

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

**Case No. 26-CV-60410-DMM**

LIABEL CASTENEDA FRENES,

Petitioner,

v.

KELLY WALKER, *et al.*,

Respondents.

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**RESPONSE TO ORDER TO SHOW CAUSE**

Respondents hereby respond to the Court's Order to Show Cause. [ECF No. 4].

Petitioner Liobel Casteneda Frenes ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). On February 13, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. The Court has ordered Respondents to show cause why the petition should not be granted.

Respondents have carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a) and whether Petitioner is entitled to a bond hearing. While reserving all rights, including the right to appeal, Respondents respectfully submit this abbreviated response to the Court's Order to Show Cause in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law, Respondents will submit one upon request.

It is Respondents' position that Petitioner is subject to mandatory detention under

§ 1225(b), because he was present in the United States without being admitted or paroled. *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 25-40701, \_\_\_ F. 4th \_\_\_, 2026 WL 323330 (5<sup>th</sup> Cir. Feb. 6, 2026); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025); *Morales v. Noem*, et al., No. 25-62598-CIV SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026). In *Buenrostro*, the Fifth Circuit Court of Appeals recognized 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. *Buenrostro-Mendez*, at \*4-9.

The government acknowledges, however, that Judges in this District have reached the opposite conclusion. *See, e.g., Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AUGUSTIN-BIRCH, ECF No. 28 (S.D. Fla. Jan. 15, 2026) (“Respondent shall either afford Petitioner a prompt, individualized bond hearing before an immigration judge or release Petitioner.”); *Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at \*3, 8 (S.D. Fla. Oct. 15, 2025) (“§ 1226(a), not § 1225(b)(2), governs Petitioner’s detention”); *Gil-Paulino v. Sec’y of the U.S. Dep’t of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41 (S.D. Fla. Oct. 10, 2025) (“§ 1226 governs Petitioner’s detention”); *Hernandez Alvarez v. Acting Warden Roger Morris, et al.*, Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that “detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen “applicant[s] for admission” to the United States.); *Cerro Perez v. Parra, et al.*, Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CIV-ALTONAGA, ECF No. 7 (S.D. Fla. Oct. 15, 2025) (concluding that “prudential exhaustion requirements are excused for futility”

and finding that “section 1226(a) and its implementing regulations govern Petitioner’s detention, not section 1225(b)(2)(A)”); *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025) (finding good cause to excuse Petitioner’s failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner’s request for a bond hearing or release and that Petitioner is subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Duvalon Boffill v. Field Office Director, et al.*, Case No. 25-25179-CIV-BECERRA, ECF No. 9 (S.D. Fla. Nov. 20, 2025) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner’s detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)); *Ocampo Fernandez v. Ripa*, No. 25-24981-CIV-LEIBOWITZ, ECF No. 17 (S.D. Fla. Nov. 25, 2025) (declining to follow BIA order in *Hurtado* and holding that “Petitioner is detained pursuant to Section 1226 and is therefore entitled to a bond hearing”); *Espinal Encarnacion v. ICE Field Office Director, et al.*, Case No. 25-61898-CIV-DAMIAN, ECF No. 29 (S.D. Fla. Dec. 23, 2025) (“this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner’s detention, and not Section 1225(b)”); *Acosta v. Ripa, et. al.*, Case No. 25-62360-CIV-DIMITROULEAS, ECF No. 19 (S.D. Fla. Dec. 26, 2025) (“§ 1226(a) and its implementing regulations govern Petitioner’s detention, not § 1225(b)(2)(A)”); and *Fuentes Granados v. Secretary of Homeland Security*, Case No. 26-60020-CIV-SMITH, ECF No. 7 (S.D. Fla. Jan. 27, 2026) (“Petitioner is being unlawfully detained due to his improper classification as “an alien who is an applicant for admission” pursuant to 8 U.S.C. § 1225(b)(2)(A)[;] . . .Petitioner’s proper classification is a detainee pursuant to 8 U.S.C. § 1226(a)”).

Respondents are appealing the judgment that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b), governs detention under the facts presented in the cases above appealing to the Eleventh

Circuit in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, et al., No. 25-14065 (11th Cir.) and *Cerro Perez v. Assistant Field Office Director*, et al., No. 25-14075 (11th Cir.). Until the foregoing appeals are resolved, however, Respondents acknowledge that this Court's decision in *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AUGUSTIN-BIRCH, ECF No. 28 (S.D. Fla. Jan. 15, 2026), among others, would control the result here if the Court adheres to those decisions, as the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention.

Thus, while Respondents do not consent to issuance of the writ and reserve all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, Respondents hereby rely upon, and incorporate by reference, the legal arguments they presented in *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AUGUSTIN-BIRCH (S.D. Fla. Jan. 15, 2026),<sup>1</sup> and the Court can decide this issue without further briefing. However, as noted above, should the Court prefer to receive a formal opposition brief in this matter, the Respondents will file such a brief upon the Court's request.

Respectfully submitted,

JASON A. REDING QUIÑONES  
UNITED STATES ATTORNEY

By: /s/ Alicia H. Welch  
ALICIA H. WELCH  
ASSISTANT U.S. ATTORNEY  
Fla. Bar No. 100431  
99 N.E. 4<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Miami, Florida 33132  
Telephone: (305) 961-9455

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<sup>1</sup> Specifically, Respondents incorporate by reference all arguments raised in its opposition brief in *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AUGUSTIN-BIRCH, ECF No. 13.

E-mail: [Alicia.Welch@usdoj.gov](mailto:Alicia.Welch@usdoj.gov)

*Counsel for Respondents*