

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

GUSTAVO ENRIQUE MADUENO
FERNANDEZ,
Petitioner,

Case No. 2:26-cv-01703-SPC-NPM

v.

U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT, et al.,
Respondents.

Response to Habeas Petition

Petitioner Gustavo Enrique Madueno Fernandez filed this Petition seeking immediate release or, alternatively, a bond hearing. *See* Dkt. 1 at ECF pg. 14. The Federal Respondents contend Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) as an arriving alien whose parole has been terminated; however, Federal Respondents acknowledge adverse authority holding that arriving aliens are not subject to mandatory detention if they are apprehended in the interior of the United States. *See, e.g., Mendes v. Ripa*, No. 3:26-CV-118-JEP-PDB, 2026 WL 1396160, at *1 (M.D. Fla. May 19, 2026). Federal Respondents therefore file this Response to preserve their contention that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

BACKGROUND

Petitioner is a citizen of Venezuela who was previously admitted to the United States in September 2017 on a B2 visa that expired in March 2018. *See* Ex. A. ICE advises Petitioner overstayed that visa but then left the United States.

Petitioner then sought and was granted parole to re-enter into the United States effective June 9, 2024. *See* Ex. B. He entered pursuant to that parole on July 27, 2024, and, by its terms, that parole expired on July 26, 2025. *See* Ex. C at 4; *see also* Ex. E at 1.

However, on March 25, 2025, the Department of Homeland Security published a Federal Register Notice (“FRN”) announcing the termination of parole for aliens from certain countries, including Venezuela. *See Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13,611 (March 25, 2025).

On May 6, 2026, ICE detained Petitioner. *See* Ex. C. On May 11, ICE issued him a Notice to Appear, charging him as an arriving alien. *See* Ex. D at 1. And on May 15, ICE issued him an I-261 (“Additional Charges of Inadmissibility / Deportability”) again charging Petitioner as an arriving alien with the additional details of his parole grant and not to exceed dates. *See* Ex. E at 1 (item “3.”).¹

¹ While the May 6th I-213 lists “Administrative Charges / Allegations” that include both § 237 (i.e., visa overstay) and § 212(7)(A) (i.e., arriving alien), *see* Ex. C at 4, the I-213 is only an investigative report – akin to a police report—and not a charging document. The NTA and the I-261 issued to Petitioner are the actual charging documents – akin to a prosecutor’s information – and they list only § 212(7)(A). *See* Ex. D at 4; Ex. E at 1.

In the interim, on May 13, 2026, Petitioner sought redetermination of bond before the Immigration Court, arguing based on Petitioner's 2016 entry into the United States on a B2 visa, and not his 2024 entry on parole. *See* Ex. F at 2. By Order of May 18, the Immigration Judge denied bond based on the fact that petitioner is charged as an arriving alien. *See* Ex. G. ICE advises that, a check of the relevant systems as of the date of this Response shows Petitioner has not filed an appeal of that Order. As Petitioner has 30 days to appeal that order to the BIA, *see* 8 C.F.R. § 1003.1(b)(7) (providing for appeal of bond determinations); 8 C.F.R. § 1003.38(b) (requiring any such appeal be filed within 30 days), his time to appeal that bond denial has not yet run.

Petitioner filed this Petition on May 19, 2026, *see* Dkt. 1, apparently instead of filing an appeal with the BIA. Notwithstanding the arriving alien charge in the NTA and I-261, *see* Exs. D, E, the Petition alleges Petitioner entered the United States without admission or inspection. *See* Dkt. 1 at ¶ 2.

Petitioner is currently detained at the Glades County Detention Center. *See* Ex. H.² As of the date of this Response (May 27, 2026), Petitioner has been detained for 21 days. *See* Ex. C; *but see* Ex. I (showing detention in ICE custody since May 8, 2026).

² Pursuant to its Inter-Governmental Services Agreement for Glades County Detention Center, U.S. Immigration and Customs Enforcement requests Sheriff David Hardin be terminated from this case. *See* Inter-Governmental Services Agreement for Glades County Detention Center, Ex. J; *Mota-Constanzo v. Noem*, 2:26-cv-00369-KCD-DNF, 2026 WL 681819, at *2 & n.2 (M.D. Fla. Mar. 11, 2026).

CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021),

ARGUMENT

I. Petitioner’s detention comports with the INA and thus the Due Process Clause of the Fifth Amendment.

Title 8 U.S.C. § 1225—applicable to “applicants for admission,” that is, aliens present in the United States who have not been admitted—is the specific detention authority applicable to Petitioner. Under § 1225(a), an “applicant for admission” is defined as an “alien present in the United States who has not been admitted *or who arrives in the United States.*” (Emphasis added). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2).

The present case is factually and legally distinct from recent cases finding § 1225(b)(2)(A) an inapplicable basis for detention. The Code of Federal Regulations

define an “[a]rriving alien” as “an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.” 8 C.F.R. § 1.2. Importantly, “[a]n arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.” *Id.*

Here, Petitioner was paroled into the United States on or about July 27, 2024, as an arriving alien. *See* Ex. C at 4; *see also* Ex. E at 1. His parole at a port of entry allowed his otherwise mandatory § 1225(b)(2)(A) detention to be suspended, subject, however, the government’s right to treat him “as if stopped at the border.” *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). However, his parole terminated on March 25, 2025, by action of DHS. *See Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13,611 (March 25, 2025). But even if that Termination were not effective, his parole would have terminated on its own in July 2025, *see* Ex. C at 4; *see also* Ex. E at 1, as it was only good for one year. *See* Ex. B. In any event, termination of his parole by whatever means restored him to his status as an applicant for admission subject to mandatory detention. *Cf. Cooper Pedro v. Warden, Glades County Detention Center*, 2:26-cv-KCD-DNF (M.D. Fla. Apr. 2, 2026) (holding a previously paroled petitioner is an

arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)); *Chanaguano Caiza v. Scott*, No. 1:25-CV-00500-JAW, 2025 WL 3013081, at *6 (D. Me. Oct. 28, 2025) (holding the petitioner’s parole automatically terminated upon expiration subjecting him to mandatory detention).³

Respondents acknowledge *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026) in which the Eleventh Circuit held that “[t]he text of [8 U.S.C.] § 1225(b)(2)(A) is clear that mandatory detention applies only to a narrower category of applicants for admission: those seeking lawful entry into the United States . . . [not] to other present aliens not seeking admission.” *Id.* at *13. In short, “§ 1225 applies to arriving aliens seeking entry at the border, whereas § 1226 applies to aliens unlawfully in the interior.” *Id.* at *14. Federal Respondents are evaluating whether to seek further appellate review of *Hernandez Alvarez*. While reserving all rights, including the right to appeal on the issue of the proper detention authority for aliens like Petitioner, Federal Respondents acknowledge *Hernandez Alvarez* is binding on this Court.

In the event the Court orders a bond hearing to be conducted by an immigration judge under 8 U.S.C. § 1226(a), Federal Respondents request a reasonable period of seven working days to arrange an individualized bond hearing.

³ Immigration Judges generally lack jurisdiction to redetermine conditions of custody for “[a]rriving aliens” in removal proceedings, including previously paroled aliens. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B).

II. Petitioner has failed to exhaust his administrative remedies.

Should an alien be dissatisfied with an Immigration Judge's ultimate decision—including one in which the alien is found subject to mandatory detention—he has the opportunity to appeal the Immigration Judge's order to the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.1(b)(7); 8 C.F.R. § 1003.38(b). However, Petitioner has not availed himself of that opportunity before turning to this Court for intervention by habeas.

The principle of exhaustion protects administrative agency authority and promotes judicial efficiency, recognizing that agencies “ought to have primary responsibility for the programs that Congress has charged them to administer.” *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992). The Eleventh Circuit has not adopted a futility exception in the habeas context. *See e.g., McGee v. Warden, FDC Miami*, 487 F. App'x 516, 518 (11th Cir. 2012) (finding that the district court lacked jurisdiction to consider a Section 2241 petition where the petitioner failed to exhaust remedies, notwithstanding his argument that doing so would be futile); *Morris v. Warden, FCC Coleman - Low*, No. 5:22-CV-527-WFJ-PRL, 2023 WL 3931928, at *2 (M.D. Fla. June 9, 2023) (expressing doubt as to whether the futility exception applies in the context of Section 2241 habeas petitions); *Gonzalez-Velez v. Warden, FCC Coleman - Low*, No. 5:22-CV-509-WFJ-PRL, 2023 WL 3584113, at *2 (M.D. Fla. May 22, 2023) (“[a]t the outset, it should be noted that an ‘exception’ to administrative exhaustion based on futility in the § 2241 setting has not been adopted by the Eleventh Circuit.”); *but see*

Garcia v. Noem, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *3 (M.D. Fla. Oct. 31, 2025) (stating that exhaustion may be excused if an administrative body is biased or otherwise predetermined the issue before it). Moreover, exhaustion of administrative remedies could provide the benefit of a written decision from an Immigration Judge. *See* Executive Office for Immigration Review, Policy Manual, 8.3 Bond Proceedings, § (e)(7) (“If either party appeals, the Immigration Judge prepares a written decision based on notes from the hearing”), *available at* <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-8-3> (last visited May 27, 2026). Petitioner should therefore be required to exhaust his administrative remedies by first appealing his bond denial to the BIA before resorting to this Court for habeas relief.

Conclusion

WHEREFORE, the Court should deny the Petition.

Respectfully submitted,

May 27, 2026

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CERTIFICATE OF FILING

I hereby certify that, on the date set forth above, I filed the foregoing documents and any exhibits referenced therein, as well as the attached Index using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/ Charles T. Harden III

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