

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RODE ELIZABETH QUINONEZ
MERCADO, as next friend of Juan Carlos
Abarca-Jovel,

Petitioner,

v.

DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Respondents.

No. 25-cv-12066-JEK

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS (Doc. No. 1)**

The Court should deny *pro se* Petitioner Rode Elizabeth Quinonez Mercado's Petition for a Writ of Habeas Corpus. Doc. No. 1. Petitioner brings the Petition as next friend of her husband, Juan Carlos Abarca-Jovel, who is in immigration detention. *Id.* at 1, 6. Respondents are cognizant of this Court's recent decision in *Gomes v. Hyde*, No. 25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025). Nevertheless, U.S. Immigration and Customs Enforcement ("ICE") respectfully maintains that Abarca-Jovel is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

I. BACKGROUND

A. ICE Declaration

Abarca-Jovel "is a native and citizen of El Salvador." Ex. 1, Charpentier Decl. (July 30, 2025, ¶ 7. Abarca-Jovel "is not a citizen or national of the United States." *Id.*

"On April 20, 2019, United States Customs and Border Protection ("USBP") encountered [Abarca-Jovel] approximately a half mile from the San Luis Port of Entry in Arizona." *Id.* ¶ 8.

USBP determined that Abarca-Jovel “was inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I)” because “he was an intending immigrant without a valid immigrant document.” *Id.* ¶ 9. Accordingly, USBP concluded that Abarca-Jovel “was subject to 8 U.S.C. § 1225(b).” *Id.* Abarca-Jovel “claimed a fear of return to El Salvador.” *Id.* ¶ 10.

The next day, on April 21, 2019, “USBP elected to issue and serve [Abarca-Jovel] with a Notice to Appear alleging that he was removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i)” because Abarca-Jovel “entered the United States at a place other than designated by the Attorney General[.]” *Id.* ¶ 11. Accordingly, USBP “released [Abarca-Jovel] from custody.” *Id.* The Notice to Appear was later filed in Immigration Court in Boston. *Id.*

More than a year later, in August 2020, Abarca-Jovel “filed with the Immigration Court an application for protection from removal based upon his fear of returning to El Salvador.” *Id.* ¶ 13. That application remains pending. *Id.*

Nearly five years later, on February 17, 2025, Abarca-Jovel was arrested and charged with Assault and Battery in New Bedford District Court. *Id.* ¶ 14. Five months later, on July 21, 2025, ICE arrested and detained Abarca-Jovel based on his then-pending criminal charge from February. *Id.* ¶¶ 5, 14. Abarca-Jovel “was served an I-200, Warrant for Arrest of Alien showing” biometric information and “probable cause of removability due to ongoing removal proceedings.” *Id.* Abarca-Jovel’s charges in New Bedford District Court “were dismissed the same day as his administrative arrest, and appear to have been pending at the time of his administrative arrest by ICE.” *Id.* at 3 n.1.

Abarca-Jovel is detained under 8 U.S.C. § 1225(b) and housed at the Plymouth County House of Correction. *Id.* ¶ 5. Abarca-Jovel’s “removal proceedings have been transferred to the

detained docket where they will be handled on an expedited basis.” *Id.* ¶ 15. Abarca-Jovel’s “next hearing is scheduled for July 31, 2025, before an Immigration Judge in” Boston. *Id.*

B. The Petition

Petitioner brings this habeas petition on behalf of her husband Abarca-Jovel. Pet. for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (July 23, 2025), Doc. No. 1, at 1, 6. (“Pet.”).¹ The Petition alleges that, on July 21, 2025, ICE detained Abarca-Jovel “without a judicial warrant” when Abarca-Jovel was leaving his home “on his way to district court.” *Id.* at 6. Petitioner alleges that Abarca-Jovel “has a pending claim of asylum.” *Id.* at 5-6. The Petition challenges Abarca-Jovel’s “[i]mmigration detention” as violating the Fifth Amendment and seeks “a stay of transfer.”² *Id.* at 2, 7; Doc. No. 1-2 at 1.

II. LEGAL STANDARD

Section 2241 of Title 28 of the United States Code provides district courts with jurisdiction to hear federal habeas petitions. It is Petitioner’s burden to establish entitlement to a

¹ The cited page numbers of the Petition refer to the ECF-stamped page numbers.

² This Court already has ordered:

Abarca-Jovel shall not be transferred to another district unless the government provides advance notice of the intended move. Such notice shall be filed in writing on the docket in this proceeding, and shall state the reason why the government believes that such a movement is necessary and should not be stayed pending further court proceedings. Once that notice has been docketed, Abarca-Jovel shall not be moved out of the District for a period of at least 72 hours from the time of that docketing.

Order Concerning Service of Pet. & Stay of Transfer or Removal (July 23, 2025), Doc. No. 5 at 3-4.

writ of habeas corpus by proving that his custody violates the Constitution, laws, or treatises of the United States. See 28 U.S.C. § 2241(c)(3); *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) (“The burden of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner.”).

III. ARGUMENT

A. Abarca-Jovel is Lawfully Detained as an Applicant for Admission Under 8 U.S.C. § 1225(b)(2)(A)

An applicant for admission is defined as “[a]n 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” 8 U.S.C. § 1225(a)(1). The term “admitted” is defined as “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).

As explained by the Supreme Court, “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’ . . . and an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry[.]’” into the United States. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (citations omitted); accord *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“An alien, like the respondent, ‘who tries to enter the country illegally is treated as an applicant for admission.’” (quoting *Thuraissigiam*, 591 U.S. at 140)). Stated another way, an “alien who arrives at a ‘port of entry,’ *i.e.*, a place where an alien may lawfully enter, must apply for admission. An alien . . . who is caught trying to enter at some other spot is treated the same way.” *Thuraissigiam*, 591 U.S. at 108. The Board of Immigration Appeals (“BIA”) likewise has held that an alien “apprehended just inside the southern border and not at a point of entry, on the same day they crossed into the United States” is “arriving” for purposes of the definition of “applicant for admission” in § 1225(a)(1). *Matter*

of *Q. Li*, 29 I. & N. Dec. at 68 (cleaned up).

Accordingly, ICE's position is that Abarca-Jovel is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b) even though the government originally released Abarca-Jovel from custody after encountering him near the border in 2019. *See Maldonado v. Bostock*, No. 23-cv-00760, 2023 WL 5804021, at *1–3 (W.D. Wash. Aug. 8, 2023) (holding that an individual apprehended near the border and later processed under § 1226 "appears to be an applicant for admission because he is a noncitizen 'present in the United States' and 'has not been admitted'" (quoting 8 U.S.C. § 1225(a)(1)); *Matter of Q. Li*, 29 I. & N. Dec. at 69 (holding that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under [§ 1225(b)], and is ineligible for any subsequent release on bond under [§ 1226]").

To the extent 8 U.S.C. §§ 1225 and 1226 are in conflict, the "specific provision" governs over the "general one." *See Edmond v. United States*, 520 U.S. 651, 657 (1997); *see Rodriguez v. Bostock*, No. 25-cv-05240, 2025 WL 1193850, at *13 (W.D. Wash. Apr. 24, 2025) (explaining that a "plain reading" of § 1225 "conflicts" with a "plain reading" of § 1226). Section 1226 is the "default" detention authority. *Jennings*, 583 U.S. at 288. By contrast, § 1225 is narrower and applies only to "applicants for admission"; that is, individuals present in the United States who have not been admitted. 8 U.S.C. § 1225. Thus, ICE's position is that the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

To be sure, USBP released Abarca-Jovel from custody in 2019. But while ICE "generally wields broad discretion to arrest and detain noncitizens pending removal proceedings under Section 1226(a), that discretion does not extend beyond the reach of the statute," which "does

not encompass an applicant for admission.” *Maldonado*, 2023 WL 5804021, at *3; *see id.* *4 (“Nor does the Court’s independent review of the relevant regulations indicate that [the Department of Homeland Security] has discretion to ‘choose’ between Sections 1225 and 1226 when it processes an applicant for admission.”); *Matter of Q. Li*, 29 I. & N. at 69 n.4 (“Once an alien is detained under [§ 1225(b)],” ICE “cannot convert the statutory authority governing her detention from [§ 1225(b)] to [§ 1226(a)] through the post-hoc issuance of a warrant.”).

Accordingly, ICE’s position is that Abarca-Jovel is properly detained under 8 U.S.C. § 1225(b)(2)(A) because Abarca-Jovel remains an applicant for admission as an “alien present in the United States who has not been admitted or who arrives in the United States[.]”³ 8 U.S.C. § 1225(a)(1). Abarca-Jovel’s custody pursuant to 8 U.S.C. § 1225(b)(2)(A) subjects him to mandatory detention. *See 8 U.S.C. § 1225(b)(2)(A)* (mandating detention of an “applicant for admission” where “the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted”). As explained by the Supreme Court, § 1225(b)(2) “mandate[s] detention of applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297. In declining to find a statutory requirement to conduct bond hearings for applicants for admission, the Supreme Court explained that “nothing in the statutory text imposes any limit on the length of detention” nor “says anything whatsoever about bond hearings.” *Id.*; *see also id.* at 302 (explaining that § 1225 authorizes detention of such individuals “throughout the completion of applicable proceedings and not just until the moment those proceedings begin”); *Thuraissigiam*, 591 U.S.

³ *But see Gomes*, 2025 WL 1869299 at *7 (concluding that “the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States”).

at 111 (“Whether an applicant who raises an asylum claim receives full or only expedited review, the applicant is not entitled to immediate release.”).

Regardless, Abarca-Jovel is entitled to seek custody redetermination in the Immigration Court, which amounts to an administrative remedy that Abarca-Jovel has not exhausted. And Abarca-Jovel’s failure to exhaust provides another basis to dismiss the petition. “Generally speaking, a plaintiff’s failure to exhaust her administrative remedies precludes her from obtaining federal review of claims that would have properly been raised before the agency in the first instance.” *Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021). While there is no statutory mandate to exhaust a claim for release in Immigration Court before presenting such claim to the district court, common-law exhaustion “allows an agency the first opportunity to apply its expertise and obviates the need for judicial review in cases in which the agency provides appropriate redress.” *Id.* at 256 (cleaned up) (quoting *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 175–76 (1st Cir. 2016)). Here, Abarca-Jovel can seek release from detention through the Immigration Court and appeal any adverse decision to the BIA, all of which weighs in favor of dismissal for failure to exhaust.⁴

B. Abarca-Jovel’s Detention is Constitutional Because Applicants for Admission Have Limited Due Process Rights

Abarca-Jovel’s claim that his detention violates the Fifth Amendment’s due process clause is without merit because the Supreme Court has held that applicants for admission are entitled only to the protections set forth by statute and that “the Due Process Clause provides nothing more” *Thuraissigiam*, 591 U.S. at 140; see Pet. ¶ 16.

⁴ But see *Gomes*, 2025 WL 1869299 at *4–5.

Applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Shaughnessy v. U.S. ex. rel. Mezei*, 345 U.S. 206, 212 (1953) (citation omitted). In *Mezei*, for example, the Supreme Court held that a returning lawful permanent resident’s detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Id.* at 207, 215. And even though he had resided in the United States previously, he had since been “permanently excluded from the United States on security grounds.” *Id.* at 207. The Supreme Court held that Mr. Mezei’s detention did not “deprive[] him of any statutory or constitutional right.” *Id.* at 215. Instead, the Court reiterated that “the power to expel or exclude aliens” is a “fundamental sovereign attribute exercised by the Government’s political departments” that is “largely immune from judicial control.” *Id.* at 210. The Court recognized that “once passed through our gates, even illegally,” aliens “may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.” *Id.* at 212. But “an alien on the threshold of initial entry stands on a different footing” than an alien who has effected an entry into the United States. *Id.*

The Supreme Court reaffirmed “[its] century-old rule regarding the due process rights of an alien seeking initial entry” in *Thuraissigiam*, explaining that an individual who illegally crosses the border—like Abarca-Jovel—is an applicant for admission and “has only those rights regarding admission that Congress has provided by statute.” 591 U.S. at 139–40. “When an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country” *Id.* at 139. Moreover, “aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending

removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Id.* (quoting *Mezei*, 345 U.S. at 215). The Court held that this same “threshold” rule applies to individuals, like Abarca-Jovel, who are apprehended after trying “to enter the country illegally” since by statute, such individuals are also defined as applicants for admission. *See id.* at 139–40. Treating such an individual in a more favorable manner than an individual arriving at a port of entry would “create a perverse incentive to enter at an unlawful rather than a lawful location.” *Id.* at 140.

The First Circuit also has held that detention of an individual seeking admission to the United States did not violate due process. *Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987). In that case, the First Circuit explained that “the detention of the appellants [was] entirely incident to their attempted entry into the United States and their apparent failure to meet the criteria for admission—and so, entirely within the powers expressly conferred by Congress.” *Id.* The appellants were detained pursuant to 8 U.S.C. § 1225(b) and the Court found no due process violation in the denial of their parole applications “pending the ultimate (seasonable) resolution of the exclusion/asylum proceedings” as there was “no suggestion of unwarranted governmental footdragging in these cases” and because “prompt attention appears to have been paid to the administrative aspects of exclusion and asylum.” *Id.*

District courts around the country routinely find no due process violation in the detention of individuals subject to 8 U.S.C. § 1225(b). For example, in *Poonjani v. Shanahan*, the court held that *Mezei* “is directly on point and controls this case” and that “because the immigration statutes at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here.” 319 F. Supp. 3d 644, 647–49 (S.D.N.Y. 2018) (citing *Mezei*, 345 U.S. at 212); *see also, e.g., Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 219 (S.D.N.Y. 2020)

(applying *Mezei* to hold that an individual’s “detention [did] not violate due process because Congress has authorized mandatory detention for immigrants in [his] circumstances and that is sufficient to satisfy due process”); *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212 (D.N.M. 2020) (“*Mezei* and its progeny do not hold that [p]etitioner has no due-process rights; rather, the applicable statutory process shapes her procedural due process rights. Because [p]etitioner has no statutory right to release or a bond hearing . . . she has no due-process right to the relief requested.”); *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 694 (E.D. Va. 2020) (declining to “ignore binding, Supreme Court precedent” to award an applicant for admission a bond hearing since § 1225(b) does not provide for such hearing). Other courts have held similarly, especially after the Supreme Court in *Thuraissigiam* reaffirmed its rule regarding the due process rights of applicants for admission. *See, e.g., Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676 (S.D. Tex. 2021) (“When a noncitizen attempts to unlawfully cross the border as [p]etitioner did, his constitutional right to due process does not extend beyond the rights provided by statute.”).

To be sure, some district courts have concluded that further analysis is warranted to determine if an applicant for admission is entitled to a bond hearing under the Constitution once § 1225’s mandatory detention becomes “unreasonably prolonged.” *See, e.g., Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018) (holding that arriving aliens “have a due process right to an individualized bond consideration once it is determined that the duration of their detention has become unreasonable” (citation omitted)). Here, however, ICE detained Abarca-Jovel only recently. In short, therefore, Abarca-Jovel’s detention is authorized by 8 U.S.C. § 1225(b) and does not violate the Constitution. *Cf. Demore v. Kim*, 538 U.S. 510, 523 (2003) (“[The] Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.”).

In any event, Abarca-Jovel is entitled to ask ICE for discretionary parole from custody. Parole provides another means of due process and should be exhausted before asserting a due process claim in this Court. *See Traore v. Decker*, No. 19-cv-4612, 2019 WL 3890227, at *4 (S.D.N.Y. Aug. 19, 2019) (explaining that “by failing to file an application for or even request[ing] parole, [p]etitioner has failed to exhaust his administrative remedies.”); *Alexandre v. Decker*, No. 17-cv-5706, 2019 WL 1407353, at *5 (S.D.N.Y. Mar. 28, 2019) (concluding that “the parole procedure, as currently enforced, satisfies due process for ‘arriving aliens’ because (1) they are differently situated than individuals within our borders, and (2) the period of detention during such a proceeding is not indefinite—it will end upon the conclusion of the removal proceeding”).

IV. CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Dated: July 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served by means of the Court's Electronic Case Filing system on July 30, 2025, and will be served by FedEx on July 31, 2025, to *pro se* Petitioner at:

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