UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:26-cv-60515-JB

JULIO SANCHEZ PUPO,

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

Respondent[1] files this Return to Petitioner's Petition for Writ of Habeas Corpus [D.E. 1] (hereinafter the "Petition") and respond to Petitioner's Emergency Motion for Immediate Release [D.E. 3], Petitioner's Motion to Expedite Consideration [D.E. 4], Motion for Stay of Removal [D.E. 5], Petitioner's Emergency Motion for Temporary Restraining Order [D.E. 6] and this Court's Order dated February 24, 2026 [D.E. 8]. As to the merits, this action should be dismissed as Petitioner was properly detained pursuant to 8 U.S.C. § 1225(b)(2).

I. FACTUAL BACKGROUND

Petitioner, Julio Sanchez Pupo ("Petitioner") is a native and citizen of Cuba who last entered the United States without inspection on January 7, 2023. **Exhibit A:** Form I-862, Notice to Appear ("NTA"), dated January 28, 2023. On or about January 7, 2023, U.S. Customs and

[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 ¶ 10. The Proper Respondent and immediate custodian at the Broward Transitional Center is Carlos Nunez. *See Rumsfeld v. Padilla*. Accordingly, Respondents Kristi Noem, Field Office Director, and Pamela Bondi must be dismissed as improper parties.

Border Protection ("CBP") Border Patrol Agents encountered Petitioner at or near Eagle Pass, Texas. **Exhibit B**: Deportation Officer Declaration. After a brief interview, it was determined that Petitioner was not a citizen or resident of the United States. *Id.*

On January 28, 2023, Petitioner was issued a Notice to Appear (NTA) charging Petitioner with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), in that Petitioner was an alien present in the United States without being admitted or paroled, or who arrived in the United States at a time or place other than as designated by the Attorney General. Ex A. The NTA also charged Petitioner with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I), in that Petitioner was an immigrant who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act. *Id.* On February 11, 2025, the immigration court granted Petitioner's Motion to Terminate proceedings without prejudice. **Exhibit C**: Order of the Immigration Judge, dated February 11, 2025.

On December 22, 2025, U.S. Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO") Stuart Criminal Alien Program ("CAP") officers encountered Petitioner at the Palm Beach County Jail following an arrest by local authorities under the 287(g) program for civil violations. **Exhibit D**: Form I-213, Record of Deportable/Inadmissible Alien, dated December 22, 2025. It was determined that Petitioner is a native and citizen of Cuba unlawfully present in the United States. *Id.*

On December 22, 2025, ERO issued Petitioner a Warrant for Arrest and a Notice of Custody Determination. **Exhibit E:** Form I-200, Warrant for Arrest of Alien, dated December 22, 2025; **Exhibit F**: Form I-286, Notice of Custody Determination. On December 23, 2025, Petitioner

was issued a new NTA charging Petitioner with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). **Exhibit G**: Form I-862, NTA, dated December 23, 2025.

Petitioner remains in ICE custody at the Broward Transitional Center ("BTC") pending the conclusion of his removal proceedings. **Exhibit H:** Detention History. Petitioner is next scheduled for a hearing before the Executive Office for Immigration Review ("EOIR") on March 4, 2026. **Exhibit I**: Notice of Hearing in Removal Proceedings, dated February 9, 2026. To date, Petitioner has not requested a custody redetermination hearing before the Immigration Court. Ex B.

On February 24, 2026, Petitioner filed this habeas petition, challenging his continued detention.

II. ARGUMENT

a. Petitioner's alleged Fourth Amendment Violation and Discrimination Claims do not Support Habeas Relief as a Matter of Law.

As discussed in detail below, Petitioner raises several 'claims' that are simply not cognizable in habeas corpus. As a starting point, "[t]he *sole* purpose of habeas corpus proceedings is to test the validity or legality of the restraint of the petitioner." *Martin v. Spradley*, 341 F.2d 89, 90 (5th Cir. 1965). In *Nelson v. Campbell*, 541 U.S. 637, 643 (2004), the Supreme Court explained the distinction between § 1983 claims seeking redress for constitutional harms and the habeas statute. Claims "where an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence" are the "core of habeas corpus" *Id.* citing *Preiser v. Rodriguez,* 411 U.S. 475, 489 (1973). "By contrast, constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core and may be brought pursuant to § 1983 in the first instance." *Nelson*, 541 U.S. at 643; *see also Beasley v. Unnamed Respondent*, 2018 WL 10611667, at *2 (N.D. Ga. Dec. 12, 2018) ("A habeas remedy does not extend to matters that do not affect either the fact or duration of

confinement."), report and recommendation adopted, 2019 WL 8353314 (N.D. Ga. Jan. 10, 2019); *see, e.g., Aloba v. FCC Coleman 1*, 2024 WL 4040591, at *2 (M.D. Fla. Sept. 4, 2024) (Jung, J.) ("Petitioner cannot bring a First Amendment Claim in a habeas proceeding.").

Because of the limited purpose of the writ of habeas corpus, a claim of an unlawful warrantless arrest, without showing that custody itself was unlawful, is legally insufficient to substantiate the issuance of the writ. *Buriev v. Warden, GEO, Broward Transitional Ctr.*, No. 25-CV-60459, 2025 WL 2763202, at *3 (S.D. Fla. Sept. 26, 2025) (holding that petitioner's fourth amendment claim of warrantless arrest in purported violation of the Fourth Amendment legally insufficient and dismissing habeas petition). In holding that an unlawful arrest offers no habeas relief in it of itself, the *Buriev* Court explained that "unlawful arrest, by itself, doesn't warrant release" and therefore, no habeas relief is warranted. *Id.* citing *Williams v. Sec'y, Dep't of Corr.*, 2019 WL 2717202, at *4 (M.D. Fla. June 28, 2019) (Jung, J.) ("Fourth Amendment violation during arrest does not by itself warrant habeas relief." (citation omitted)); *Abraham v. Wainwright*, 407 F.2d 826, 828 (5th Cir. 1969) ("Even if, arguendo, [the petitioner's] arrest was illegal, that alone does not present grounds for habeas relief unless such arrest in some way deprived the petitioner of a fair trial."). Like the petitioner in *Buriev*, Petitioner has not shown why his current detention is unlawful, and instead, only conclusively claims his arrest was warrantless in violation of the Fourth Amendment. This allegation alone offers no habeas relief even if true. Accordingly, Claim I fails as a matter of law. Moreover, a warrant was issued for Petitioner's arrest. Ex E.

Claim V, which argues discrimination and an equal protection violation, also fails as a habeas claim for the same reason. Specifically, Claim V also does not bring into question Petitioner's detention in any way or form. Instead, as with Claim I, it merely conclusive alleges discrimination and equal protection violations without any challenge to the detention itself. In

other words, there is no indication in Claim V how, even if discrimination occurred, such discrimination would make Petitioner's detention unlawful, or under what authority or facts a discrimination claim if proven could result in an unlawful detention necessitating release. Thus, Claim V is legally insufficient because even if discrimination occurred, there is no basis to conclude that it would make detention unlawful. Additionally, Claim V also fails to state a cause of action for an equal protection violation. *Mehmood v. Castano*, No. 18-22301-CIV, 2018 WL 11249352, at *3 (S.D. Fla. July 18, 2018), aff'd, 783 F. App'x 934 (11th Cir. 2019) ("to state an equal protection claim, a plaintiff must allege he is similarly situated to other detainees who received more favorable treatment, and the government engaged in invidious discrimination against him based on a constitutionally protected basis such as ethnicity"). Consequently, Claim V fails to state a claim for discrimination as a matter of law, and also fails to state a claim that challenges the legality of Petitioner's detention or length of his detention making it a non-core habeas claim for which no relief is available under a petition for writ of habeas corpus.

Moreover, Petitioner's formulaic and conclusive recitations of discrimination, unspecified harassment and unlawful arrest, which offer mere legal conclusions, are insufficient themselves to support any claim for immediate release. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (a "formulaic recitation of the elements of a cause of action will not do"); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that to be legally sufficient a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face" and that legal conclusions couched as factual allegations are insufficient). Given that Claims I and V are mere legal conclusions devoid of facts, much less facts that call into question the legality or length of Petitioner's detention, they are legally insufficient to offer Petitioner habeas relief. Accordingly, the Petition must be dismissed.

b. Under *Zadvydas v. Davis*, Petitioner's Due Process Claim (Claim II) is premature and his detention is presumptively reasonable.

In Claim II, Petitioner conclusively claims that his detention is arbitrary and violates due process citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (holding that while the government cannot indefinitely detain an alien **post removal** order, 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 awaiting removal after a removal order is entered, but does not apply to aliens detained pending removal proceedings; like Petitioner. *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 properly detained pending removal proceedings.

Here, Petitioner is detained pending resolution of his removal proceedings, and has only been detained for 65 days. Ex H. This detention does not violate due process. *See Demore*, 538 U.S. at 531. As noted above, the Supreme Court expressly rejected expanding the due process

detention time limitation presumptions of *Zadvydas* to aliens in removal proceedings, and 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; *see also 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 and his detention is lawful under § 1225(b)(2). *Id.*

c. Habeas Relief is not Available to Challenge Conditions of Confinement such as those Raised in Claims III and IV.

In Claims III and IV, Petitioner challenges the conditions of his confinement claiming issues with nutrition, water, safety, medical care and medications. All these claims fail as a matter of law because claims regarding the conditions of confinement cannot be raised in habeas. *See Nelson*, 541 U.S. at 643 ("constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside [the] core" of habeas corpus); *Vaz v. Skinner*, 634 Fed. App'x 778, 781 (11th Cir. 2015) ("§ 2241 petition is not the appropriate vehicle for raising an inadequate medical care claim, as such a claim challenges the conditions of confinement, not the fact or duration of confinement."). Consequently, Claims III and IV are legally insufficient.

d. Court Lacks Jurisdiction to Stay Transfer Because it Lacks Jurisdiction to Review Decisions of Where to Detain Alien to Facilitate Removal.

8 U.S.C. § 1252(a)(2)(B)(ii) deprives courts of jurisdiction over "any decision or action of the Attorney General...the authority for which is specified under this subchapter to be in the discretion of the Attorney General...." 8 U.S.C. § 1252(a)(2)(B). In turn, section 1231(g)(1), which falls under the same subchapter, provides that "[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1).

"Courts have interpreted these statutes to mean that a district court lacks jurisdiction to enjoin the government from transferring immigration detainees to other districts, as those decisions fall within the discretion of the Attorney General." *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *5 (S.D. Fla. Aug. 8, 2025) (holding that Court lacks jurisdiction to enjoin transfer of alien detainee) citing *Calla-Collado v. Att'y Gen. of the U.S.*, 663 F.3d 680, 685 (3d Cir. 2011) (stating that Congress vested DHS and as a "part of DHS, ICE" "with [the] authority to enforce the nation's immigration laws" and "the authority to determine the location of detention of an alien in deportation proceedings...and therefore, to transfer aliens from one detention center to another"); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (finding that "[t]he Attorney General is mandated to 'arrange for appropriate places of detention for aliens detained pending removal.' " (citing 8 U.S.C. § 1231(g)(1)). Consequently, this Court may not enjoin a transfer. Accordingly, Petitioner's motions/requests seeking to enjoin his transfer [DE 1, 5 and 6] must be denied as the Court lacks jurisdiction to provide such relief. Moreover, this Court's order [D.E. 8 at pg. 3] must be vacated to the extent it enjoined a transfer as this Court lacked jurisdiction to enjoin Petitioner's transfer.

e. Petitioner's Motions for Injunctive Relief should be Denied as he has not met his Burden of Persuasion.

Petitioner's motions to enjoin his removal [D.E. 5 and 8] should be summarily denied as Petitioner has not met his burden or presented any evidence concerning why such an injunction should issue. *Hochstein v. City of Miami Beach*, 758 F. Supp. 3d 1348, 1354 (S.D. Fla. 2024) (party seeking injunction bears the burden of persuasion) (citing *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the 'burden of persuasion' " as to each of the four prerequisites, and grant of preliminary injunction "is the exception rather than the rule"). In his motions for a stay and for temporary injunction, Petitioner offers bare legal conclusions and no evidence or argument as to why he will likely succeed on the merits of his purported challenge to his inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), or any of the other elements necessary for an injunction.[2]

In fact, in both motions, Petitioner concludes, without argument or evidence, that he "has shown a substantial likelihood of success on his habeas claims, including unlawful seizure, arbitrary and punitive detention, unconstitutional conditions of confinement and denial of medical care". DE 5 at 2and DE 8 at 2. Petitioner offers no evidence or argument on any of these supposed claims or why such claims would entitle him to any relief much less to enjoin his removal. Given that Petitioner entered illegally and has not presented any evidence or argument as to how he will

[2] Notably, Petitioner does not directly raise any argument concerning why his detention is unlawful other than constitutional violations, which as noted above offer him no habeas relief, and does not claim he is subject to detention under § 1226(a) instead of § 1225(b)(2). Nevertheless, even if this Court finds that Petitioner's detention is pursuant to § 1226(a) and not § 1225(b)(2), these motions should still be denied, because both sections authorize detention. As noted below, the functional difference between these sections is that § 1226(a) allows for a bond hearing, while § 1225(b)(2) does not. Consequently, even if the Court finds that detention authority is pursuant to § 1226(a), the only statutory benefit available to Petitioner that was not previously available would be a bond hearing and not his immediate release and enjoining of his removal as he requests.

be able to challenge removal or why he should not be removed, it is not likely that he will succeed on the merits on that claim. Nevertheless, he does not even attempt to make an argument on why he will succeed on the merits, but only conclusive argues that he will. Thus, he has not met his burden of persuasion and his motions/requests for injunction should be denied. *See Joseph v. Bank of Am.*, N.A., No. 1:11-CV-3909-JEC-AJB, 2011 WL 13223498, at *4 (N.D. Ga. Nov. 17, 2011), report and recommendation adopted, No. 1:11-CV-3909-JEC, 2011 WL 13224163 (N.D. Ga. Dec. 9, 2011) ("Plaintiff's bare, conclusory allegations are insufficient to state a claim at all, much less do they warrant the extraordinary relief a TRO or preliminary injunction provides.").

Moreover, this Court's order [D.E. 8 pg. 3], which preliminarily enjoined any movement of Petitioner outside this district, and by necessity enjoins his removal because it would involve a transfer out of this district, must be vacated in part as Petitioner has not met his burden and, as noted above, this Court lacks jurisdiction to enjoin a transfer.

f. Petitioner is an Applicant for Admission[3] subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a)[4] is Inapplicable as Clarified by the Fifth Circuit Court of Appeal in *Buenrostro-Mendez*.

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[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. § 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). Nevertheless, the government acknowledges that other 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)").

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, ___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, 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 J**; *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))[5]. 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

[4] Petitioner does not claim he is subject to detention under § 1226(a) as he claims his detention is unlawful without providing an explanation. That said, the question of whether § 1225(b)(2) or § 1226(a) applies is addressed in response because Petitioner requests a bond hearing in the alternative. DE 1 at 1. Regardless of which section applies, there is no doubt that detention is lawful because both sections permit detention.

[5] 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.

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 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.

i. 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.

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

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.

iii. 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).

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. 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 government's interpretation of § 235(b)(2). *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, the Petition should be dismissed because detention is lawful under § 8 U.S.C. § 1225(b)(2) and Petitioner has failed to exhaust him administrative remedies before seeking relief from the Court. Moreover, none of Petitioner's five 'claims' entitle him to be released as matter of law. Furthermore, Petitioner's motion for immediate release, motion for stay of removal and motion for TRO should all be denied as Petitioner has failed to show he is entitled to be release or that he is substantially likely to succeed on his request for an immediate release. Regardless, given that Respondents Field Office Director, Pamela Bondi and Kristi Noem 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 27, 2026, I electronically filed the foregoing with the Clerk of Court using CM/ECF.

Respectfully submitted,

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