UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 26-cv-60229-MIDDLEBROOKS/AUGUSTIN-BIRCH

CRISTIAN MIDAEL CARDONA MARROQUIN,

Petitioner,

v.

KRISTI NOEM, in her Official Capacity, Secretary of the U.S. Department of Homeland Security, *et al.*,

Respondents.
_____/

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 13], pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Rule 4(b). In support, Respondents state as follows:

On February 19, 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 13]. 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 17 at II. B. Pgs. 4-6]. The R&R relies on district

court cases supporting this interpretation of the relevant statutory provisions. *Id.* at II. B. Pgs. 4-6. The R&R also acknowledges the recent decision from the Fifth Circuit, *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), agreeing with Respondents' statutory interpretation of the detention authority, but the R&R notes it is not binding on the Court. [DE 17 at fn 1]. The R&R continues to state that following this decision, "courts within this Circuit have declined to follow the majority's opinion, finding the dissenting opinion to be more persuasive instead." *Id.* However, Respondents submit to the Court that after the *Buenrostro-Mendez* decision, the Honorable Judge Dimitrouleas adopted the analysis from the Fifth Circuit in denying the habeas petition similar to this case. *See Perez Morales v. Noem*, et al., No.26-60251-CIV DIMITROULEAS, ECF No. 15 (S.D. Fla. Feb. 9, 2026) (adopting the *Buenrostro-Mendez* analysis 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).

While Respondents acknowledge the current weight of district court authority favors the interpretation set forth in the R&R, there are other cases in this District, in addition to the *Perez Morales* decision cited above, that support Respondents' argument that detention authority is authorized pursuant to 8 U.S.C. § 1225(b)(2). *See, e.g., Iraheta Morales v. Noem*, et al., Case No. 25-62598-CIV-SINGHAL, ECF No. 10 (S.D. Fla. Jan. 29, 2026) (concluding that habeas petitioner who entered the United States without inspection in 2004 is an "applicant for admission" governed by 8 U.S.C. § 1225(b) and rejecting petitioner's argument the government must grant a bond hearing under 8 U.S.C. § 1226)); *Binzha Banchi v. Diaz, et al.*, No. 25-62341-CIV-SINGHAL, ECF No. 23 (S.D. Fla. Feb. 2, 2026)(same); *Luzardo Doria v. Warden, Broward Transitional Center, et al.*, No. 26-60112-CIV-SINGHAL, ECF No. 12 (S.D. Fla. Feb. 10,

2026)(same); *Tamariz Escarola v Warden BTC et al*, 0:26-cv-60216-CIV-Singhal, EFC 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, EFC 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)).

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 13 at II at pg. 5-6]. However, as set forth fully in Respondents' Return [DE 7 pg. 3-5], 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 "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). 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).

For the reasons set forth herein and in Respondents' Return [DE 7], the Court should sustain these objections and deny the Habeas Petition.

Dated: February 25, 2026

Respectfully submitted:

JASON A. READING QUIÑONES
UNITED STATES ATTORNEY

By: ***Mary Beth Ricke***
MARY BETH RICKE
Fla Bar No. 107213
Assistant United States Attorney
Email: mary.ricke@usdoj.gov
500 E. Broward Blvd., Suite:700
Fort Lauderdale, Florida 33394
Tel.: (954) 660-5137
Fax: (954) 356-7180

Counsel for Respondents