

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-60337-MIDDLEBROOKS/AUGUSTIN-BIRCH

DANIEL BOZA-ALFONSO,

*Petitioner,*

v.

CARLOS NUNEZ, in his official capacity  
as Assistant Field Office Director, Broward  
Transitional Center, et al.,

*Respondents.*

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**RESPONDENTS' OBJECTIONS TO REPORT AND RECOMMENDATION**

Respondents, by and through the undersigned Assistant United States Attorney, hereby file Objections to the Report and Recommendation on Petitioner's Petition for Habeas Corpus ("R&R") [DE 17], pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Rule 4(b). In support, Respondents state as follows:

On February 27, 2026, the Honorable Magistrate Judge Augustin-Birch recommended ordering Respondents to either afford Petitioner an individualized bond hearing before an immigration judge within seven days or to release the Petitioner. [DE 9]. Specifically, that Respondents "either afford Petitioner an individualized bond hearing before an immigration judge within seven days or release him." *Id.* Respondents respectfully submit that the Court should sustain Respondents' objections and deny the Habeas Petition.

**I. PETITIONER IS LAWFULLY DETAINED PURSUANT TO 8 U.S.C. § 1225(b)(2)**

Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, Respondents object to the R&R's finding that Petitioner is detained pursuant to 8 U.S.C. § 1226(b)

and, therefore, is entitled to a bond hearing. [DE 9 at I. pg. 2 II. pg. 3-4]. The R&R relies on district court cases supporting this interpretation of the relevant statutory provisions. *Id.* While Respondents acknowledge the current weight of district court authority favors the interpretation set forth in the R&R, there are other cases that support Respondents' argument that detention authority is authorized pursuant to 8 U.S.C. § 1225(b)(2). *See, e.g., Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). [ECF No. 13.]. Moreover, while Respondents acknowledge that their interpretation is currently the minority view, there are Courts in this district that agree with Respondents interpretation.<sup>1</sup>

The R&R concludes that because Petitioner's NTA charges him with being an alien present in the United States who has not been admitted or paroled, Petitioner's detention is governed by 8 U.S.C. § 1226 and not by 8 U.S.C. § 1225(b)(2). [DE 9 at II. B. pg. 6]. However, as set forth fully in Respondents' Return, 8 U.S.C. § 1225(a) deems all aliens who either "arrive[] in the United States" or who are "present in the United States [and] who ha[ve] not been admitted" to be

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<sup>1</sup> *See Hernandez v. Miami Field Office Director*, Case No. 26-20440-ALTMAN, ECF No. 8 (S.D. Fla. Feb. 27, 2026) ("The plain text of § 1225(a)(1) defines aliens, like our [p]etitioner, as "applicants for admission" notwithstanding their distance from the border or the time they've spent in the United States without admission"); *Jimenez-Clemente v. Acting Director, ICE, et al.*, Case No. 26-cv-20096-Altman (S.D. Fla. March 2, 2026) (same); *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); *Israel Binzha Banchi v. Mitchell Diaz, et al.*, No. 0:25-cv-62341, Singhal (S.D. Fla. Feb. 2, 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*); *Doria v. Warden, Broward Transitional Center*, No. 0:26-cv-60112, Singhal (S.D. Fla. Feb. 9, 2026) (same); *Tamariz Escarola v Warden BTC et al*, 0:26-cv-60216-CIV-Singhal, ECF No. 9 (S.D. Fla. Feb. 18, 2026) (same); *Pavon Ramirez v. ICE et al*, 1:26-cv-20804-CIV-Dimitrouleas, ECF No. 10 (S.D. Fla. Feb. 20, 2026) (same); *Alvares Mora v. Warden, Krome et al*, 1:26-cv-20942-CIV-Dimitrouleas, ECF 8 (S.D. Fla. Feb. 23, 2026)(same); and *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)).

“applicant[s] for admission.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border.

In turn, § 1225(b)(2) provides that “an alien who is an applicant for admission” “shall be detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The statute’s use of the term “shall” makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception based upon the duration of the alien’s presence in the country or where in the country the alien is located. Therefore, the statute’s plain text mandates that the Government detain all “applicants for admission” who are not clearly and beyond a doubt entitled to be admitted.

Petitioner falls squarely within the statutory definition. He was “present in the United States,” and he has “not been admitted.” 8 U.S.C. § 1225(a). *See* Exhibit A of Response. Therefore, § 1225(b)(2) mandates Petitioner “be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

While the R&R relies 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 at II. B. pg. 5 and III. at pg. 6], 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.

For the reasons set forth herein and in Respondents Return [DE 12], the Court should sustain these objections and deny the Habeas Petition.

Respectfully submitted,

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