August 25, 2025, Petitioner requested a custody redetermination hearing before the Immigration Court. *Id.* On August 28, 2025, the Immigration Judge took no action on the request because Petitioner was not brought to the courtroom. **Exhibit J:** Immigration Judge order dated August 28, 2025. On September 8, 2025, Petitioner requested a custody redetermination hearing before the Immigration Court. Ex E. On September 19, 2025, the Immigration Judge denied Petitioner's request for release on bond based on the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). **Exhibit K:** Immigration Judge Order dated September 19, 2025. Petitioner reserved appeal on the Immigration Judge's denial of his request for release on bond. *Id.*

On October 20, 2025, Petitioner filed an appeal of the Immigration Judge's decision denying his request for release on bond to the BIA. **Exhibit L:** Filing Receipt for Appeal or Motion. That appeal remains pending. Ex E. On February 25, 2026, Petitioner requested a third custody redetermination hearing before the Immigration Court. *Id.* Petitioner is scheduled for a bond hearing on March 6, 2026. **Exhibit M:** Notice of Custody Redetermination Hearing. To date, Petitioner remains in ICE ERO custody at Glades County Detention Center in Moore Haven, Florida. Ex H.

II. ARGUMENT

A. Petition Must be Dismissed for Lack of Jurisdiction or Transferred to the Middle District Because Petitioner is confined within the Middle District of Florida.

Petitioner admits to being detained at Glades County Detention Center, which is located in Moore Haven, Florida a city in Glades County, Florida. DE 5 ¶¶ 1, 13; *see also* Ex E; Ex H.²

² Pursuant to Rule 201(b)(2), Respondents request that the Court take judicial notice of the location of Glades County Detention Center as this fact can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Glades County, Florida falls within the Middle District of Florida. *See* 28 U.S.C. § 89 (b). Accordingly, Petitioner's district of confinement is the Middle District of Florida. Despite this admission, Petitioner incorrectly claims that venue is proper in this district because "ICE Miami Field Office which maintains responsibility for his immediate detention, and the Miami Immigration Court which is responsible for the denial of his bond request." DE 1 ¶ 13. However, this is not the proper inquiry for venue under 28 U.S.C. § 2241.

Section 2441 allows "the [U.S.] Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus only "within their respective jurisdictions." 28 U.S.C. § 2441(a). The "within their respective jurisdiction" phrase means "that a Section 2441 petitioner challenging his present physical custody must file a petition for writ of habeas corpus in the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 446-47 (2004). "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.

Recently, the Supreme Court reiterated this rule and clarified that in habeas petitions filed by immigration detainees, "jurisdiction lies in only one district: the district of confinement" *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (citing *Padilla*, 542 U.S. at 426, 443). In *J.G.G.*, the Supreme Court found that detainees in Texas improperly filed a putative class action in the District of Columbia challenging their detention. *Trump*, 604 U.S. at 672. ("The detainees are confined in Texas, so venue is improper in the District of Columbia."). As it relates to venue, the Supreme Court was clear; the location of confinement is the only variable. *Id.*

Similarly, courts in this district, citing *Padilla*, previously dismissed habeas petitions for lack of jurisdiction filed by immigration detainees located outside the Southern District of Florida or alternatively, transferred matter to the correct district. *See Ali v. Florida Soft Side South*, 26-

cv-20098-Gayles (S.D. Fla. Jan. 9, 2026) (sua sponte transferring habeas corpus claim filed in Southern District of Florida where custodian was FSSFS to Middle District of Florida) attached as **Exhibit N**; *Zhang v. United States*, 21-CV-81382-ALTMAN, 2021 U.S. Dist. LEXIS 162725, at *2-3 (S.D. Fla. Aug. 25, 2021) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Glades County Jail, in Glades County, Florida, because jurisdiction lies in the district of confinement); *Dolme v. Barr*, 20-CV-24106-Altman, 2020 U.S. Dist. LEXIS 197596, at *2-3 (S.D. Fla. Oct. 21, 2020) (dismissing habeas petition for lack of jurisdiction where detainee was detained in Wakulla County Jail, in Wakulla County, in the Northern District of Florida, because jurisdiction lies in the district of confinement); *see also Fernandez v. United States*, 941 F.2d 1488, 1495 (11th Cir. 1991) (“Section 2241 petitions may be brought only in the district court for the district in which the inmate is incarcerated.”); *Price v. Immigr. & Custom Enft*, No. 1:20-CV-4746-AT-JSA, 2020 WL 13544293, at *1 (N.D. Ga. Nov. 30, 2020), report and recommendation adopted sub nom. *Price v. U.S. Immigr. Customs Serv. (ICE)*, No. 1:20-CV-4746-AT, 2020 WL 13544292 (N.D. Ga. Dec. 18, 2020) (transferring matter to correct district).

Accordingly, Respondents respectfully request this Petition be dismissed for lack of jurisdiction, or in the alternative, transferred to the Middle District of Florida where Petitioner is currently detained and was detained at the time of his Petition.

B. Petitioner is an Applicant for Admission³ 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*.

³ 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.

Petitioner is properly detained as an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Buenroostro-Mendez v. Bondi*, No. 25-20496, 25-40701, ___ 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.

§ 1225(b)(2) because they were present in the United States without being admitted or paroled, despite having entered illegally many years ago); *Israel Binzha Banchi v. Mitchell Diaz, et al.*, No. 0:25-cv-62341, Singhal (S.D. Fla. Feb. 2, 2026) (same); *Doria v. Warden, Broward Transitional Center*, No. 0:26-cv-60112, Singhal (S.D. Fla. Feb. 9, 2026) (same); *Pavon Ramirez v. ICE et al*, 1:26-cv-20804-CIV-Dimitrouleas, ECF No. 10 (S.D. Fla. Feb. 20, 2026) (same); *Tamariz Escarola v Warden BTC et al*, 0:26-cv-60216-CIV-Singhal, EFC No. 9 (S.D. Fla. Feb. 18, 2026) (same); *Alvares Mora v. Warden, Krome et al*, 1:26-cv-20942- CIV-Dimitrouleas, EFC 8 (S.D. Fla. Feb. 23, 2026) (same); *Jimenez-Clemente v. Acting Director, ICE et al.*, No. 1:26-cv-20096-Altman, EFC 15 (S.D. Fla. March 2, 2026) (same). 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)”).

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 O**; *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))⁴. 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 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

⁴ Although the opinion mainly relied upon the plain language and legislative intent, this Court 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.

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’”)⁵; *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA

⁵ The Supreme Court in *Thuraissigiam* rejected a similar argument that the IIRIRA should be read to allow for individuals who enter unlawfully to receive greater due process protections than those who enter legally:

Respondent argues that this rule [relating to due process protection limitations on aliens] does not apply to him because he was not taken into custody the instant he attempted to enter the country (as would have been the case had he arrived at a lawful port of entry). Because he succeeded in making it 25 yards into U. S. territory before he was caught, he

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

claims the right to be treated more favorably. The Ninth Circuit agreed with this argument. We reject it.

Dep’t of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 140 (2020).

[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* Ex A. 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.

C. 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 currently in § 1229a removal proceedings and is 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.

D. 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.

E. 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).

F. Court Lacks Jurisdiction to Rule on Count III, which asks this Court to Usurp Attorney General’s Authority to Make Asylum Determinations in the First Instance.

In Count III, Petitioner requests this Court rule on the merits of his asylum application, by-passing the statutory scheme of review altogether that requires he present any appeal to the BIA of a final order and then to the Eleventh Circuit, and enjoin his deportation. DE 1 ¶ 38. However, the Supreme Court has ruled that, in expedited removal proceedings, 8 U.S.C. § 1252(e)(2) bars habeas corpus judicial review of claims raised by an alien that asylum should be granted. *Thuraissigiam*, 591 U.S. 103, 133 (holding that pursuant to § 1252(e)(2) district courts lack jurisdiction to entertain analysis of whether asylum should be granted and reiterating that as to “foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law,” “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.”) citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892). The Petitioner in *Thuraissigiam* alleged that the asylum officer had erred by not considering relevant facts about the identity and motives of his attackers, and sought judicial review of his asylum petition via a petition for writ of habeas corpus. In reversing the Ninth Circuit, the Supreme Court found that § 1252(e)(2) is constitutional and bars such judicial review in the habeas context. *Id.* Thus, habeas review is not available over Petitioner’s asylum claim. Accordingly, Count III must be dismissed and his request for a TRO and enjoining his removal must be denied as Petitioner

cannot show likelihood he will prevail on the merits as is necessary before any injunction may issue.

G. 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 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. As set forth in the EOIR Policy Memo 25-45 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) in *Yajure Hurtado*. *See* <https://www.justice.gov/eoir/eoir-policy-manual/memoranda-pm-list>. 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, this Court lacks jurisdiction over this matter; therefore, should dismiss or transfer it to the Middle District of Florida. Additionally, the Petition should be dismissed because detention is lawful under § 8 U.S.C. § 1225(b)(2) and Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court. Regardless, given that Respondents Mitchell Diaz, Garrett Ripa, Todd Lyons, Kristi Noem, Pamela Bondi and Executive Office for Immigration Review United States Department of Justice are not Petitioner's immediate custodians, they must be dropped/dissmised as parties.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

/s/ Francisco Armada

Francisco Armada

Assistant United States Attorney

Fla. Bar No. 45291

500 E. Broward Blvd., Suite 700

Ft. Lauderdale, FL 33394

Tel: (954)660-5931

Email: Francisco.Armada@usdoj.gov

Attorney for the Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 2, 2026, I electronically filed the foregoing with the Clerk of Court using CM/ECF.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: /s/ Francisco Armada

Assistant United States Attorney