

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:26-cv-60213-DMM

ALVARO DURAN LINARES,

Petitioner,

v.

JUAN GONZALEZ, *et al.*,

Respondents.

**RESPONDENT'S OBJECTIONS TO
REPORT AND RECOMMENDATION**

Respondent,¹ pursuant to S.D. Fla. Mag. R. 4 and the Court-ordered shortened objection period, objects to the Magistrate Judge's Report and Recommendation [DE 8] (the R&R), for the limited purpose of preserving its legal arguments for appeal.

Background

On February 6, 2026, the Magistrate Judge issued the R&R recommending that the Petition be granted and that Respondent afford Petitioner an individualized bond hearing within seven days or release him from immigration detention. R&R at 6-7. This recommendation was premised on the Magistrate Judge's conclusion that Petitioner's detention is governed by 8 U.S.C. § 1226 and not the mandatory detention provisions of Section 1225(b). R&R at 3-6.

In response to the Petition—because this Court has already rejected Respondent's argument as to the proper detention authority in previous cases, which pending binding

¹ The Magistrate Judge recommended that AFOD Carlos Nunez be substituted as the sole Respondent to this case and dismissing all respondents named by Petitioner. Respondent does not object to this portion of the R&R.

precedent to the contrary, would similarly control this case—Respondent filed what it termed a “truncated” habeas return, filed primarily to preserve the government’s arguments for appeal, but also to expedite the Court’s consideration of the Petition and to conserve party and judicial resources. *See* DE 6 at n.2.

Given the Magistrate Judge’s recommendation as set forth in the R&R and summarized above, this objection serves substantially the same purpose as Respondent’s truncated habeas return: preservation of the government’s legal arguments for appeal, as failure to object to an R&R can have the affect of waiving or forfeiting the issue on appeal.

Standard of Review

A district judge may accept, reject, or modify an R&R. *See* 28 U.S.C. § 636(b)(1)(C); *Williams v. Wainwright*, 681 F.2d 732 (11th Cir. 1982). A district judge “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C).

Objection

The government reiterates and incorporates by reference its legal argument as to the applicability of 8 U.S.C. § 1225(b)(2) to aliens like Petition, who are present in the United States but who have never been inspected or admitted into the country. *See* DE 6-2.

In addition, since the filing of the habeas return and the issuance of the R&R, the Fifth Circuit issued a published decision agreeing with the government’s interpretation of Section 1225(b)(2). *See Buenrostro-Mendez v. Bondi*, --- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Respondent relies on *Buenrostro-Mendez* —albeit not binding on this Court—in further support of its legal position and as persuasive authority for the Court rejecting the recommendation and legal conclusion set forth in the R&R.

Respectfully submitted,

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