UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-20308-CIV-BECERRA

BAROLOME ANTONIO GONZALEZ GONZALEZ,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, *et al.*,

Respondents.
_____/

RESPONDENTS' RESPONSE IN OPPOSITION TO THE EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] by and through the undersigned Assistant United States Attorney and in accordance with the Order to Show Cause and for Production of Evidence [DE 6], submit the following Response in opposition to the Emergency Petition for Writ of Habeas Corpus [DE 1] (Petition).

INTRODUCTION

Petitioner, Barolome Antonio Gonzalez Gonzalez, "is a native and citizen of Guatemala." Petition ¶63. Petitioner "entered the United States without inspection on or around June 15, 2000." *Id.* ¶65. Petitioner does not contest that he is subject to detention under the controlling immigration laws. He merely argues the "he is not subject to … detention under 8 U.S.C. §

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. Petitioner is currently detained at Krome Service Processing Center (Krome), a detention facility in Miami, Florida. The immediate custodian in charge of Krome is Assistant Field Director (AFOD) Charles Parra. Accordingly, the only proper Respondent in this case is AFOD Parra, in his official capacity.

1225." *Id.* ¶3. Instead, he argues, his detention "is properly classified under 8 U.S.C. § 1226(a)." *Id.* By way of relief, in relevant part, Petitioner asks this Court to "[d]eclare the Petitioner is not subject to detention under 8 U.S.C. § 1225(b), and that he is lawfully detainable, if at all, only under 8 U.S.C. § 1226(a)." *Id.* ¶121. Accordingly, this case comes down to a question of statutory interpretation. Specifically, what statutory provision controls Petitioner's detention: § 1225(b)(2) or § 1226(a).

Respondents recognize that this Court has ruled, in similar circumstances, that § 1226(a), not § 1225(b)(2), controls a petitioner's detention. *Garcia-Gomez v. Ripa*, No. 25-CV-25567-BECERRA (S.D. Fla Dec. 31, 2025); *Ardon-Quiroz v. Assistant Field Off. Dir.*, No. 25-CV-25290-BECERRA, 2025 WL 3451645, at 5–7 (S.D. Fla. Dec. 1, 2025); *Boffill v. Field Off. Dir.*, No. 25-CV-25179-BECERRA, 2025 WL 3246868, at 5–7 (S.D. Fla. Nov. 20, 2025). Nonetheless, Respondents repeat their statutory interpretation arguments in this case to preserve them for appeal and incorporate by reference the arguments made in those cases.

Section 1225(b)(2)(A) mandates detention for "an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(A). Pursuant to § 1225(a), "[a]n alien present in the United States *who has not been admitted* … shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). "The term[] … admitted mean[s], with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Petitioner admits that he "entered the United States *without inspection*." Petition ¶65 (emphasis added). Accordingly, under a plain language reading of the relevant statutes, Petitioner has not been admitted into the United States and is, therefore, deemed an applicant for admission subject to mandatory

detention pursuant to § 1225(b)(2)(A). For the reasons explained more fully below, the Petition should be denied.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Guatemala who last entered the United States without inspection on an unknown date. Declaration of Deporatation Officer Kristy Zamir ¶7; *see* Zamir Dec. Exhibit A, Form I-862, Notice to Appear (NTA), dated September 16, 2025.

On September 16, 2025, local law enforcement along with U.S. Customs and Border Protection (CBP) encountered Petitioner during a vehicle stop for a traffic violation. Zamir Dec. ¶8; *see* Zamir Dec. Exhibit B, Form I-213, dated September 16, 2025. CBP determined that Petitioner had unlawfully entered the United States at a time and place other than as designated by the Secretary of the Department of Homeland Security (DHS). Zamir Dec. ¶9. Petitioner was transferred to the custody of Border Patrol Agents. *Id.* On that same day, U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) issued Petitioner a Warrant for Arrest. Zamir Dec. ¶10; *see* Zamir Dec. Exhibit C, Form I-200, Warrant for Arrest of Alien, dated September 16, 2025.

On September 16, 2025, Petitioner was issued a Notice to Appear (NTA) charging Petitioner with removability pursuant to 8 U.S.C. § 1182 (a)(6)(A)(i), in that Petitioner was an alien present in the United States without being admitted or paroled, or who arrived in the United States at a time or place other than as designated by the Attorney General. Zamir Dec. ¶11; *see* Zamir Dec. Exhibit A, Form I-862, NTA, dated September 16, 2025. The NTA also charged Petitioner with removability pursuant to 8 U.S.C. §1182(a)(7)(A)(i)(I) Act, in that Petitioner was an immigrant who, at the time of application for admission, was not in possession of a valid

unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act. *Id.*

Petitioner subsequently filed a request for a custody hearing with the Krome Immigration Court, and a hearing was set for January 9, 2026. Zamir Dec. ¶12; *see* Zamir Dec. Exhibit D, Notice of Custody Redetermination Hearing in Immigration Proceedings, dated December 29, 2026. On January 9, 2026, the Immigration Judge denied Petitioner's request for bond, finding that the court had no jurisdiction to grant bond pursuant to Matter of Yajure Hurtado, I&N Dec. 216 (BIA 2025). Zamir Dec. ¶13; *see* Zamir Dec. Exhibit E, Order of the Immigration Judge, dated January 9, 2026. An appeal of this order is due on February 9, 2026; to date, Petitioner has not appealed this order to the Board of Immigration Appeals (BIA). Zamir Dec. ¶14.

Petitioner remains in ICE custody at the Krome North Service Processing Center (Krome), pending the conclusion of his removal proceedings. Zamir Dec. ¶15; *see* Exhibit G, Detention History. Petitioner was originally scheduled for a hearing before the Executive Office for Immigration Review (EOIR) on January 9, 2026; however, Petitioner requested a continuance, which was granted. Zamir Dec. ¶16; *see* Exhibit H, Order of the Immigration Judge, dated January 9, 2026. Petitioner is next scheduled for a hearing before EOIR on February 23, 2026. Zamir Dec. ¶17; *see* Exhibit I, Notice of Hearing in Removal Proceedings, dated January 9, 2026.

On January 16, 2026, Petitioner filed this habeas petition, challenging his continued detention under 8 U.S.C. § 1225(b). Petitioner is an applicant for admission properly detained pursuant to section 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

Under the plain language of § 1225(b)(2), the Government is required to detain all aliens, like Petitioner, who are present in the United States without admission—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

I. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a) defines "applicant for admission" to encompass an alien who either "arrives in the United States" or who is "present in the United States [but] has not been admitted." 8 U.S.C. § 1225(a)(1). And "admission" under the Immigration and Nationality Act (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 there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a); *see* Petition ¶65. Moreover, Petitioner cannot establish—and has not even alleged that he can establish—that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(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).

II. The Government's Reading Comports with Congressional Intent.

Before 1996, federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Accordingly, the Government's reading of the statute is not only supported by the express language of § 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to a result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099. Accordingly, the INA's prior framework, which distinguished between aliens based on physical "entry," had

> the "unintended and undesirable consequence" of having created a statutory scheme where aliens who entered without inspection "could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," *including the right to request release on bond*, while aliens who had "actually presented themselves to authorities for inspection" ... were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d. Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

Congress discarded that regime through enactment of IIRIRA. Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States *after inspection* and authorization by an immigration officer."

8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would … create the very [thing] that Congress designed the Act to avoid").

The Government's reading, on the other hand, is true to Congress's intent and should be adopted.

III. The Government's Reading Accords with *Jennings*.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of § 1225(b) that §

"1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

IV. Section 1226 Does Not Support Petitioner's Argument.

Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* "applicants for admission" subject to § 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States. Petitioner's detention is not controlled by § 1226(a).

WHEREFORE, for the foregoing reasons, the Emergency Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

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