UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

FLAVIO BLADAMIR CHOGLLO CHAFLA, Petitioner v. RODNEY S. SCOTT, et al., Respondents	No. 2:25-cv-00437-SDN
LUIS GERMAN LEMA TEMAY, Petitioner v. RODNEY S. SCOTT, et al., Respondents	No. 2:25-cv-00438-SDN
VICTOR MANUEL TENESACA LEMA, Petitioner v. RODNEY S. SCOTT, et al., Respondents	No. 2:25-cv-00439-SDN

RETURN AND RESPONSE TO ORDERS TO SHOW CAUSE IN OPPOSITION TO PETITIONS FOR WRITS OF HABEAS CORPUS

The Government, by and through undersigned counsel, opposes the Amended Verified Petitions for Writs of Habeas Corpus filed under 28 U.S.C. § 2241 by petitioners Flavio Bladimir Choglo Chafla (Dkt. #7, Sept. 2, 2025 (the "Choglo Chafla Petition" or "Choglo Chafla Pet.")), Luis German Lema Tamay (Dkt. #9, Sept. 3, 2025 (the "Lema Tamay Petition" or "Lema Tamay Pet.")), and Victor Manuel Tenesaca Lema (Dkt. #9,

Sept. 3, 2025 (the "Tenesaca Lema" or "Tenesaca Lema Pet.")) (collectively, the "Petitioners" and "Petitions"). U.S. Customs and Border Protection ("CBP") personnel in Maine initiated the arrests and detention through U.S. Border Patrol ("USBP"). Petitioners were subsequently transported from Maine to the Plymouth County Correctional Facility in Massachusetts and transferred to U.S. Immigration and Customs Enforcement ("ICE") custody, where all remain. ICE submits that the true cause of Petitioners' detention is pursuant to 8 U.S.C. § 1225(b)(2). 28 U.S.C. § 2243.

I. Introduction

To warrant a grant of the writ of habeas corpus, Petitioners bear the burden of proving by a preponderance of the evidence that their custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3); *see also Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009); *Farrell v. Lanagan*, 166 F.2d 845, 847 (1st Cir. 1948). Petitioners cannot meet this burden. All are in ICE Enforcement and Removal Operations ("ERO") custody in Massachusetts. CBP arrested and detained Petitioners initially, before transferring them to the custody of ICE. ICE maintains mandatory detention authority to hold Petitioners without bond pursuant to 8 U.S.C. § 1225(b)(2). Even were this Court to alternatively conclude that Petitioners are instead detained pursuant to the broad civil arrest and detention authority provided under 8 U.S.C. § 1226(a), Petitioners could nonetheless avail themselves of the various due process protections provided under that provision. Thus, their detention does not violate the Due Process Clause of the Fifth Amendment.

The Government stipulates and agrees that 8 U.S.C. § 1225(b)(1) "expedited removal" does not apply to Petitioners.

II. Background

A. Facts Alleged by Petitioners

Petitioners' habeas applications under 28 U.S.C. § 2241 arise from their earlier arrests on August 23, 2025, and initial detention in CBP custody. *See* Tenesaca Lema Pet. ¶ 4; *see also* Ex. 1, Declaration of Derek D. Wilcox ("Wilcox Decl.") ¶¶ 5, 10 & Ex. 2, Declaration of Ysean A. Ali ("Ali Decl.") ¶ 5.[1] Petitioners, all Ecuadorian citizens, recently resided in close proximity to one another in South Portland. Chogllo Chafla Pet. ¶ 1; Lema Tamay Pet. ¶ 1; Tenesaca Lema Pet. ¶ 1. No legal immigration status is alleged in the Petitions. To the contrary, none of the Petitioners are legally present in the United States. Wilcox Decl. ¶ 7; Ali Decl. ¶ 5. Yet all have been continuously present in the United States for more than two years. Chogllo Chafla Pet. ¶ 3 ("entered the United States in February of 2019"); Lema Tamay Pet. ¶ 2 ("entered the United States in April of 2019"); Tenesaca Lema Pet. ¶ 2 ("entered the United States in March of 2021"). Despite admittedly residing in the United States for years, no Petitioner alleges that he entered via any particular manner of inspection or admission by an immigration officer.

Petitioners allege—incorrectly—that, "[b]ecause Respondents have unlawfully detained [them] under 8 U.S.C. § 1225," each "will be unlawfully denied all required process in the Immigration Court, all potential appeals from that process, and access to certain forms of relief from removal that would be potentially available in the

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[1] Only the Tenesaca Lema Petition includes allegations concerning the initial arrest. The Chogllo Chafla and Lema Temay Petitions are silent on the issue.

The Federal Rules of Civil Procedure apply to § 2241 proceedings. *See* FED. R. CIV. P. 81(a)(4); FED. R. CIV. P. 12(b)(6). The Government takes as true all well-pleaded factual allegations, *see Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), but submits that Petitioner's "threadbare or speculative" allegations should be disregarded, *see Pruell v. Caritas Christi*, 678 F.3d 10, 13 (1st Cir. 2012). The provisions of 28 U.S.C §§ 2246-2247 further permit affidavits and documentary evidence to be submitted.

Immigration Court." Chogllo Chafla Pet. ¶ 7; Lema Tamay Pet. ¶ 7; Tenesaca Lema Pet. ¶ 9. Although now resolved, Petitioners also challenged their planned transport to Texas for the duration of the related removal proceedings. Chogllo Chafla Pet. ¶ 8; Lema Tamay Pet. ¶ 8; Tenesaca Lema Pet. ¶ 10. Petitioners further feared that their transportation to Texas would deprive them of the right to a bond hearing in which the government bore the burden of proof, however, this concern is now moot, as well. Chogllo Chafla Pet. ¶ 9; Lema Tamay Pet. ¶ 9; Tenesaca Lema Pet. ¶ 11.

Petitioner Lema Temay is the father of a young son who was born in the United States. *See* Lema Temay Pet. ¶ 3; *see also id.* at ##9-1 (Maine birth certificate) & 9-2 (U.S. Passport). Petitioner Tenesaca Lema is the father of a young daughter who was born in the United States. *See* Tenesaca Lema Pet. ¶ 3; *see also id.* at ##9-1 (New York birth certificate) & 9-2 (U.S. Passport). Petitioner Tenesaca Lema was subject to removal proceedings commenced by the U.S. Department of Homeland Security ("DHS") against him on June 17, 2021. Tenesaca Lema Pet. ¶ 2. His Immigration Court case was administratively closed on February 21, 2024. *Id.*; *see also id.* at ##9-3 (Immigration Court search results).

B. Additional Facts Submitted by the Government

Petitioners' arrests and detention arise from their earlier traffic stop on August 23, 2025. On that date, Border Patrol Agent-Resident Agent ("BPA-RA") Derek D. Wilcox was contacted by the Maine State Police ("MSP") in connection with a traffic stop of a vehicle in Bowdoinham, Maine, containing a driver and four passengers. Wilcox Decl. ¶¶ 1, 5. MSP advised BPA-RA Wilcox that the vehicle occupants could not provide identification documents and were unable to communicate in the English language. *Id.* ¶ 5. As a result, MSP requested the assistance of BPA-RA Wilcox to verify the identities of

the driver and four passengers. *Id.*

BPA-RA Wilcox responded to the location of the vehicle at mile marker 40 of Interstate 295 in Bowdoinham. Wilcox Decl. ¶ 6. He approached the vehicle and in the Spanish language identified himself as a BPA, before conducting a field interview by asking each person's citizenship and immigration status. *Id.* ¶ 7. All Petitioners separately responded that they were citizens of Ecuador, and further stated that they did not have any immigration documents allowing them to be legally present in the United States. *Id.* The remaining passengers in the vehicles were also found to be in the country illegally, however, BPA-RA Wilcox was able to confirm that the driver of the vehicle was already in immigration proceedings and was released. *Id.* ¶ 8.

Of the passengers in the vehicle, only Petitioner Lema-Tamay was able to provide a government issued identification that allowed BPA-RA Wilcox to verify his identity. Wilcox Decl. ¶ 9. Although Petitioner Lema-Tamay provided a Massachusetts driver's license listing a residential address in Revere, Massachusetts, the vehicle, which was registered in his name, listed a different residential address in South Portland, Maine. *Id.* As a result, BPA-RA Wilcox was only able to verify the identity but not the residence of Petitioner Lema-Tamay at the time. *Id.* The remaining three passengers in the vehicle, including Petitioners Tenesaca-Lema and Chogllo-Chafla, had no government-issued identification documents that allowed BPA-RA Wilcox to verify their identity or their home address at the time. *Id.*

Due to the fact that BPA-RA Wilcox was unable to definitively identify three of the four passengers of the vehicle or any of the four passengers' addresses, he placed Petitioners under arrest and transported them to the Area Port of Portland for processing. Wilcox Decl. ¶ 9. BPA-RA Wilcox did so based on his belief that Petitioners

were likely to abscond before he could obtain warrants for their arrest. *Id.*; *see also* 8 U.S.C. § 1357(a)(2).

On August 28, 2025, USBP contacted ICE ERO to initiate the transfer of custody of Petitioners and to determine which ICE ERO facility had bedspace available. *See* Ali Decl. ¶ 7. On August 30, 2025, USBP contacted ICE ERO to determine whether its request for bedspace had been approved. *Id.* ¶ 8. While no bedspace was available in Maine or Massachusetts at that time, ICE ERO advised that space was available at a detention facility in Denver, Colorado. *Id.* On September 1, 2025, however, USBP declined the available bedspace in Denver because, due to logistical constraints, it was unable to timely arrange for transport of Petitioners to board that flight to Denver. *Id.* ¶ 9. Instead, USBP made arrangements to transport Petitioners via air to Los Fresnos, Texas, anticipating bedspace opening at ICE ERO's Port Isabel Detention Center located there. *Id.* The flight was scheduled to depart the morning of September 3, 2025. *Id.*

C. Procedural Developments

On September 2, 2025, this Court issued Orders enjoining Respondents from removing Petitioners from the District of Maine pending further order from the Court. *See* 2:25-cv-00437-SDN, Dkt. #10 at 5; 2:25-cv-00438-SDN, Dkt. #5 at 11-12; 2:25-cv-00439-SDN, Dkt. #5 at 2.[2] On September 4, 2025, CBP confirmed for the U.S. Attorney's Office that ICE ERO had located and approved bedspace for Petitioners at the Plymouth County Correctional Facility and would be prepared to transfer Petitioners to ICE ERO custody the following morning, September 5, 2025. Ali Decl. ¶ 11. CBP and ICE ERO consented and agreed that no further transfers would be made during the

[2] When USBP was advised of the transport restriction, Petitioners' scheduled flight was cancelled and they remained in CBP custody. Ali. Decl. ¶ 10.

pendency of these habeas proceedings; Petitioners, by and through counsel, confirmed their assent to transfer to the Plymouth County Correctional Facility on the condition that no further transfers be made during the pendency of their respective habeas proceedings. On September 5, 2025, following Respondents' submission of motions to amend, the Court ruled that Respondents were permitted to transfer Petitioners to the custody of ICE ERO in Massachusetts, however, remained barred from any further transfers during the pendency of these habeas proceedings absent an order from this Court. Petitioners' transport and transfer to ICE ERO custody at the Plymouth County Correctional Facility was completed later in the evening of September 5, 2025. Ali Decl. ¶ 11.

Petitioners Chogllo Chafla and Lema Temay have been issued Notices to Appear ("NTA") Form I-862, finding each to be "an alien present in the United States who has not been admitted or paroled." *See* Ex. 3 at 1, I-862 Notice to Appear for Chogllo Chafla; Ex. 4 at 1, I-862 Notice to Appear for Lema Temay. The NTAs charge that Petitioners Chogllo Chafla and Lema Temay are subject to removal from the United States pursuant to "212(a)(6)(A)(i) of the Immigration and Nationality Act [8 U.S.C. § 1182(a)(6)(A)(i)]," for being aliens "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." *Id.* Both are ordered to appear before an IJ in Immigration Court in Chelmsford, Massachusetts. *Id.* Notice of the NTAs was provided to Petitioners Chogllo Chafla and Lema Temay in the Spanish language. *Id.* at 2.

Petitioner Tenesaca Lema's background is distinct. As he acknowledges, DHS "commenced removal proceedings against [him] on June 17, 2021," and "[h]is Immigration Court case was administratively closed on February 21, 2024." Tenesaca

Lema Pet. ¶ 2. "Administrative closure," however, merely represents "the temporary suspension of a case" which "removes a case from the immigration court's active calendar until the case is calendared." 8 C.F.R. § 1003.18(c) ("[r]ecalendaring places a case back on the immigration court's active calendar"). The reason Petitioner Tenesaca Lema's removal proceedings were administratively closed was because, as recently represented by DHS counsel in Immigration Court, Petitioner Tenesaca Lema failed to appear for his master calendar hearing in February 2024. *See* Ex. 5, Order of Immigration Judge; Ex. 6, DHS Motion to Recalendar. DHS has accordingly moved the Immigration Court to recalendar Petitioner Tenesaca Lema's removal proceedings. *Id.*

III. Argument

A. Legal Framework for Detention

The Immigration and Nationality Act ("INA") provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory. As explained by the First Circuit, "[t]he text of the INA confers broad authority" for civil arrests. *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 19 (1st Cir. 2020). Per 8 U.S.C. § 1357(a)(2), an alien may be arrested without an administrative warrant—as occurred here with Petitioners—where there is "reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest . . . ."[3]

[3] Pursuant to regulation, where an individual is arrested without a warrant, such individual must be "examined" after the arrest to determine if there is prima facie evidence that the individual is present in the United States in violation of immigration laws and the case must be referred to an IJ for removal

1. Mandatory detention under 8 U.S.C. § 1225

Section 1225 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 "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens

proceedings and the alien provided notice of the reasons for arrest and the right to be represented in removal proceedings. *See* 8 C.F.R. § 287.3.

arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

2. Discretionary detention under 8 U.S.C. § 1226

Section 1226 more "generally governs the process of arresting and detaining . . . [noncitizens] pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section 1226(a) provides the default rule that an alien "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). As the Supreme Court has explained, this provision "creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions . . . ." *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).

Pursuant to 8 U.S.C. § 1226(a), immigration authorities can arrest an alien with an administrative warrant and then either continue detention for removal proceedings or release the alien on "bond . . . or conditional parole." *Id.* § 1226(a)(1)-(2).[4] Once arrested under § 1226(a), release can occur "provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If the immigration officer opts for continued detention, the alien can seek

[4] As mentioned, per 8 U.S.C. § 1357(a)(2), an alien may also be arrested without an administrative warrant.

review of that decision at a bond hearing before an IJ. 8 C.F.R. § 236.1(d)(1). An IJ's decision to continue detaining an alien may be appealed to the Board of Immigration Appeals ("BIA").[5] 8 C.F.R. § 236.1(d)(3).

3. The administrative removal process

Removal proceedings are initiated with the issuance of an NTA with the Immigration Court that has jurisdiction over the location of the individual. *See* 8 U.S.C. § 1229; 8 C.F.R. §§ 239.1, 1003.14. Once an NTA is filed with the Immigration Court, the IJ "shall conduct proceedings for deciding the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1). Such proceeding "shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States." *Id.* § 1229a(a)(3).

An alien can apply for any form of relief from removal for which he is eligible. *Id.* § 1229a(c)(4). If the IJ grants relief from removal and the Government does not appeal to the BIA or is unsuccessful in such appeal, then the individual obtains lawful status and is not subject to removal from the United States. If, however, the IJ orders an alien removed, such alien can appeal to the BIA and is not subject to removal until the BIA issues a decision on the appeal. *Id.* § 1229a(c)(5); 8 C.F.R. § 1241.1(a). If the BIA affirms the IJ's denial of an application for relief from removal, an alien can file a petition for review ("PFR") with the circuit court and seek a stay of removal. 8 U.S.C. § 1252(a)(5)

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[5] The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

("[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter . . . .").

B. "Expedited Removal" is Inapplicable to Petitioners

ICE submits that 8 U.S.C. § 1225 provides the detention authority applicable here, and that such detention is mandatory. Petitioners are mistaken, however, that their § 1225 detention compels "expedited removal." The two issues are distinct.

Section 1225(b)(1) provides that an immigration officer may unilaterally order that an alien be removed "without further hearing or review," subject, though, to an alien indicating either an intention to apply for asylum or a fear of persecution. Section 1225(b)(1) provides the sole basis for the "expedited removal of inadmissible arriving aliens" referenced in the title text of 8 U.S.C. § 1225. That is the result feared by Petitioners. But here, by contrast, § 1225(b)(2) applies. Section 1225(b)(2) requires that Petitioners "shall be detained for a proceeding under section 1229a of [Title 8]." Petitioner's § 1225(b)(2) detention, by its terms, thus makes 8 U.S.C. § 1229a applicable to their removal proceedings. Petitioner Tenesaca Lima, too, is ineligible for expedited removal, because he was and remains subject to the removal proceedings previously initiated.

It is this "usual removal process" under §§ 1225(b)(2) and 1229a—not 1225(b)(1) expedited removal—which applies here. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09 (2020).That is to say, Petitioners will receive all process due, "involv[ing] an evidentiary hearing before an immigration judge, and at that hearing [Petitioners] may attempt to show that [they] should not be removed." *Id.*

C. Petitioners' Detention Otherwise Comports with the Due Process Clause of the Fifth Amendment

1. Petitioners must be detained pursuant to 8 U.S.C. § 1225 pending the outcome of their removal proceedings

As noted above, ICE submits that § 1225—applicable to "applicants for admission," that is, aliens present in the United States who have not be admitted—is the specific detention authority applicable to Petitioners. Under § 1225(a), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—the provision relevant here—is the "broader" of the two. *Id.* It "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 ("[A]n 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 section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). Section 1225(b) therefore applies because Petitioners are present in the United States without being admitted, making detention mandatory.

ICE's position is supported by the recently issued BIA precedent of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). There, the BIA recently confirmed that the INA requires that all applicants for admission, even those who have entered without admission or inspection and resided in the United States for years

without lawful status, are subject to mandatory detention for the duration of their immigration proceedings. *Id.*

2. To the extent 8 U.S.C. § 1226 is applied, Petitioners would be constitutionally subject to discretionary detention and receive adequate due process

Petitioners may argue that they are detained pursuant to 8 U.S.C. § 1226, which as detailed above, also allows for the detention of aliens for the purpose of removal proceedings. ICE submits that the detention authority instead resides under 8 U.S.C. § 1225. The Government acknowledges, however, the recent caselaw from this Court and the District of Massachusetts sustaining challenges to DHS's interpretation of § 1225. *See Romero v. Hyde*, 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Rodrigues De Oliveira v. Joyce*, 2:25-cv-00291-LEW (D. Me. July 2, 2025); *but see Pena v. Hyde*, 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (finding that section 1225 "authorizes the detention of any alien who 1) is 'an applicant for admission' to the country and 2) is 'not clearly and beyond doubt entitled to be admitted.'"). ICE nonetheless submits that Petitioners here must be detained pending the outcome of their removal proceedings, as § 1225 and recent BIA decisional law requires.

Even to the extent § 1226 were found to apply, such authority provides that an alien may be detained "pending a decision on whether [he] is to be removed from the United States." *Id.* The provision "creates authority for anyone's arrest or release under § 1226—and it gives [immigration authorities] broad discretion as to both actions . . . ." *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).[6] Under § 1226,

[6] Moreover, "[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

too, Petitioners' detention would therefore be authorized by statute and regulation, with no basis for the Court to order release.

The Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Wong Wing v. U.S.*, 163 U.S. 288, 235 (1896) (holding deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character."). Here, Petitioners are detained for the limited purpose of removal proceedings. If found to be detained under § 1226, each could seek a bond hearing to contest such detention.[7] Under such a § 1226 scenario, per Supreme Court precedent, detention would not violate the Constitution. *See Wong Wing*, 163 U.S. at 235 ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.").

There is no dispute that Petitioners' detention is not indefinite; it will end upon the conclusion of the removal proceedings. As another district court in this circuit recently recognized, a brief period of detention for the purpose of removal proceedings or to effectuate removal does not violate the Constitution. *See Dambrosio v. McDonald, Jr.*, No. 25-CV-10782-FDS, 2025 WL 1070058, at *2 (D. Mass. Apr. 9, 2025) (recognizing that detention "for a period of less than three months' time . . . does not amount to an unconstitutional duration").

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[7] Notable, too, is that even if an IJ disagrees with DHS's position that Petitioner is detained under § 1225 at a bond hearing and finds jurisdiction under § 1226, the agency could invoke the automatic stay provision at 8 C.F.R. § 1003.19(i)(2).

IV. Conclusion

Petitioners are not entitled to writs of habeas corpus based on their allegations that their due process rights under the Fifth Amendment have been violated. *See Mathews v. Eldridge*, 424 U.S. 319, 333-35 (1976) (establishing three-part balancing test); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (applying *Mathews* test to determine due process protections for immigration detainees).[8] While it is true that, "once passed through our gates, even illegally," noncitizens "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law," such standards here have not been breached. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). The Government respectfully submits that the court should dispose of and dismiss these matters—without prejudice—"as law and justice require." 28 U.S.C. § 2243. To the extent the matters are not disposed of by dismissal, the Government will be prepared for and available to attend any hearings scheduled not more than five days after the filing of this return. *Id.* At such hearing, the Government may submit additional evidence and arguments bearing on Petitioner's due process claims.

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[8] The Mathews factors [to be balanced] are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Id. (quoting *Mathews*, 424 U.S. at 335).

Dated: September 12, 2025
Bangor, Maine

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

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