UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-cv-060451-DMM

ROBERTO DEIVIS PESTANA-CEPERO,

Petitioner,

v.

MITCHELL DIAZ, in his official Capacity as Assistant Field Office Director, *et al.*

Respondents.
_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondents, by and through the undersigned Assistant United States Attorney hereby file their Response to the Paperless Order to Show Cause [DE 6] as to why Petitioner's Emergency Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief and Emergency Motion for Temporary Restraining Order and Stay of Removal Proceedings [DE 1] (the "Petition") should be denied and states in support thereof as follows:

I. INTRODUCTION

Petitioner, Roberto Deivis Pestana-Cepero ("Petitioner") challenges the lawfulness of his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* [DE 1, ¶¶ 14, 17]. Petitioner is a native and citizen of Cuba. *See* Ex. 1, Record of Deportable/Inadmissible Alien (Form I-213), dated November 19, 2025. Petitioner entered the United States without inspection at or near Eagle Pass, Texas on February 11, 2022. *See* Ex. 2, I-200, Warrant for Arrest of Alien (Form I-200), dated November 19, 2025. Petitioner argues that he should be afforded the opportunity to post bond pursuant to 8 U.S.C § 1226(a) and be released during the pendency of his

proceedings. [DE 1, ¶ 15] Petitioner also seeks a temporary restraining order pursuant to Federal Rule of Civil Procedure 65 and a stay of removal proceedings. *Id.* at ¶ 34.

The government has carefully reviewed this petition and determined that the central legal issue presented concerns the statutory authority for ICE's detention of Petitioner under 8 U.S.C. §§ § 1225(b)(2)(A) or § 1226(a). While reserving all rights, including the right to appeal, the government respectfully submits 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, the government will submit one upon request.

II. ARGUMENT

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b)(2), because he was present in the United States without being admitted or paroled. *See* Ex. 1, Form I-213; *see also 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 (S.D. Fla. Jan. 29, 2026))(concluding that an alien who entered the United States in 2004 without inspection by immigration authorities is an applicant for admission subject to detention under § 1225(b)(2) and not entitled to a bond hearing); *Banchi v. Diaz, et al.*, No. 25-62341-CIV-SINGHAL (S.D. Fla. Feb. 2, 2026)(stating that for the reasons explained in the Court's *Morales* decision, again, it is concluded that Petitioner's detention under § 1225(b)(2) pending a removal hearing is lawful); *Doria v. Warden et al.*, No. 26-cv-60112-SINGHAL (S.D. Fla. Feb. 9, 2026)(stating there is no

support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are already here after having illegally entered the country)(internal quotations and citations omitted); *Perez Morales v. Noem, et al.*, No.26-60251-CIV-DIMITROULEAS (S.D. Fla. Feb. 9, 2026)(adopting the analysis of the majority opinion in *Buenrostro-Mendez*); *Escarola v. Warden et al.*, No. 26-cv-60216-SINGHAL (S.D. Fla. Feb. 18, 2026)(stating the government may, under the present statutory scheme detain Petitioner under § 1225(b)(2) pending removal); *Mokanu v. Warden, Federal Detention Center Miami*, No. 25-24121-ARTAU (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)); *Ramirez v. ICE et al.*, No. 26-20804-DIMITROULEAS (S.D. Fla. Feb. 20, 2026)(adopting the analysis of the majority opinion in *Buenrostro-Mendez*); *Mora v. Warden*, No. 26-cv-20942-DIMITROULEAS (S.D. Fla. Feb. 23, 2026)(same). It should also be noted in *Buenrostro-Mendez*, the Fifth Circuit Court of Appeals recognized that presence without admission renders an individual like Petitioner 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.

Nonetheless, the government acknowledges that several Judges in this District have reached the opposite conclusion. *See, e.g., Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609 (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.*, No. 25-24292-

CIV-WILLIAMS (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 (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.*, No. 25-24820-CIV-WILLIAMS (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CIV-ALTONAGA (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 (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); *Duvallon Boffill, et al.*, No. 25-25179-CIV-BECERRA (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 (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.*, No. 25-61898-CIV-DAMIAN (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)"); *Ocegueda Gonzalez v. Noem, et al.*, No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH (S.D. Fla. Dec. 23, 2025) ("Having concluded that Petitioner's detention is governed by 8 U.S.C. § 1226(a), Petitioner is

entitled to an individualized bond hearing before an immigration judge."); *Fuentes Granados v. Secretary of Homeland Security*, No. 26-60020-CIV-SMITH (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)"); and *Montero v. Warden of the Federal Detention Center Miami*, No. 25-25650-CIV-HUCK (S.D. Fla. Feb. 18, 2026) ("the Court concludes that section 1226(a)—not section 1225(b)—governs Petitioner's detention").

The government is 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. *See Hernandez Alvarez v. Warden, Federal Detention Center Miami*, et al., No. 25-14065 (11th Cir.); *see also Cerro Perez v. Assistant Field Office Director*, et al., No. 25-14075 (11th Cir.). Until the foregoing appeals are resolved, the government acknowledges that this Court's recent decision in *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH (S.D. Fla. Dec. 23, 2025) would control the result here as the legal arguments are not materially distinguishable for purposes of the Court's decision on the issue of which statutory provision authorizes Petitioner's detention. The government does not consent to issuance of the writ and reserves all rights, including the right to appeal. However, in an effort to conserve judicial and party resources while expediting the Court's consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Ocegueda Gonzalez v. Noem, et al.*, Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH (S.D. Fla. Dec. 23, 2025).

III. CONCLUSION

The government maintains that Petitioner's detention is appropriate under § 1225(b) and the Petition should be denied. If this Court requires additional briefing from the government, upon request, such briefing will be provided.

Dated: February 27, 2026

Respectfully submitted,

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