

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

CASE NO. 26-cv-60517-DAMIAN

Chafik Sofia-Laffita,

Petitioner,

v.

Carlos R. Nunez, in his official capacity as
Assistant Field Officer Director of Broward
Transitional Center, *et al.*,

Respondents.

RESPONDENTS' RESPONSE IN OPPOSITION TO WRIT OF HABEAS CORPUS

Carlos R. Nunez, in his official capacity as Assistant Field Officer Director of Broward Transitional Center ("Respondents")¹, through the undersigned counsel, submits this Response in Opposition to Petitioner Chafik Sofia-Laffita's ("Petitioner") Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 ("Petition") (ECF No. 1). As demonstrated below, Petitioner is properly detained pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), therefore the Court should deny the Petition.

I. BACKGROUND

Petitioner is a native and citizen of Cuba. *See* Petition ¶ 11.

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 Broward Transitional Center. *See* Petition at ¶ 4. The only appropriate respondent is Acting Assistant Field Office Director Juan Gonzalez. All other respondents should be dismissed.

On or about December 30, 2021, Petitioner entered the United States without inspection at or near El Paso, Texas. *See* Petitioner’s Exhibit B, at 1. On January 9, 2022, U.S. Customs and Border Protection (“CBP”), determined Petitioner had unlawfully entered the United States from Mexico and Petitioner was taken into custody. On the same day, CBP issued a Notice to Appear (“NTA”) charging Petitioner as inadmissible under INA § 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* On January 10, 2022, Petitioner was released on recognizance. *See* Petitioner’s Exhibit A, at 1.

On November 11, 2025, Petitioner was encountered by Florida Highway Patrol during a traffic stop. *See* Exhibit A, Deportation Officer Declaration, at 2. Petitioner claimed to be a citizen and national of Cuba without necessary legal documents to enter, pass through, or to remain in the United States and was then transported to Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) custody. *Id.*, at 3.

On December 12, 2025, Petitioner had a custody redetermination hearing, and the Immigration Judge entered an order of Other – court lacks authority under *Matter of Yahure Hurtado*. *See* Exhibit B, Immigration Judge Order, at 1. On January 8, 2026, Petitioner had another custody redetermination hearing, and the Immigration Judge entered an order of Other – no material change in circumstances. *See* Exhibit C, Immigration Judge Order, at 1.

On January 12, 2026, ICE filed a Motion to Pretermit Respondent’s asylum application, under INA § 208(a)(2); 8 U.S.C. § 1158(a)(2), based on the Asylum Cooperative Agreement with Ecuador. *See* Petition at ¶ 15.

On January 30, 2026, U.S. District Judge Dimitrouleas ordered that Petitioner be provided a bond hearing. *See* Petition at ¶ 16.

On February 3, 2026, Petitioner had a bond hearing in compliance with U.S. District Judge Dimitrouleas's order. The Immigration Judge granted Petitioner's request for custody redetermination and ordered Petitioner's release from custody under bond of \$5,000. *See* Petitioner's Exhibit D, at 1. ICE reserved appeal of the Immigration Judge's order. *Id.*, at 2. Appeal is due March 5, 2026. *Id.*

On February 5, 2026, the Immigration Judge held the Petitioner's scheduled individual merits hearing. *See* Petition at ¶ 20. The Immigration Judge granted ICE's Motion to Pretermite, filed on January 12, 2026, and ordered the Petitioner removed from the United States. *See* Exhibit E, Removal Order, at 3.

On February 6, 2026, ICE filed an emergency motion to reconsider bond and revoke bond based on a material change in circumstances. On February 9, 2026, the Immigration Judge granted ICE's emergency motion to reconsider bond, finding there was a material change in circumstances, given that Petitioner now had a removal order, and revoked the previously granted bond. *See* Petitioner's Exhibit E.

On February 11, 2026, Petitioner filed an appeal of the Immigration Judge's order granting ICE's Motion to Pretermite. *See* Petition at ¶ 21.

On February 16, 2026, the Immigration Judge issued an amended order granting ICE's emergency motion to reconsider. *See* Exhibit D, Amended Immigration Judge Order, at 1. In the amended order, the Immigration Judge added that the Petitioner's bond is hereby revoked as Respondent represents a heightened risk of flight. *Id.*

To date, Petitioner is currently detained at the Broward Transitional Center ("BTC") in Pompano Beach, Florida. *See* Petition at ¶ 4. The detention authority is INA section 235(b)(2)(A), as Petitioner is an applicant for admission seeking admission in the United States who remains in

section 240 proceedings by virtue of his pending appeal of the Immigration Judge's February 6, 2026, order granting ICE's Motion to Pretermitt.

II. ARGUMENT

Petitioner argues that his continued detention is in violation of 8 U.S.C. § 1226(a) (Claim I); the Due Process Clause of the Fifth Amendment (Claim II); procedural due process under the Fifth Amendment (Claim III); the Administrative Procedure Act (Claim IV).

Petitioner is asking the Court, as a prayer for relief, to issue a writ of habeas corpus ordering Respondents to release Petitioner under the same terms previously granted – Immigration Bond of \$5,000. Petitioner does not request immediate release nor a new bond hearing. For the reasons stated below, Petition should be denied accordingly.

A. 8 U.S.C. § 1226(e) precludes judicial review of the Immigration Judge's order denying bond.

Any dissatisfaction with the Immigration Judge's "discretionary judgment regarding the application of [1226]" and the ultimate outcome of the custody hearing is properly brought before the Board of Immigration Appeals pursuant to 8 C.F.R. § 1003.19(f) ("The determination of an Immigration Judge with respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing of the reasons for the decision. *An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to § 1003.38*), and not this Court. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.")

Here, Petitioner's bond was revoked on February 9, 2026, by the Immigration Judge. The Immigration Judge filed an amended order on February 16, 2026, stating that Petitioner's bond was revoked as he represents a heightened risk of flight. *See* Exhibit D, at 1. Petitioner, in his new habeas petition filed on February 24, 2026, instead of requesting immediate release or a new bond hearing, is asking the Court, as a prayer for relief, to issue a writ of habeas corpus ordering Respondents to release Petitioner under the same terms previously granted – Immigration Bond of \$5,000. However, under 8 U.S.C. § 1226(e), this Court is precluded from ordering this form of relief.

B. Petitioner is Subject to Detention Under 8 U.S.C. § 1225(b)(2).

The government has carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), the Court's jurisdiction to hear such a claim under 8 U.S.C. § 1252, whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated response to the Court's Order to Show Cause in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law, the government will submit one upon request.

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b)(2), because he was present in the United States without being admitted or paroled. *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, ___ F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6, 2026) (holding that the noncitizen petitioners in removal proceedings were subject to

mandatory detention under 28 U.S.C. § 1225(b)(2) because they were present in the United States without being admitted or paroled, despite having entered illegally many years ago); *Morales v. Noem*, et al., No. 25-62598-CIV SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026))(same); *Perez Morales v. Noem*, et al., No.26-60251-CIV DIMITROULEAS, ECF No. 15 (S.D. Fla. Feb. 9, 2026)(same, adopting the analysis of the majority opinion in *Buenrostro*); *Mokanu v. Warden, Federal Detention Center Miami*, No. 25-24121-ARTAU, ECF No. 19 (S.D.Fla. Feb. 19, 2026) (holding that 8 USC 1252(g) prohibits the Court in a habeas proceeding from reviewing the denial of bond to a person present without admission or parole who is detained pursuant to 8 U.S.C. § 1225, and, on the merits, finding that petitioner who had been present in the country for years on humanitarian parole was an applicant for admission and subject to detention under 8 USC 1225(b)(2). In *Buenrostro-Mendez*, the Fifth Circuit Court of Appeals recognized that presence without admission renders an individual like Petitioner both an “applicant for admission” and “seeking admission” under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention--regardless of how much time the individual has been present in the United States. *Buenrostro-Mendez*, at *4-9.

The government acknowledges, however, that several Judges in this District have reached the opposite conclusion. *See, e.g., Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *3, 8 (S.D. Fla. Oct. 15, 2025) (“§ 1226(a), not § 1225(b)(2), governs Petitioner’s detention”); *Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41 (S.D. Fla. Oct. 10, 2025) (“§ 1226 governs Petitioner’s detention”); *Hernandez Alvarez v. Acting Warden Roger Morris*, et al., Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that “detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2),

applicable to noncitizen “applicant[s] for admission” to the United States.); *Cerro Perez v. Parra*, et al., Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome*, et al., No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that “prudential exhaustion requirements are excused for futility” and finding that “section 1226(a) and its implementing regulations govern Petitioner’s detention, not section 1225(b)(2)(A)”); *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025) (finding good cause to excuse Petitioner’s failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner’s request for a bond hearing or release and that Petitioner is subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Duvalon Boffill*, et al., Case No. 25-25179-CIV-BECERRA, ECF No.9 (Nov. 20, 2025) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner’s detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)); *Ocampo Fernandez v. Ripa*, No. 25-24981-CIV-LEIBOWITZ, ECF No. 17 (S.D. Fla. Nov. 25, 2025) (declining to follow BIA order in *Hurtado* and holding that “Petitioner is detained pursuant to Section 1226 and is therefore entitled to a bond hearing”); *Espinal Encarnacion v. ICE Field Office Director*, et al., Case No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”); *Ocegueda Gonzalez v. Noem*, et al., Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) (“Having concluded that Petitioner’s detention is governed by 8 U.S.C. § 1226(a), Petitioner is entitled to an individualized bond hearing before an immigration judge.”); 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)”); *Montero v. Warden of the Federal Detention Center Miami*, Case No. 25-25650-CIV-HUCK, ECF No. 14 (S.D. Fla. Feb. 18, 2026) (“the Court concludes that section 1226(a)—not section 1225(b)—governs Petitioner’s detention”).

The government is appealing the judgment that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b), governs detention under the facts presented in the cases above appealing to the Eleventh Circuit in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, et al., No. 25-14065 (11th Cir.) and *Cerro Perez v. Assistant Field Office Director*, et al., No. 25-14075 (11th Cir.). Until the foregoing appeals are resolved, however, the government acknowledges that this Court’s recent decision in *Espinal Encarnacion v. ICE Field Office Director*, et al., Case No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”) would control the result here if the Court adheres to that decision, as the legal arguments are not materially distinguishable for purposes of the Court’s decision on the issue of which statutory provision authorizes Petitioner’s detention.

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court’s consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Espinal Encarnacion v. ICE Field Office Director*, et al., Case No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”), and the Court can decide this issue without further briefing.

However, as noted above, should the Court prefer to receive a formal opposition brief in this matter, the government will file such a brief upon the Court's request.

C. Petitioner's Due Process Claim fails because he is detained pursuant to a valid statutory authority.

Petitioner's constitutional claim fails as a matter of law. Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. The Fifth Amendment does not require bond hearings for aliens detained pursuant to valid statutory authority, nor does Petitioner possess a protected liberty interest in release on bond where Congress has mandated detention. The Due Process Clause does not prohibit Congress from imposing categorical detention rules in the immigration context. *See Demore v. Kim*, 538 U.S. 510, 528 (2003).

III. CONCLUSION

Petition should be denied because the Court is precluded from granting such prayer for relief. Petitioner does not request a new bond hearing. Even if Petitioner had requested a new bond hearing, Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and ineligible for bond. Accordingly, the Court should deny Petitioner's habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List via CM/ECF.

By: s/ Brittany Brock

Brittany Brock

Special Assistant U.S. Attorney