UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JESUS CASTILLO GUDIEL,
Petitioner.

v.

PATRICIA HYDE, Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge, TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, and KRISTI NOEM, U.S. Secretary of Homeland Security,
Respondents.

Civil Action No: 1:25-cv-0490-MSM-PAS

**THE UNITED STATES' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS**

The United States, on behalf of Respondents Patricia Hyde, Michael Krol, Todd Lyons, and Kristi Noem, in their official capacities, respectfully submits its Opposition to Petitioner's Petition for Writ of Habeas Corpus ("Petition," ECF 1).

Petitioner claims that his detention is unlawful in that it violates his Fifth Amendment right to due process and seeks a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately. ECF 1, Prayer for Relief. In fact, Petitioner's detention is lawful under 8 U.S.C. § 1225(b) because he is an applicant for admission who is not "clearly and beyond a doubt entitled to be admitted" to the United States. Under these circumstances, Petitioner "shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Because Petitioner's detention is fully supported by statute, regulation, and the Constitution, the Petition should be denied.

## BACKGROUND

### A. Petitioner's Immigration History

Petitioner is a native and citizen of Guatemala. Petitioner claims he entered the United States in or about October 17, 1996, without inspection of an immigration officer at a place other than a port of entry, or a designated area by the Attorney General. He was encountered by Department of Homeland Security ("DHS") officials on August 14, 2025, and detained.[1] On September 4, 2025, bond was granted in the amount of $8,000.[2] DHS filed an E-43 automatic stay of that decision with the Board of Immigration Appeal ("BIA").

### B. The applicability of 8 U.S.C. § 1225.

In exercising its plenary power over immigration, Congress delegated to the Secretary of Homeland Security the responsibility for "[s]ecuring the borders," enforcing the immigration laws, and "control[ling] and guard[ing] the boundaries and borders of the United States against the illegal entry of aliens." 6 U.S.C. §§ 202(2) & (3); 8 U.S.C. § 1103(a)(5). Pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has

[1] ICE detained Petitioner under 8 U.S.C. § 1225. On October 31, 2025, petitioner was ordered removed by an immigration judge. Petitioner has reserved his right to appeal and has 30 days to perfect the appeal. Should the appeal period expire, without a perfected appeal, Petitioner would be subject to detention under 8 U.S.C. § 1231. Respondents submit this fact should not be materially contested.

[2] Petitioner failed to disclose in the Petition that criminal history includes a DUI from 2009 and possession of marijuana from 2024 in Utah. This fact was provided as a part of ICE's bond submission filed on September 3, 2025, which also included its position on his ineligibility for bond. Although the Petition includes ICE's position on bond, it did not include the remainder of the evidence attached in the filing.

not been admitted is known as an "applicant for admission." Per Section 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. The term "admission" is defined by the Immigration and Nationality Act ("INA") to mean "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); *See also* 8 C.F.R. § 1235.1 (setting forth inspection procedures). Section 1225(b)(1) provides for the inspection of aliens arriving in the United States for admission, whereas Section 1225(b)(2)(A) provides for the inspection of all "other" applicants for admission. Notably, Section 1225(b)(2)(A) states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 240."[3] 8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See also Matter of Yajure Hurtado*, 29 I&N Dec. 216, page 224 (BIA 2025) ("The legislative history confirms that, under a plain language reading of section 235(b)(1) and (2) of the INA, 8 U.S.C. § 1225(b)(1), (2), Immigration Judges do not have authority to hold a bond hearing for arriving aliens and applicants for admission."). Such is the case here.

## ARGUMENT

### A. Petitioner's Habeas Petition is Premature.

To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his custody is in violation of 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

[3] Section 240 of the INA, codified at 8 U.S.C. § 1229a, refers to the full removal proceedings that Petitioner is currently subject to before the Immigration Court.

of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner."); *Farrell v. Lanagan,* 166 F.2d 845, 847 (1st Cir. 1948) ("The burden of proof is on the petitioner to establish denial of his constitutional rights. The court must be convinced by a preponderance of evidence.").

**B. Petitioner Is Properly Detained Under 8 U.S.C. § 1225(b)(2)(A).**

Petitioner is subject to 8 U.S.C. § 1225. Specifically, his detention is proper under 8 U.S.C. § 1225(b)(2)(A), which mandates that he remain in detention during the pendency of his removal proceedings. Pursuant to 8 U.S.C. §1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240." 8 U.S.C. § 1225(b)(2)(A). In the present case, Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement.

To start, Petitioner is an "applicant for admission" to the United States. As described above, an "applicant for admission" is an alien *present in* the United States who has not been admitted. 8 U.S.C. § 1225(a)(1) (emphasis added). Next, because Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Indeed, Petitioner cannot demonstrate that he is "clearly and beyond a doubt entitled to be admitted" because, as he is present in the United States without being admitted or paroled, he is inadmissible per 8 U.S.C. § 1182(a)(6). Thus, the Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained.

The plain language of the statute makes clear that applicants for admission fall into

one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to "aliens *arriving* in the United States and certain other aliens who have not been admitted or paroled." Section 1225(b)(2), on the other hand, is broader and applies to the "other aliens" who are applicants for admission.

In short, while Section 1225(b)(1) applies to aliens "arriving" in the United States, Section 1225(b)(2) applies to all "other" aliens who are applicants for admission—like Petitioner. Simply put, an alien does not lose his "applicant for admission" status simply because he was present at a time other than his immediate arrival in the United States. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025) (holding 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, regardless of whether they have lived in the United States for years).

Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 ("[Section] 1225(b)(2) ... mandates[s] detention of aliens *throughout the completion of applicable proceedings* and not just until the moment those proceedings begin." (emphasis added)).

Accordingly, because all "other" applicants for admission—like Petitioner—who do not fall under Section 1225(b)(1) and have not demonstrated "clearly and beyond a doubt" that they are entitled to be admitted to United States under Section 1225(b)(2) "shall" be detained, Petitioner's detention is lawful.

**C. The Stay of the Immigration Judge's Bond Order Does Not Violate Due Process.**[4]

To the extent Petitioner challenges on due process grounds the BIA's allowance of ICE's motion to stay the Immigration Judge's bond order, this claim fails. As explained by the district court in *El-Dessouki,* no procedural due process violation occurs when "the BIA reviewed the particular circumstances of petitioner's case and the merits of ICE's request and determined that an emergency stay [was] warranted under the circumstances." 2006 WL 2727191, at *3. Stated further, "disagreement with the BIA's expeditious resolution of ICE's motion in ICE's favor does not rise to a level of a violation of his right to procedural due process." *Id.* The court also found no substantive due process violation, explaining that petitioner did not face indefinite detention, that the government had a strong "interest in preventing flight of aliens likely to be ordered removable and in protecting the community" and therefore "petitioner's temporary detention pursuant to 8 C.F.R. § 1003.19(i)(1) pending ICE's appeal to the BIA does not violate his right to substantive due process." *Id.*

Other courts have similarly found no due process violation in detention after the BIA allows a stay of an Immigration Judge's bond order. *See e.g., Hussain,* 492 F. Supp. 2d at 1032 ("It is difficult to see how DHS's exercise of its responsibilities within that system operates as a denial of due process."); *Zavala v. Ridge,* 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004) ("The emergency stay provision found in 8 C.F.R. § 1003.19(i)(1) presents an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner's

[4] The government is aware that some Federal District Courts have ruled the usage of the automatic stay to be a due process violation. See 1:25-cv-11981-JEK Sampiao v. Hyde et al (District of Massachusetts).

liberty interest."); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446, 451 (D. Conn. 2003) (same).

Courts have recognized that due process is not violated by the BIA's grant of a motion to stay because an alien can file a motion in opposition to the stay request or can file a motion for reconsideration of the stay if granted. *See e.g., A. v. Garland, No. 23-CV-1696 (PJS/TNL), 2023 WL 8469655, at *1-2 (D. Minn. Dec. 7, 2023)* (finding no due process violation in the BIA's grant of a motion to stay release as petitioner "was able to make his arguments in his (pending) motion for reconsideration."); *Organista v. Sessions*, No. CV-18-00285-PHX-GMS (MHB), 2018 WL 776241, at *3 (D. Ariz. Feb. 8, 2018) (finding that petitioner who did not receive opportunity to contest discretionary stay of release had not shown likelihood of success on claim that he had not received sufficient opportunity to be heard, given availability of reconsideration motion). For these reasons, Petitioner's claim that a stay of the Immigration Judge's bond order violates the Fifth Amendment fails.

## CONCLUSION

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

Respectfully submitted,

UNITED STATES OF AMERICA,
By its Attorneys,

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**CERTIFICATION OF SERVICE**

I hereby certify that on November 4, 2025, I electronically filed the foregoing response, and it is available for viewing and downloading from the Court's CM/ECF system, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system.

/s/ Peter I. Roklan