

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

Case No. 26-CV-60206-DMM

TELLEZ LOPEZ,

Petitioner,

v.

IMMIGRATION and CUSTOMS
ENFORCEMENT (ICE);
ENFORCEMENT AND REMOVAL
OPERATIONS (ERO); ACTING
EXECUTIVE ASSOCIATE DIRECTOR
et al.

Respondents.

**RESPONDENTS' OBJECTIONS TO REPORT AND RECOMMENDATION
ON PETITION FOR A WRIT OF HABEAS CORPUS [DE 9]**

Respondents by and through the undersigned Assistant United States Attorney hereby file their Objections to Report and Recommendation (the "R&R") on Petition for a Writ of Habeas Corpus (the "Petition") [DE 9] and state in support thereof as follows:

I. INTRODUCTION

On February 11, 2026, the Honorable Magistrate Judge Augustin-Birch recommended that the Petition be granted and Respondents afford Petitioner an individualized bond hearing before an immigration judge or release him. [DE 9, p. 1]. The R&R states that the Court has already rejected Respondents' position concerning 8 U.S.C. § 1225(b)(2) applying to all non-citizens who are present in the United States without admission. *See id.* at 3-4. Instead, the R&R finds that because Petitioner has lived in the United States for over four years by the time he was detained,

his detention is governed by 8 U.S.C. § 1226(a). *Id.* at 5. However, Respondents maintain that Petitioner is an alien present in the United States without admission or parole and, consequently, an applicant for admission who is properly detained under 8 U.S.C. § 1225(b)(2). Therefore, Respondents' objections should be sustained and the habeas petition denied.

II. ARGUMENT

A. Respondents Object to the R&R's finding that Petitioner's Detention is Governed by 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 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). 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.* at *3. Nevertheless, the court concluded that presence without admission renders an individual like Petitioner to be both an “applicant for admission” and “seeking admission” under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention--regardless of how much time the individual has been present in the United States. *Id.* at *4-9.

“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.”). Furthermore, § 1226(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.

While the R&R recognizes the Fifth Circuit decision in *Buenrostro-Mendez*, the R&R notes that this is not binding upon the Court. [DE 9, p. 4, n. 1]. Respondents would highlight that in *Perez Morales v. Noem*, et al., No.26-60251-CIV DIMITROULEAS, DE 15 (S.D. Fla. Feb. 9, 2026), the Court adopted the analysis of the Fifth Circuit majority opinion in *Buenrostro*. Additionally, in *Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, DE 10 (S.D. Fla. Jan. 29, 2026), the Court concluded 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).

The R&R also relies in part upon *Jennings v. Rodriguez*, 583 U.S. 281 (2018) for its conclusion that Petitioner is detained pursuant to 8 U.S.C. § 1226. [DE 9, p. 4]. Respondents’ interpretation is consistent with *Jennings*. *Jennings* reviewed a decision from the U.S. Court of Appeals for the Ninth Circuit that applied constitutional avoidance to “impos[e] an implicit 6-month time limit on an alien’s detention” under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government’s reading, the Court recognized in its description of § 1225(b) that § “1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* at 287.

III. CONCLUSION

For the reasons set forth herein and in Respondents' Return [DE 5], the Court should sustain these objections and deny the habeas petition.

Dated: February 17, 2026

Respectfully submitted,

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