

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-20998-CIV-WILLIAMS

MICHEL ROJAS PRIETO,
Petitioner,

v.

KELEI WALKER, Field Office Director,
U.S. Immigration and Customs Enforcement
Miami Field Office,
Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Respondents¹ hereby responds to the Court's Order to Show Cause why the Petition for Writ of Habeas Corpus should not be granted.

Petitioner Michel Rojas Prieto ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). On February 13, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. The Court has ordered the government to show cause why the petition should not be granted. Petitioner argues that he is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2); that his detention without bond violates his procedural and substantive due process rights and is, instead, eligible for consideration for release on bond under 8 U.S.C. § 1226(a).

¹ A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 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." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Krome North Processing Center (Krome). See Petition at ¶ 5. The only appropriate respondent is the immediate custodian in charge of Krome, Assistant Field Director ("AFOD") Charles Parra. Accordingly, the only proper respondent in this case is AFOD Parra, in his official capacity. All other respondents should be dismissed.

As explained below, Petitioner was previously in removal proceedings under 8 U.S.C. § 1221a, but an Immigration Judge dismissed those proceedings. DHS then placed Petitioner in expedited removal under 8 U.S.C. § 1225(b)(1), which requires mandatory detention without bond.

FACTUAL BACKGROUND

The petitioner, Michel Rojas Prieto, is a native and citizen of Cuba. Exh. XXXX, Form I-213, Record of Deportable/Inadmissible Alien, dated June 10, 2025 (I-213). U.S. Customs and Border Protection (CBP) encountered Petitioner on or about May 9, 2022, after he illegally crossed the border of the United States at San Luis, Arizona. Exh. A, I-213. CBP initiated removal proceedings pursuant to section 240 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1229a, by issuing a Notice to Appear (NTA), dated May 12, 2022. Exh. B, NTA. The NTA charged Petitioner with inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who entered in the United States at any time or place other than as designated by the Attorney General. Exh. B, NTA. On May 17, 2022, CBP released Petitioner on his own recognizance. Exh. A, I-213.

At a master calendar hearing on June 6, 2025, the Immigration Judge issued an order dismissing removal proceedings under INA § 240, upon the Department of Homeland Security's (DHS) *ore tenus* motion to dismiss. Exh. C, Order on Motion to Dismiss. Petitioner appealed this order to the Board of Immigration Appeals (BIA); the appeal remains pending. Hab. Pet., ¶ 4.

On or about June 10, 2025, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), served on Petitioner a Notice and Order of Expedited Removal, Form I-860, charging him with inadmissibility pursuant to section 212(a)(7)(A)(i)(I) of the

Immigration and Nationality Act (Act), as an immigrant who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General. Exh. D, Declaration.

Petitioner is currently detained at the Krome North Service Processing Center (BTC) in Miami, Florida. Exh. D, Declaration.

ARGUMENT

Section 1225 of Title 8, United States Code, applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission may be subject to expedited removal under 8 U.S.C. § 1225(b)(1) or placed in removal proceedings under 8 U.S.C. § 1229a. Under the expedited removal process, applicants for admission arriving in the United States, or as designated by the Secretary of Homeland Security pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii), who lack valid entry documentation or make material misrepresentations, shall be “order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings are subject to detention under 8 U.S.C. § 1225(b)(2)(A).

Petitioner was originally placed in § 1229a removal proceedings, but those proceedings were dismissed by an Immigration Judge and DHS then placed Petitioner in expedited removal under 8 U.S.C. § 1225(b)(1). Petitioner has appealed the dismissal of the § 1229a proceedings to the Board of Immigration Appeals and that appeal remains pending. The resolution of Petitioner's appeal to the BIA will determine whether he is in expedited removal and detained under 8 U.S.C. § 1225(b)(1) or if his removal proceedings under § 1229a will proceed and he is detained 8 U.S.C. § 1225(b)(2) or if he.

Should the BIA dismiss Petitioner's appeal of the Immigration Judge's dismissal of the § 1229a removal proceedings, Petitioner will be subject to detention pursuant to 8 U.S.C. § 1225(b)(1) as an alien in expedited removal proceedings. Should Petitioner's appeal be sustained, he will remain in removal proceedings under § 1229a and remain subject to detention under 8 U.S.C. § 1225(b)(2) through the completion of the removal proceedings. Although this Court has previously decided that aliens detained pursuant to 8 U.S.C. 1225(b)(2) are entitled to bond hearings under 8 U.S.C. § 1226(a), it has not (to the undersigned's knowledge) decided that aliens in in Petitioner's situation, or, more broadly, in expedited removal proceedings under 8 U.S.C. § 1225(b)(1) are eligible for bond hearings.

Lest there be any doubt about the propriety of DHS's decision to place Petitioner in expedited removal under 8 U.S.C. § 1225(b)(1), the statute allows for such placement when an alien either lacks entry documentation or seek admission through fraud or misrepresentation. See 8 U.S.C. § 1225(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i) (referring to § 212(a)(6)(C), (a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7)). In addition, the alien must either be "arriving in the United States" or within a class that the Secretary of Homeland Security ("Secretary") has designated for expedited removal. The Secretary is allowed to designate for expedited removal "any or all

aliens” who have “not been admitted or paroled into the United States” and also have not “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” *Id.* § 235(b)(1)(A)(iii), 8 U.S.C. § 1225(b)(1)(A)(iii). The Secretary has designated additional categories of aliens pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii). *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68,924 (Nov. 13, 2002); Designating Aliens for Expedited Removal, 69 Fed. Reg. 48,877 (Aug. 11, 2004) (“2004 Designation”).

Here, Petitioner falls within the Secretary’s 2004 designation, which applies to aliens who (i) “are physically present in the U.S. without having been admitted or paroled,” (ii) “are encountered by an immigration officer within 100 air miles of any U.S. international land border,” and (iii) cannot establish “that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter.” 2004 Designation, 69 Fed. Reg. at 48,880.

On May 9, 2022, CBP encountered the Petitioner, after he had crossed the U.S. Border at San Luis, Arizona, which is within 100 miles from the southern border. As for the timing of DHS’s decision to place Petitioner in expedited removal, DHS is allowed to process such an alien for expedited removal at any time. *See* 8 C.F.R. § 235.3(b)(1)(ii).

For an alien placed in expedited proceedings, the removal process varies depending upon whether the alien indicates either “an intention to apply for asylum” or “a fear of persecution or torture.” 8 C.F.R. §§ 235.3(b)(4), 1235.3(b)(4)(1); *see* 8 U.S.C. § 1225(b)(1)(A)(ii). If the alien does not so indicate, the inspecting officer “shall order the alien removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does so indicate,

however, the officer “shall refer the alien for an interview by an asylum officer.” 8 U.S.C. § 1225(b)(1)(A)(ii). That officer assesses whether the alien has a “credible fear of persecution or torture,” 8 C.F.R. § 208.30(d)—in other words, whether there is a “significant possibility” that the alien is eligible for “asylum under section 208 of the Act,” “withholding of removal under section 241(b)(3) of the Act,” or withholding or deferral of removal under the Convention Against Torture (“CAT”), 8 C.F.R. § 208.30(e)(2)–(3).

If the alien does not establish a credible fear, the asylum officer “shall order the alien removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(B)(iii)(I). But if the alien does establish such a fear, he is entitled to “further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). By regulation, that “further consideration” takes the form of removal proceedings under section 240 of the Act. 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B). Thus, if an alien originally placed in expedited removal establishes a credible fear, he receives a full hearing before an immigration judge. 8 U.S.C. § 1225, or INA § 235, expressly provides for the detention of aliens originally placed in expedited removal. Such aliens “shall be detained pending a final determination of credible fear.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Aliens found not to have a credible fear “shall be detained . . . until removed.” *Id.* Aliens found to have such a fear, however, “shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

The Supreme Court in *Jennings* reviewed the expedited removal statute. *See Id.*, 583 U.S. at 290-91. In reviewing the authority to detain aliens, the Court noted that an alien who “arrives in the United States,” or “is present” in the country, but who “has not been admitted” is treated as “an applicant for admission.” *Id.* at 287 (quoting 8 U.S.C. § 1225) (emphasis added). Petitioner’s arrival in the United States without inspection near the southern border classifies him as an

applicant for admission. On June 10, 2025, DHS took the Petitioner into custody (*see* Petition at ¶ 4), and consistent with his status as an applicant for admission, DHS detained him as an applicant for admission under 235(b)(1)(A)(iii)(I), because he is not a citizen of the United States, is a Cuban national, and sought entry without valid entry documents. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I).

As an applicant for admission who is inadmissible under § 1182(a)(7), Petitioner is subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i) & (iii) and 8 C.F.R. § 235.3(b)(1)(ii) (referring to aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer that they have been physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility). Petitioner is within the designated group of aliens who (i) “are physically present in the U.S. without having been admitted or paroled,” (ii) “are encountered by an immigration officer within 100 air miles of any U.S. international land border,” and (iii) cannot establish “that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter.” 2004 Designation, 69 Fed. Reg. at 48,880. *See also Matter of M-S-*, 271 I&N Dec. 509, 511 (BIA 2019). Furthermore, section 235(b)(1)(B)(ii) mandates detention (i) for the purpose of ensuring additional review of an asylum claim, and (ii) for so long as that review is ongoing, until removal proceedings conclude, unless DHS exercises its discretion to parole the alien. *Matter of M-S-*, 27 I&N Dec. at 517.

CONCLUSION

For the foregoing reasons, Petitioner’s detention is lawful, and his Petition should be denied.

**JASON REDING QUINONES
UNITED STATES ATTORNEY**

By: /s/ Carlos Raurell
Assistant U.S. Attorney
Florida Bar No. 529893
United States Attorney's Office
Southern District of Florida
99 NE 4th Street, Florida 33132
Telephone: (305) 961-9243
E-mail: carlos.raurell@usdoj.gov
Counsel for Respondents