UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-CV-61281-DAMIAN

MARLON GUSTAVO ZAPATA AROSTEGUI,

Petitioner,

v.

WARDEN, BROWARD TRANSITIONAL CENTER, *et al.*,

Respondents.
_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondents[1] hereby respond to the Court's Order to Show Cause why the Petition for Writ of Habeas Corpus should not be granted.

FACTUAL BACKGROUND

Petitioner, Marlon Gustavo Zapata Arostegui, is a native and citizen of Nicaragua. Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, dated April 21, 2026 (I-213). On or about May 14, 2023, Petitioner applied for admission at a U.S. port of entry and was paroled into the United States under the Nicaraguan Humanitarian Parole program. Exh. A, I-213; Exh. B,

[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). At the time of the filing of the Petition, Petitioner was detained at the Broward Transitional Center ("BTC") in Pompano, Florida. See Petition at p. 5. The custodian of BTC is the Assistant Field Office Director (AFOD) of BTC, AFOD Juan Gonzalez, in his official capacity, The only appropriate respondent named is the Warden of that facility. All other respondents should be dismissed.

Declaration. On or about April 16, 2026, Petitioner was encountered by Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations. Exh. A, I-213. ICE ERO determined that Petitioner was subject to removal under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA). Exh. A, I-213. On or about April 21, 2026, Petitioner was taken into ICE custody. Exh. C, Detention History; Exh. D, I-200.

On April 23, 2026, the U.S. Department of Homeland Security (DHS) filed the Notice to Appear (NTA) with the Executive Office for Immigration Review (EOIR), initiating removal proceedings. Exh. E, NTA. In the NTA, Petitioner is charged as an arriving alien inadmissible under section 212(a)(7)(A)(i) of the INA, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the INA, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the INA. Exh. E, NTA. On May 6, 2026, Petitioner, with counsel, attended an initial master calendar hearing before an Immigration Judge. Exh. B, Declaration. The matter was reset to allow DHS to amend the NTA. Exh. B, Declaration. On or about May 9, 2026, Petitioner was transferred to the Imperial Regional Detention Facility in Calexico, California. Exh. C, Detention History. On May 12, 2026, DHS filed a Form I-261, Additional Charges of Inadmissibility/Deportability, amending only the factual allegations in the NTA to include Petitioner's application for admission on May 14, 2023. Exh. F, I-261.

Upon information and belief, Petitioner has not filed a request for a custody redetermination before the Immigration Judge. Exh. B, Declaration. Petitioner's removal proceedings are ongoing; he is scheduled for a hearing on May 19, 2026, before the Imperial Immigration Court. Exh. B, Declaration; Exh. G, Notice of Hearing. Petitioner is presently

detained at the Imperial Regional Detention Facility in Calexico, California . Exh. B, Declaration; Exh. C, Detention History.

ARGUMENT

A. Petitioner's Current Confinement

Petitioner, Marlon Gustavo Zapata Arostegui, is currently confined in Imperial Regional Adult Detention Facility in Calexico, California. *See* Exh. B Declaration; Exh. C, Detention History.

B. This Petition May Be Transferred to the Southern District of California

Section 2441 allows "the [U.S.] Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus "within their respective jurisdictions." 28 U.S.C. § 2441(a). The Supreme Court has interpreted the "within their respective jurisdiction language to mean 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."); *see also United States v. Kinsey*, 393 Fed. Appx. 663, 664 (11th Cir. 2010) ("Petitions under § 2241 may be brought only in the district in which the inmate is incarcerated."); *United States v. Lassiter*, 812 Fed. Appx. 896, 900 (11th Cir. 2020) ("Under the plain language of § 2241, jurisdiction lies in only one district: the district of confinement."). Because the Petitioner was at the Broward Transitional Center at the time of filing (April 29, 2026) and the Petitioner's immediate custodian (the warden of Broward Transitional Center) was in the Southern District of Florida, this Court has jurisdiction over the Petition. *See* Exh. B.

Nevertheless, transfer of a 2241 petition upon the relocation of a petitioner is permissible. *See Vasquez Vega v. United States Attorney General*, Case No. 25-cv-61632-RAR, Doc. 14 (S.D. Fla. Jan 22, 2026) (transferring petition in the interest of justice to the Southern District of Texas where Petitioner was relocated from Broward Transitional Center); *Gardner v. United States*, No. 23-cv-10077, 2023 WL 9316848, at *2 (N.D. Fla. Oct. 25, 2023) (listing cases in which courts "have recognized where a [28 U.S.C.] § 2241 petitioner has been redesignated to a prison facility in another jurisdiction, a court may transfer the petition to the jurisdiction in which the petitioner is being held"); *Perez v. Breckon*, No. 9:17-cv-00353-JKS, 2019 WL 652410, at *2 (N.D.N.Y. Dec. 15, 2019). Furthermore, if a petitioner files his case in the wrong district, the Court can sua sponte transfer the case "to any district or division in which it could have been brought." 28 U.S.C. § 1406(a); *see also Lipofaky v. NY State Workers Comp. Bd.*, 861 F.2d 1257, 1258 (11th Cir. 1988)("[A] district court may raise on its own motion an issue of defective venue or lack of personal jurisdiction[.]"). Respondents respectfully advise the Court that there is an appropriate respondent in the Southern District of California who has the power to produce the Petitioner[2]; the Warden of Imperial Regional Detention Facility. Thus, the Court may transfer this petition to the Central District of California. Respondents defer to the Court's discretion on this subject.

Respondents are mindful that the transfer of a habeas petition every time a petitioner is relocated may cause perpetual delay in a petition's adjudication, as the Court acknowledged in *Tang v. Gonzales*, Case 4:06cv277/MP/WCS; 2006 WL 3628061, *2 (N.D.Fl. Aug. 18, 2006). Still, in this case, the instant Petition can be adjudicated by the Central District of California, in that

[2] "[W]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 441, 124 S.Ct. 2711.

Petitioner is now detained in that district. The Petitioner's transfer to California was not to avoid adjudication by this Court. Similarly, there would be no benefit to the government if the Petition were to be adjudicated by the Central District Court of California.

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

"Congress has established the requirements for admission of aliens that arrive at the border without authorization to enter." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *4 (S.D.N.Y. June 12, 2018) (citing 8 U.S.C. § 1225). Under § 1225(a), "aliens who arrive at the nation's borders" without authorization to enter this country "are deemed 'applicants for admission,' and must be inspected by an immigration official before being granted admission." *Id.* (citing 8 U.S.C. § 1225(a)(1), (3)). Under 8 U.S.C. § 1225(b), "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 proceeding under section 1229(a) of this title [i.e., a removal proceeding]." *Id.* (quoting 8 U.S.C. § 1225(b)(2) (A)) (brackets in original). Thus, detention is mandatory for arriving aliens subject to Section 1225(b). *See also* 8 C.F.R. § 235.3(c) ("Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act.") and (d) ("The Service will assume custody of any alien subject to detention under paragraph (b) or (c) of this section.")

As an arriving alien subject to mandatory detention under Section 1225(b), "an immigration judge 'may not' conduct a bond hearing to determine whether [the] arriving alien should be released into the United States during removal proceedings." *Id.* (quoting 8 C.F.R. § 1003.19(h)(2)(i)(B)). Arriving aliens who are detained pursuant to § 1225(b)(2)(A), however, may

be released from custody pursuant to Department of Homeland Security's (DHS) discretionary parole authority. *See* 8 U.S.C. § 1182(d)(5)(A).

Under Section 1182(d)(5)(A), DHS "may ... in [its] discretion parole into the United States temporarily under such conditions as [it] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]" *Id.* Importantly, however, DHS's discretionary parole of an alien "shall not be regarded as an admission of the alien and when the purposes of such parole shall . . .have been served the alien shall forthwith return or be returned to the custody from which he was paroled[.]" *Id.* "[T]hereafter[,]" a formerly paroled alien's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

Here, Petitioner is an 'arriving alien' subject to the removal and detention provisions in 8 U.S.C. § 1225(b)(2). On or about May 14, 2023, Petitioner applied for admission at a U.S. port of entry and was paroled into the United States under the Nicaraguan Humanitarian Parole program. Exh. A, I-213. Because Petitioner is an arriving alien and because DHS's discretionary parole of an alien "shall not be regarded as an admission of the alien," his detention is lawful under 8 U.S.C. § 1225(b)(2). *See also* 8 C.F.R. 1.2 ("Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry . . . . An 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.")

D. Petitioner is Ineligible for Bond because he is Subject to Detention Under 8 U.S.C. § 1225(b)(2).

Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. In *Jennings*, the Supreme Court

explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. *Jennings*, 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Under the plain language of 8 U.S.C. § 1225(b), all "applicants for admission" who are found "not clearly and beyond a doubt entitled to be admitted" are subject to detention under 8 U.S.C. § 1225(b)—regardless of how long they have been present in the United States. *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit"). The conclusion that "§ 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

Given that 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission, "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention ... throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, and Immigration Judges do not have authority to redetermine the custody status of an alien present without admission.

"It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). "In the context of custody proceedings, an Immigration Judge's authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . . ." *Id.* at 46. The regulation clearly states that "the Immigration Judge is authorized to exercise the authority in

[8 U.S.C. § 1226]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"); *see id.* § 1003.19(h)(2)(i)(B) ("[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. §1182(d)(5).]"). "An immigration judge is without authority to disregard the regulations, which have the force and effect of law." *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018). Because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), he is ineligible for bond, and this Court should deny relief.

E. Petitioner's Due Process Claims fail because he is detained pursuant to a valid statutory authority.

Petitioner contests his classification as an arriving alien. But the fact that an arriving alien remains present—or even released—in the United States for even a lengthy period does not change the alien's immigration status or rights under the INA. The Eleventh Circuit Court of Appeals' decision in *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir. May 6, 2026) seems to affirm this determination - noting at 4-5:

> The text and statutory structure of the INA, bolstered by the long history of detention across our immigration laws and the congressional purpose in passing IIRIRA, yield the conclusion that no bond detention generally applies to arriving aliens seeking lawful entry to the country, and not to aliens who are simply present here.

As the Supreme Court recognized in *Thuraissigiam v. Department of Homeland Security*, 591 U.S. 103, 140 S.Ct. 1959 (2020), an arriving alien's mere presence in the United States does not confer additional status or rights because "aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due process

purposes 'as if stopped at the border.' " *Thuraissigiam*, 140 S. Ct. at 1982 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215, 73 S.Ct. 625, 97 L.Ed. 956 (1953)).

The Supreme Court has long rejected the proposition that a noncitizen ceases to be an arriving alien and attains rights otherwise unavailable to arriving aliens solely based on the noncitizen's length of detention, release, or presence in the United States. *Id.; Jennings v. Rodriguez*, 583 U.S. 281, 138 S.Ct. 830, 842-45 (2020) (rejecting Ninth Circuit's holding that after six months, detention of alien under section 1225(b) shifts to section 1226(a)); *Landon v. Plasencia*, 459 U.S. 21, 32, 103 S.Ct. 321, 74 L.Ed.2d 21(1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative."); *Leng May Ma v. Barber*, 357 U.S. 185, 188, 78 S.Ct. 1072, 2 L.Ed.2d 1246 (1958) ("For over a half century this Court has held that the detention of an alien in custody pending determination of his admissibility does not legally constitute an entry though the alien is physically within the United States."); see also *Bouchikhi v. Holder*, 676 F.3d 173, 177 (5th Cir. 2012) (" 'Arriving alien' is a legal term of art explicitly defined in 8 C.F.R. § 1.2" and "the definition takes in various categories of aliens who are physically present in the United States but for one reason or another are not yet admitted.").

In *Jennings v. Rodriguez*, the Supreme Court rejected application of the canon of constitutional avoidance to read into the statute an implicit six-month limit on detention. *Jennings*, 138 S.Ct. at 842-845. Instead, the Court concluded the statute mandated detention until "the completion of applicable proceedings." *Id.* at 845. Nevertheless, the Court left open whether prolonged detention of arriving aliens without a bond hearing would violate the Due Process Clause of the Fifth Amendment. *Id.* at 851-52.

As an arriving alien, Petitioner enjoys only those rights afforded to him under the INA. The Supreme Court addressed arriving aliens' due process rights in *Thuraissigiam*. There, petitioner entered the United States without permission, immigration authorities apprehended him twenty-five yards from the border and placed him in expedited removal proceedings, and petitioner claimed asylum. *Thuraissigiam*, 140 S. Ct. at 1968. An asylum officer determined petitioner failed to demonstrate a credible fear of persecution, an IJ affirmed, and Petitioner filed a habeas application claiming immigration authorities wrongfully denied his asylum claim. *Id.* at 1969. The district court dismissed petitioner's habeas application for lack of jurisdiction pursuant to 8 U.S.C. §§ 1252(a)(2) and (e)(2), but the Ninth Circuit reversed, holding that such an application of these statutes violated the Suspension Clause. *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 917 F.3d 1097, 1113-1119 (9th Cir. 2019). In a footnote, however, the Ninth Circuit also "disagree[d] with the government's contention ... that a person like [petitioner] lacks all procedural due process rights." *Id.* at 1111 n.15 (citations omitted).

The Supreme Court reversed, holding the application of §§ 1252(a)(2) and (e)(2) to foreclose jurisdiction did not violate the Suspension Clause, but, as relevant here, the Court also addressed the Ninth Circuit's due process concerns. *Thuraissigiam*, 140 S. Ct. at 1968-81. The Court stated that the Ninth Circuit's holding [as to due process] is contrary to more than a century of precedent ... that as to "foreigners who have never been naturalized, nor acquired any domicil 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." *Id.* at 1982 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660, 12 S.Ct. 336, 35 L.Ed. 1146 (1892)). The Court reasoned that the Ninth Circuit's extension of arriving aliens' procedural due process

rights beyond the confines of the statutory scheme disregards the reason for our century-old rule ... [which] rests on fundamental propositions: [T]he power to admit or exclude aliens is a sovereign prerogative[;] ...the Constitution gives the political department of the government plenary authority to decide which aliens to admit[;] ... and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted[.] *Id.* (internal quotations and citations omitted). The Court specifically declined to hold that arriving aliens enjoy due process rights beyond those provided by statute solely because they enter the United States: "[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country[.]" *Id.* The Court concluded that "an [arriving alien in the United States] has only those rights regarding admission that Congress has provided by statute." *Id.* at 1983.

Significantly, the Court's pronouncements as to arriving aliens' due process rights, however, are broad and would appear to extend to the detention context. As the Court stated, for arriving aliens "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 1982 (internal quotations and citations omitted). Additionally, in describing the extent of arriving aliens' due process rights, the Court relied on decisions which did concern immigration detention. *Id.* ("Since [*Nishimura Ekiu*], the Court has often reiterated this important rule." (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544, 70 S.Ct. 309,94 L.Ed. 317 (1950); *Mezei*, 345 U.S. at 212, 73 S.Ct. 625; *Landon*, 459 U.S. at 32, 103 S.Ct. 321)).

Even before *Thuraissigiam*, one court in the Eleventh Circuit agreed with other courts in holding that arriving aliens have no procedural due process right to a bond hearing. *Dini v. Warden, Etowah Det. Ctr.*, No. 4:19-cv-01065-RDP-JEO, 2019 WL 4888018, at *2 (N.D. Ala.

Oct. 3, 2019). At the very least, *Thuraissigiam* comports with this analysis. Moreover, one court has cited *Thuraissigiam* in holding that arriving aliens have no procedural due process right to bond beyond what the INA provides. *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020).

In sum, arriving aliens' procedural due process rights entitle them only to the relief provided by the INA. *Thuraissigiam*, 140 S. Ct. at 1983 ("[A]n [arriving alien] has only those rights regarding admission that Congress has provided by statute."); *Landon*, 459 U.S. at 32, 103S.Ct. 321 ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative."); *Mezei*, 345 U.S. at 212, 73 S.Ct. 625 (holding that for arriving aliens, due process amounts to "[w]hatever the procedure authorized by Congress is"); *Nishimura Ekiu*, 142 U.S. at 660, 12 S.Ct. 336 ("[T]he decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."). As other courts have held, because the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing. *A.M.Y.*, No. 7:20-cv-61-CDL-MSH, Order & R. 34-37 (M.D. Ga. Oct.13, 2020), ECF No. 47, *recommendation adopted by* Order 1 (M.D. Ga. Nov. 4, 2020), ECF No. 49; *Bataineh*, 2020 WL 3572597, at *8-9; *de la Rosa Espinoza v. Guadian*, No. 20-3126-JWL, 2020 WL 3452967, at *5-8 (D. Kan. June 24, 2020); *Gonzalez Aguilar v. McAleenan*, No. 19-cv-0412 WJ/SMV, — F. Supp. 3d ——, 2020 WL 1429673, at *5-7, 448 F.Supp.3d 1202 (D.N.M. Nov. 8, 2019); *Dini*, 2019WL 4888018, at *2; *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648-650 (S.D.N.Y. 2018). Petitioner may only seek relief from detention under the parole procedure set forth in 8 U.S.C. § 1182(d)(5)(A).

CONCLUSION

Based upon the foregoing, the Petition should be dismissed for lack of jurisdiction or denied on its merits.

Respectfully Submitted,

JASON A. READING QUIÑONES
UNITED STATES ATTORNEY

Respectfully submitted,

JASON READING QUINONES
UNITED STATES ATTORNEY

By: *s/ Danielle Croke*
Assistant United States Attorney
Fla. Bar No. 0723258
500 S. Australian Avenue, 4th Floor
West Palm Beach, FL 33401
Danielle.croke@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th of May, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Danielle Croke
Danielle Croke
Assistant United States Attorney