UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

LUIS LANDAVERDE MORAN, **Petitioner,** **v.** **PATRICIA HYDE, Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge, and TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, KRISTI NOEM, U.S. Secretary of Homeland Security, Pamela BONDI, U.S Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,** **Respondents.**	**Case No. 25-cv-362-LM-TSM**

ABBREVIATED RESPONSE TO HABEAS PETITION AND REQUEST TO PROCEED WITHOUT ADDITIONAL BRIEFING OR ARGUMENT

Petitioner Luis Landaverde Moran ("Petitioner"), asserts that he is a Citizen of El Salvador, residing in this U.S. since 2010 and detained since September 11, 2025. Petition, DN 1 ("Pet.) ¶ 15. Petitioner filed the instant Petition seeking an order for immediate release, arguing (1) he is being mandatorily detained improperly under 8 U.S.C. § 1225(b)(2) and (2) that his due process is violated pursuant to *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

The legal issues presented in this Petition for Writ of Habeas Corpus ("Petition") concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner. Specifically, Respondents submit that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2), while Petitioner claims that his detention is governed by 8 U.S.C. § 1226. While reserving all rights, including the right to appeal, Respondents submit this abbreviated

response in lieu of a formal responsive memorandum to preserve the legal issues and to conserve judicial and party resources in light of this Court's recent decisions, *Jimenez v. FCI Berlin, Warden,* --- F. Supp. 3d ----, 2025 WL 2639390 (D.N.H. Sept. 8, 2020) and *Lamidi v. FCI Berlin, Warden,* Civ. No. 25-cv-297 (D.N.H. Sept. 15, 2025) (doc. no. 14), in which the Court analyzed ICE's detention authority under 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1226.

While Respondents respectfully disagree with the Court's decision in *Jimenez* and *Lamidi*, Respondents acknowledge this Court's prior decision controls the result in this case if the Court adheres to the reasoning in that decision. Thus, in the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents hereby rely upon, and incorporate by reference, the legal arguments it presented in those prior case and supplement those arguments with the additional authority provided below. Respondents submit that the Court can decide this matter without further briefing and without oral argument. However, should the Court prefer to receive a formal opposition brief in this matter, Respondents respectfully request the opportunity to file such a brief and will do so upon the Court's request.

DISCUSSION

Respondents contend that Petitioner's detention is governed by INA § 235, 8 U.S.C. § 1225, because as an alien who entered without inspection or parole, he is an applicant for admission who is treated, for constitutional purposes, as if stopped at the border. As such, he is subject to mandatory detention.

Respondents acknowledge that this Court and others have concluded that three conditions trigger Section 1225's mandatory detention provision: an examining officer must determine that

the individual is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted to the United States. *See Jimenez*, --- F. Supp. 3d ----, 2025 WL 2639390. 1 Respondents submit that all applicants for admission are necessarily "seeking admission" to the United States. This reasoning is supported by a recent decision of the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

In *Yajure Hurtado*, after employing the canons of statutory interpretation, including analyzing the plain language of the Immigration and Nationality Act ("INA"), the context of the statute in the larger statutory scheme, and the relevant legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), the BIA held — in an situation materially similar to this case — that "aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220; *see also Alvarenga Pena v. Hyde*, Civil Action No. 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. Jul. 28, 2025) (explaining that "continued detention is therefore authorized by § 1225(b)(2)(A) and, according to that statute, such detention is mandatory, regardless of whether the alien has been placed in full or expedited removal proceedings.").

The BIA went on to reject the argument recently adopted by several sessions of this Court that an applicant for admission under Section 1225(b)(2)(A) is not "seeking admission" for

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1 Respondents note that in *Jimenez* and *Lamidi* are different to the extent the Petitioners were detained at the border and placed in expedited removal pursuant to Section 1225(b)(1) not b(2) like in this matter.

purposes of the statute: "[i]f he is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" 29 I&N Dec. at 221. In line with this reasoning, Petitioner here is seeking admission to the United States. Indeed, if Petitioner was *not* seeking admission to the United States, then surely he would agree to depart the United States.

The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus*, 25 I. & N. 734, 743 (BIA 2012). Statutory language "is known by the company it keeps." *McDonnell v. United States*, 579 U.S. 550, 569 (2016). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The words "or otherwise" here "introduce an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). ICE's determination that Section 1225(b)(2) applies because Petitioner is present in the United States without admission therefore comports with the plain language of the statute and does not violate the INA.

Petitioner also argues that his due process is violated under *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). However, even if that case were to apply in this situation, Petitioner has only been detained since September 11, 2025, and therefore such claim is incredibly premature

Additionally, Respondents note that Petitioner does not appear to have requested relief in the form of an order directing the IJ to hold a bond hearing but that is the only relief to which he is potentially entitled, even if section 1226 is the governing statute.

Finally, for the same reasons presented by Respondents in *Jimenez*, Respondents maintain Petitioner is not entitled to a bond hearing by the Court for bond pending this habeas petition.

CONCLUSION

Respondents acknowledge that the principal legal issues in this case substantially overlap with those at issue in *Jimenez* and *Lamidi*. Should the Court apply the same reasoning of those cases here, it would reach the same result as the facts of those cases are materially indistinguishable from the facts presented in this case. Accordingly, while preserving all rights, Respondents rely upon and incorporate here by reference the legal arguments they presented in *Jimenez* and *Lamidi*. and supplement their argument with the authorities discussed above. Respondents submit that further briefing and/or oral argument would not substantively benefit the Court or the parties, nor

would they be a good use of judicial or party resources. Therefore, the Court can decide this matter without delay.

Respondents thank the Court for its consideration of this abbreviated submission and respectfully request that the Court deny this Petition.

Respectfully submitted,

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