

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

AGUSTIN PASTRANA-SAIGADO,

Petitioner,

vs.

No. 2:25-cv-00950-MLG-LF

TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; PAMELA BONDI, Attorney General of the United States; MARY DE ANDA-YBARRA, Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement; and DORA CASTRO, Warden, Otero County Processing Center, all named in their official capacities.

Respondents.

RESPONSE TO PETITIONER’S WRIT OF HABEAS CORPUS (DOC. 1)

INTRODUCTION

Respondents, Immigration and Customs Enforcement (“ICE”), the Department of Homeland Security (“DHS”), and Pamela Bondi, Attorney General of the United States (collectively “Respondents”),¹ hereby submit this Response to Petitioner’s Writ of Habeas Corpus (Doc. 1).

Petitioner is a noncitizen of the United States and national of Mexico who asks this Court to order Respondents to provide a bond review hearing. *See* Doc. 1 at 10. Petitioner is currently detained pending proceedings in the U.S. Immigration Court scheduled for October 25, 2025. Petitioner’s sole allegation is a Fifth Amendment due process violation resulting from detention

¹ The undersigned does not represent Dora Castro, Warden, Otero County Processing Center, as that is a private facility, and Warden Castro is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to Warden Castro, as she is detaining the Petitioner at the request of the United States.

without bond under §1225. *See generally* 8 U.S.C. § 1225. Petitioner argues his appropriate classification falls under §1226, which would entitle Petitioner to a bond review proceeding. *See generally* 8 U.S.C. § 1226.

Respondents request the Court deny or dismiss the petition (Doc. 1) as Petitioner is appropriately classified under § 1225(b)(1) per BIA guidance in *Hurtado*. *See* 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Additionally, should the Court find §1226 applies to Petitioner, there is no legal basis for relief beyond the grant of a bond review. *See* Doc. 1 at 10.

FACTUAL BACKGROUND²

Petitioner entered the United States unlawfully, without admission or parole, on or about September 10, 2000. On June 23, 2025, Petitioner was encountered by ICE officers and admitted to being a citizen and national of Mexico, who had entered the country illegally and was currently unlawfully present in the United States. Petitioner was subsequently taken into custody and removal proceedings were initiated. On October 15, 2025, Petitioner had a bond redetermination hearing before the U.S. Immigration Court. The immigration judge (“IJ”) denied bond after finding that §1225 applied. *See* Doc. 16, Exhibit B.³ Petitioner is currently scheduled for a merits hearing before the U.S. Immigration Court on October 25, 2025.

LEGAL BACKGROUND

I. Detention of “Arriving Aliens” Under §1225 and Aliens Under §1226

² Respondents submit this section upon information and belief and under expedited process. To the extent any of the factual narrative be considered dispositive or seriously in dispute, Respondents respectfully request the opportunity to supplement this briefing with a declaration or additional documents.

³ Respondents have not been served an “as filed” copy, but believe this citation to be correct. Respondents intend to reference the IJ order dated October 15, 2025, filed by Petitioner as an exhibit to the request for Temporary Restraining Order.

Generally, when a noncitizen arrives in the United States they are “an applicant for admission,” who must “be inspected by immigration officers” to ensure that they may be admitted into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as “arriving aliens” and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; *See also* 8 U.S.C. § 1225(b)(1)(A)(i). Aliens who enter illegally, but are detained shortly after unlawful entry, cannot be said to have “effected an entry” and remain, similar to an alien detained at a port of entry, “on the threshold” and subject to §1225. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

These arriving aliens can be subject to an expeditious process to remove them from the United States. 8 U.S.C. § 1225(b)(1). Under this process, known as expedited removal, arriving aliens who entered illegally, 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). Even if an arriving alien is not determined to be inadmissible pursuant to §1225(b)(1), they may still be subject to mandatory detention. *See e.g.*, 8 U.S.C. § 1225(b)(2)(A). An applicant who is not determined to be inadmissible nonetheless “shall be detained for a [removal] proceeding” unless the examining immigration officer determines that the noncitizen is “clearly and beyond a doubt entitled to be admitted.” *Id.*

Traditionally when a noncitizen is charged as removable *from within the United States*, §1226 has “generally govern[ed] the process of arresting and detaining...aliens pending their removal.” 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under §1226(a), “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). By contrast, §1226(c) provides that the government

“shall” take into custody any alien who has committed any one in a set of articulated crimes. 8 U.S.C. § 1226(c)(1).

II. *Matter of Yajure Hurtado*

On September 5, 2025, the Board of Immigration Appeals (“BIA”) published a precedential opinion, *Matter of Yajure Hurtado*, clarifying that aliens apprehended in the interior of the United States, even after prolonged presence in the United States, are considered to be “arriving aliens” and are properly detained under 8 U.S.C. § 1225(b)(2). 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure Hurtado*, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because 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.” *Id.* at 220.

The BIA concluded that arriving aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the argument that “because [petitioner] has been residing in the interior of the United States for almost 3 years...he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* Specifically, if the alien “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?” *Id.* (parentheticals in original). The BIA further rejected arguments that: (1) the

immigration judge’s interpretation of § 1225(b)(2)(A) would render superfluous § 1226(c)(1)(A); (2) the relevant legislative history of the INA supports an interpretation that would permit bond hearings for individuals present in the United States without admission; (3) DHS’s “longstanding practice” indicates that aliens present without admission are entitled to bond hearings; and (4) *Matter of Q. Li*, 29 I. & N. 66 (BIA 2025), supports a conclusion that aliens detained with a warrant of arrest are detained under § 1226(a). *Id.* at 221–27.

III. §1225 and §1226 Due Process Considerations

The difference between these noncitizens is significant for due process purposes. *Thuraissigiam*, 591 U.S. at 106–07, 138–40; *See also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the “unique constitutional status of arriving aliens with no ties to the United States”). For example, the Supreme Court considered whether §1225(b) imposes a time limit on the length of detention and whether such noncitizens detained under this authority have a statutory right to a bond hearing. *Jennings*, at 296–303 (The Supreme Court held that “nothing in the statutory text [of §1225(b)] imposes any limit on the length of detention” nor “says anything whatsoever about bond hearings.”) The sole means of release for noncitizens detained pursuant to §1225(b) is temporary parole *at the discretion of DHS* under 8 U.S.C. § 1182(d)(5). *Id.* at 300.

For “more than a century” the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Thuraissigiam*, 591 U.S. at 131; *See also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (“the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative”); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (an alien on the threshold of

initial entry stands on a different footing: “Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned”).

Thuraissigiam dealt with a habeas action involving a noncitizen detained under §1225(b) who raised Fifth Amendment challenges. *Thuraissigiam*, 591 U.S. at 106–07. The Supreme Court reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other than those expressly provided by statute. *Id.* at 107 (a noncitizen seeking initial entry “has no entitlement to procedural rights other than those afforded by statute”). Accordingly, Congress may authorize detention, even for prolonged periods of time, and such detention does not deprive §1225(b) aliens “of any statutory or constitutional right.” *Id.* An alien who enters the country illegally is treated as an “applicant for admission” and has only those rights that Congress has provided by statute. *Thuraissigiam*, 591 U.S. at 140. The due process clause requires nothing more. *Id.*

IV. Burden of Proof Under §1225 and §1226.

In an immigration context, under both §1225 and §1226, it is generally the petitioner’s burden to show that he or she is eligible for release or bond. *See e.g.*, 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien . . . 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.”); *See also Matter of Adeniji*, 22 I. & N. Dec. 1102, 1102 (BIA 1999). This principle is well established in immigration law, even in cases where additional due process and individualized procedures are applicable. *See, e.g., Demore v. Kim*, 538 U.S. 510, 532, (2003) (Justice Kennedy concurring and citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“the permissibility of continued detention pending deportation proceedings turns solely upon the alien’s ability to satisfy the ordinary bond procedures – namely, whether if released the alien

would pose a risk of flight or danger to the community)) (emphasis added).

Similarly, it is also the petitioner’s burden to show entitlement to relief from removal on the merits. *See, e.g.*, 8 U.S.C. § 1229a(c)(2) (outlining the burden of proof in removal proceedings: “the alien has the burden of establishing . . . that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible . . . or by clear and convincing evidence that the alien is lawfully present); *see also* 8 U.S.C. § 1229a(c)(4)(B) (when considering applications for relief from removal “the immigration judge will determine whether or not . . . the applicant has satisfied the applicant’s burden of proof”); *Matter of Gabriel Almanza-Arenas*, 24 I. & N. Dec. 771, 774-776 (BIA 2009) (in determination of whether the immigration judge improperly applied the REAL ID Act to petitioner’s case, the BIA found that “respondent is seeking discretionary relief from removal, so he bears the burden of proof”).

ARGUMENT

I. Petitioner is Appropriately Classified under § 1225 per *Hurtado*

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 1229a.” 8 U.S.C. § 1225(b)(2)(A). Petitioner, under the *Hurtado* view, falls squarely within the ambit of § 1225(b)(2)(A)’s mandatory detention requirement. Petitioner would be an “applicant for admission” to the United States, i.e. an alien present in the United States who has not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress’s broad language here is intentional, an undocumented alien is to be “deemed for purposes of this chapter an applicant for admission.” *Id.* Petitioner is “deemed” an applicant for admission based on 1) the undocumented status and 2) that Petitioner has not demonstrated to an examining immigration officer that he is “clearly and

beyond a doubt entitled to be admitted,” making detention mandatory under §1225. *See* 8 U.S.C. § 1225(b)(2)(A).

At least three courts have adopted this general interpretation in recent months. *See Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (Court finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an “applicant for admission” upon the straightforward application of the statute); *Vargas Lopez v. Trump* No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Court finding that § 1225(b) applied despite alien’s presence in the country for over ten years, noting “overlap” between §1225 and §1226 authorities); *Chavez v. Noem* No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Court finding the *Hurtado* decision supported by the plain language of the statute, and that such an interpretation does not render § 1226, nor additions thereto by the Laken Riley Act, superfluous). Respondents are aware that a number of other courts have reached different results on this emergent issue. *See e.g.* Doc. 1 at 19.

As Petitioner is properly classified under §1225 per the BIA guidance in *Hurtado*, there can be no Fifth Amendment violation as Petitioner would have only those rights that Congress has specifically provided by statute. *Thuraissigiam*, 591 U.S. at 140; *Jennings*, at 296–303; *See also* 8 U.S.C. § 1182(d)(5). The Court should therefore deny or dismiss the petition (Doc. 1). Should the Court disagree, however, the only appropriate remedy would be a bond review under §1226.

II. Should §1226 Apply, Bond Review is Only Appropriate Remedy

Petitioner, in addition to his request for bond review under §1226, cites additional forms of relief including prohibiting removal, transfer to a facility in California and any other relief the Court deems appropriate. *See* Doc. 1 at 10. Even should the Court agree with Petitioner’s primary contention that classification under §1226, rather than §1225, is appropriate, Petitioner has provided no legal support for these additional forms of relief. The appropriate relief, if any, would

be to return Petitioner to his requested status: classification under §1226 and eligibility for a bond review in the normal course. Petitioner does not cite a single case which entitles him to further relief. *Id.*

CONCLUSION

The Court should deny or dismiss Petitioner’s Writ of Habeas Corpus (Doc. 1) as Petitioner is appropriately classified under §1225 pursuant to BIA guidance in *Hurtado*; and Petitioner’s due process rights as a §1225 “arriving alien” have been met as a matter of law. For these reasons the Court should deny or dismiss the petition (Doc. 1). Should the Court agree with Petitioner that §1226 applies, the only appropriate remedy is to remand the matter for a §1226 bond proceeding before the U.S. Immigration Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 22, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey
RYAN M. POSEY
Assistant United States Attorney