

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MICHAEL HERRERA NUNEZ,

Petitioner,

Case No. 2:26-cv-651-JES-DNF

v.

KRISTI NOEM, et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Michael Herrera Nunez (“Herrera Nunez”) seeks a writ of habeas corpus pursuant to 28U.S.C. § 2241, challenging the lawfulness of his detention by U.S. Immigration and Customs Enforcement and seeking his immediate release from custody. His petition should be denied because he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) as an inadmissible arriving alien.

FACTS

Herrera Nunez is a 41-year-old national and citizen of Cuba. (Composite Exhibit, Ex. A at 1) ICE advises that he has been a lawful permanent resident (“LPR”) since December 30, 1989. Further, ICE advises that his LPR card was most recently renewed in December 2022.

He last entered the United States on March 1, 2026, as an arriving alien at Miami International Airport. Ex. A. at 1. During reentry, a background check

revealed two prior criminal convictions. First, in 2009, Herrera Nunez was convicted of possession of cocaine in Miami-Dade County, Florida, which resulted in 3-years' probation and assessment of \$633 in costs. *Id.* at 2, 9-10. Second, in 2014, Herrera Nunez was convicted of retail theft in Dekalb County, Illinois, which resulted in two years' probation and assessment of \$232.47 in restitution. *Id.* at 2, 8. He was placed in immigration custody on March 2, 2022. *Id.* at 1. He was served with a Notice to Appear the same day. *Id.* at 4-6.

On March 6, 2026, Herrera Nunez filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. (Doc. 1.)

Herrera Nunez is currently detained at Florida Soft Side South. As of the time of this filing, he has been detained for 25 days

CERTIFIED HABEAS RETURN

ICE is detaining Herrera Nunez under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). *See* 28 U.S.C. § 2243 ("The person to whom the writ or order is directed shall make a return certifying the true cause of the detention."). Herrera Nunez bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

ARGUMENT

I. Herrea Nunez's detention comports with the INA and the Due Process Clause of the Fifth Amendment.

Title 8 U.S.C. § 1225—applicable to “applicants for admission,” that is, aliens present in the United States who have not been admitted—is the specific detention authority applicable to Herrera Nunez. Under § 1225(a), an “applicant for admission” is defined as an “alien present in the United States who has not been admitted *or who arrives in the United States.*” (Emphasis added). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025).

Here, Herrera Nunez was seeking admission into the United States on March 1, 2026, when he arrived at Miami International Airport. 8 U.S.C. § 1225(a)(1). He was subject to inspection. *Id.* 1225(a)(3). He was determined to be inadmissible and,

consequently, subject to mandatory detention. *Id.* § 1225(b)(2)(A). *Jennings*, 583 U.S. at 297.

Although he is an LPR, his LPR card does not make him admissible into the United States. Based on his criminal convictions, he is inadmissible under 8 U.S.C. §§ 1182(a)(2)(i)(I) and 1182(a)(2)(i)(II). Therefore, Herrera Nunez was properly identified as an applicant for admission under 8 U.S.C. § 1225(a)(1) *See Cruz v. Nalls-Castillo*, No 16-1587, 2017 U.S. Dist. LEXIS 156593, *5 (D.N.J Sept. 19, 2017) (stating that the “[p]etitioner is properly classified as an arriving alien pursuant to § 1225(b)(2)(A) based on his criminal history” despite being an LPR).

Finally, although Herrera Nunez does not identify what authority under which he believes he is entitled to a bond hearing, it is presumably 8 U.S.C. § 1226. Because he is detained under § 1225, he is not entitled to a bond hearing under § 1226. *Erbite v. Ripa, et al.*, No. 2:26-cv-558-JES-NPM, 2026 U.S. Dist. LEXIS 58013, *3 (M.D. Fla. Mar. 19, 2026) (“Section 1225 says nothing ‘whatsoever about bond hearings.’”) (quoting *Jennings*, 583 U.S. at 297).

Based on the foregoing, Herrera Nunez is therefore lawfully detained under 8 U.S.C. § 1225(b)(2). *Jennings*, 583 U.S. at 297.

CONCLUSION

Herrera Nunez’s Petition for Writ of Habeas Corpus should be denied

Dated: March 27, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

/s/ Christopher J. Emden

CHRISTOPHER J. EMDEN
Assistant United States Attorney
USA No. 158
400 North Tampa St., Suite 3200
Tampa, FL 33602
Telephone No.: (813) 274-6000
Facsimile No.: (813) 274-6198
E-mail: Christopher.Emden@usdoj.gov
Lead Counsel for Federal Respondents