UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-20926-CIV-ALTMAN

HENRY PADILLA EMERY,

Petitioner,

v.

KELLY WALKER, in his official capacity as Field Directo of U.S. Immigration and Customs Enforcement Miami Field Office, *et al.*,

Respondents.
_____/

RESPONDENTS' RESPONSE

Respondents,[1] by and through the undersigned Assistant United States Attorney and in accordance with the Order [DE 4], respond in opposition to the Petition for Writ of Habeas Corpus [DE 1] (Petition), and in support thereof, state the following.

I. Petitioner is an applicant for admission and is properly detained pursuant to 8 U.S.C. § 1225(b)(2).

In the Petition, "Petitioner contends that Respondents have unlawfully subjected him to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), despite the fact that he was apprehended inside the United States after having resided here for several years." Petition ¶30. Petitioner does not contest that he is subject to immigration detention; rather, Petitioner argues "his detention falls squarely within the scope of § 1226(a), which … permits release on bond." *Id.*

[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.

¶31. For the reasons explained below, Petitioner is an applicant for admission and properly detained pursuant to § 1225(b)(2).

"Petitioner entered the United States without inspection or parole on May 4, 2022." Petition ¶23. On September 16, 2025, U.S. Immigration and Customs Enforcement (ICE) encountered Petitioner, issued a detainer, and placed Petitioner in detention pending resolution of his removal proceedings. Declaration of Deportation Officer Jonathan Carmona ¶¶8, 10 (attached as Exhibit 1); *see also* Petition ¶25. "On January 15, 2026, an Immigration Judge denied his request for bond because the Immigration Judge … had no jurisdiction based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." Petition ¶26 (internal quotations marks omitted). Petitioner now brings this Petition contesting the basis of his detention.

As Petitioner correctly observed, "[t]his case turns on the statutory distinction between § 1226(a) and § 1225(b)(2)." *Id.* ¶34. Section 1225(b)(2)(A) mandates detention for "an alien who is an *applicant for admission*" while the alien is in removal proceedings. 8 U.S.C. § 1225(b)(2)(A) (emphasis added). 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). 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, like Petitioner, 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. Petitioner is properly detained pursuant to § 1225(b)(2) pending the completion of his removal proceedings.

This Court's recent ruling in *Jimenez-Clemente v. Acting Director, ICE*, Case No. 26-cv-20096, DE 15 (S.D. Fla. March 2, 2026),[2] is dispositive of this statutory interpretation question and should be followed in this case.

The petitioner in *Jimenez-Clemente*, like Petitioner here, was a foreign citizen that entered the United States without inspection in 2005. *Jimenez-Clemente*, 26cv20096 at 1. The petitioner had been residing in the United States since then. At the end of 2025, the *Jimenez-Clemente* petitioner was taken into custody by ICE and removal proceedings commenced against him. An Immigration Judge denied the petitioner bond "finding that the Petitioner was an applicant for admission and that the [immigration] court lacks authority to hear bond requests" pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.* at 1-2 (internal quotation marks omitted).

In *Jimenez-Clemente*, the petitioner brought a habeas petition challenging the basis of his immigration detention. He argued "that he's not an applicant for admission subject to mandatory detention under § 1225" and that "his detention is governed by § 1226 … because § 1226 creates a default rule that applies to aliens already in the United States." *Id.* at 3 (internal quotation marks omitted).

This Court disagreed. Following the precedent established in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) and *Morales v. Noem*, No. 25-62598-CIV, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026), this Court held that "[t]he plain text of § 1225(a)(1) defines aliens, like our Petitioner, as 'applicants for admission' notwithstanding their distance from the border or the time they've spent in the United States without admission." *Id.* at 4. The Court "thus conclude[d] that the Petitioner is an 'applicant for admission' and that his detention is

[2] Pinpoint citations to the Order [DE 15] from *Jimenez-Clemente* are included herein as *Jimenez-Clemente*, 26cv20096 at #, so that *Jimenez-Clemente*, 26cv20096 at 5 is a citation to the fifth page of the Order in *Jimenez-Clemente*.

governed by § 1225." *Id.* Similarly, here, Petitioner is an applicant for admission and his detention is government by § 1225(b)(2). The Petition should be denied.

II. Petitioner's perfunctory due process challenge fails.

In addition to the statutory interpretation question, Petitioner alleges his detention violates the Due Process Clause of the Fifth Amendment. *Jimenez-Clemente* also disposes of Petitioner's due process challenge.

Petitioner's due process challenge assert that his detention during deportation proceedings without an individualized custody determination violates the Due Process Clause. *See* Petition ¶¶47, 52. Petitioner, however, fails to allege a specific due process violation. Rather, Petitioner asserts a perfunctory, facial challenge to § 1225(b)(2)'s mandatory detention during removal proceedings. *See, e.g.*, Petition ¶45 ("The Government's blanket invocation of 'mandatory detention cannot substitute for constitutionally required process."). Effectively, Petitioner argues that the Due Process Clause requires an individualized custody determination, contrary to the plain language of § 1225(b)(2). *See, e.g., id.* ¶¶47, 52.

In *Jimenez-Clemente*, the petitioner asserted a similar "perfunctory due-process claim." *Jimenez-Clemente*, 26cv20096 at 5. This Court denied that claim, explaining that "the Supreme Court has already held that the government needn't conduct individualized bond hearings to determine an alien's flight risk and may detain aliens in removal proceedings to combat the risk of widespread flight." *Id.* (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003); *Demore*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Morales v. Noem*, No. 25-62598-CIV, 2026 WL 236307, at *9 (S.D. Fla. Jan. 29, 2026) ("Petitioner's detention is part of the deportation process and therefore does not—absent

some further showing—amount to a deprivation of due process."). Accordingly, as in *Jimenez-Clemente*, Petitioner's perfunctory due process challenge should be denied.

WHEREFORE, for the foregoing reasons, the Petition should be denied.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

Anthony Erickson-Pogorzelski
ANTHONY ERICKSON-POGORZELSKI
ASSISTANT U.S. ATTORNEY
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Tel: (305) 961-9296
Fla. Bar 619884
Email: anthony.pogorzelski@usdoj.gov