

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WISTIN ABRAHAM GALVAN LOPEZ,

Petitioner,

v.

No.2:25-cv-1288-JB/DLM

KRISTI NOEM, et. al.,

Respondents.

**RESPONDENTS' OBJECTIONS TO THE
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

Respondents hereby submit these objections to the Honorable Judge Martinez's Proposed Findings and Recommended Disposition ("PFRD"), filed on January 30, 2026. Doc 21.

I. Respondents Object to the Finding that 8 U.S.C. § 1226(a) Governs Petitioner's Detention and Object to the Recommendation Ordering Respondents to Provide a Bond Hearing.

The PFRD asserts that 8 U.S.C. § 1226(a), rather than § 1225(b)(2)(A), applies to Petitioner's detention because Petitioner was released into the United States and lived in the country for more than five years before being detained in 2025. Doc. 21 at 2. The PFRD relies on the Supreme Court's discussion of Sections 1225(b) and 1226 in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and recent decisions from this district and others, in reaching this conclusion. *Id.* at 4-11. Specifically, the PFRD interprets the language, "applicants for admission" in Section 1225(b) as applying to noncitizens *seeking admission* into the United States, not those already within the United States like Petitioner. *Id.* But this ignores the unambiguous language of Section 1225(a)(1), which explicitly defines "applicant for admission":

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after

having been interdicted in international or United States waters) ***shall be deemed for purposes of this chapter an applicant for admission.***

8 U.S.C. § 1225(a)(1) (emphasis added). And under 8 U.S.C. § 1101(a)(13)(A), the “terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” More significantly, lawfully admitted aliens are generally not deemed applicants for admission within the scope of Section 1225.¹

The Supreme Court’s dicta in *Jennings* that, “§ 1225(b) applies primarily to aliens seeking entry into the United States” has been accorded undue significance. *See Jennings*, 583 U.S. at 297. While Section 1225 primarily applies to aliens encountered at the United States’ borders, it is by its express terms also applicable to any “alien present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). *Jennings* does not license lower courts to disregard Congress’ explicit declaration that such an alien “shall be deemed for purposes of this chapter an applicant

¹ (C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

- (i) has abandoned or relinquished that status,
- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) has engaged in illegal activity after having departed the United States,
- (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
- (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
- (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

8 U.S.C. § 1101(a)(13)(C).

for admission.” *Id.* On the contrary, the Supreme Court recognized that Section 1225 is applicable to aliens who have not been admitted into the country:

Under § 302, 110 Stat. 3009–579, 8 U.S.C. § 1225, an alien who “arrives in the United States,” or “is present” in this country but “has not been admitted,” is treated as “an applicant for admission.” § 1225(a)(1). Applicants for admission must “be inspected by immigration officers” to ensure that they may be admitted into the country consistent with U.S. immigration law. § 1225(a)(3).

Jennings, 583 U.S. at 287. Aliens who have been admitted into the United States enjoy rights and privileges that are not afforded to aliens who have not been lawfully admitted. *Admitted* aliens may still be subject to removal under procedures set forth in 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288.

The designation of an undocumented alien who has been present in the United States as an “applicant for admission” reflects Congress’ presumption that an alien who is present in the United States is here by choice and would like to remain in the United States. If the statutory presumption is incorrect—if an alien does not want to apply for admission—he can affirmatively withdraw his presumptive application and return whence he came: “An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.” 8 U.S.C. § 1225(a)(4). When the statute is read in its entirety, it is manifest that Congress meant what it said: “an alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission” subject to the procedures set forth in Section 1225.

Petitioner is a citizen of Guatemala who entered the United States “without inspection” on or about September 15, 2023. Doc. 1 at ¶ 13. Because Petitioner entered the United States without inspection, Petitioner would be an “applicant for admission” to the United States, i.e.,

alien present in the United States who has not been admitted. *See* 8 U.S.C. § 1225(a)(1).

Petitioner is deemed an applicant for admission based upon 1) his undocumented status and 2) the fact that he has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted,” thereby making detention mandatory under Section 1225. *See* 8 U.S.C. § 1225(b)(2)(A); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025), Interim Decision 4125, 2025 WL 2674169.

Multiple courts² have adopted this general interpretation in recent months. *See Peña v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an “applicant for admission” upon the straightforward application of the statute); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding that Section 1225(b) applied despite alien’s presence in the country for over ten years, noting “overlap” between Section 1225 and Section 1226 authorities); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding BIA’s recent decision in *Matter of Yajure Hurtado* supported by the plain language of the statute, and that such an interpretation does not render Section 1226, nor additions thereto by the Laken Riley Act, superfluous); *Mejia Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (finding that a foreign national, who had been in the country for approximately forty years but never lawfully “admitted” into the United States, was an “applicant for admission” based on the plain meaning of Section 1225); *see also Suarez v. Noem*, No. 1:25-cv-

² The Fifth Circuit recently addressed the same issue in which it held that individuals like the Petitioner are subject to mandatory detention under § 1225(b)(2)(A). *See Buenrostro-Mendez v. Bondi et al.*, --- F.4th---, 2026 WL 323330 (5th Cir. 2026). While Respondents recognize that the Fifth Circuit’s holding is not binding on this Court, they nonetheless alert the Court to this decision as persuasive authority that may influence the Court to reconsider its position on this issue.

00202, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550-WBS-JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (denying petitioner’s motion for temporary restraining order because petitioner, a foreign national living in the United States for 29 years and taken into ICE custody following a traffic stop, was unlikely to succeed on the merits of his statutory arguments that he was not an “applicant for admission” under Section 1225); *Coronado v. Secretary, Dept. of Homeland Security*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (finding that Section 1225(b)(2) applied to petitioner, a foreign national who entered the United States without inspection and resided within the country for several years); *see also Lucero v. Field Office Dir.*, No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025).

Because Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)’s mandatory detention requirement, the Court should reject the PFRD.

CONCLUSION

Respondents submit the foregoing objections to the Honorable Judge Martinez’s Proposed Findings and Recommended Disposition (“PFRD”), filed on January 30, 2026. and request the District Court sustain said objections in reaching a decision in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Allison Shokes
ALLISON SHOKES
Assistant United States Attorney