

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

ERNESTO GONZALEZ RAMOS,

Petitioner,

vs.

Case 1:25-cv-975-MLG-KRS

GEORGE DEDOS, in his official capacity as
Warden of Cibola County Correctional
Center;

MARY DE ANDA-YBARRA, in her official
capacity as Field Office Director of the ICE
ERO;

KRISTI NOEM, in her official capacity as
Secretary of the U.S. DHS; and

PAM BONDI, in her official capacity as
Attorney General of the United States,

Respondents

RESPONSE TO AMENDMENT TO PETITION FOR WRIT OF HABEAS CORPUS

MARY DE ANDA-YBARRA, KRISTI NOEM, and PAM BONDI, in their official capacities and by and through their undersigned attorneys, hereby respond to Petitioner ERNESTO GONZALEZ RAMOS' Amendment to Petition for Writ of Habeas Corpus [Doc. 21].

STATEMENT OF THE CASE

Petitioner, a citizen of Mexico, was found in the United States on or about June 25, 2025. Petitioner had not been inspected, admitted, or paroled by an immigration officer, and he was in the United States unlawfully. Petitioner was therefore apprehended and detained by United States immigration authorities.

The United States Department of Homeland Security (DHS) initiated removal proceedings before the United States Department of Justice (DOJ) Executive Office for

Immigration Review (EOIR). *See generally* 18 U.S.C. §§ 1229 and 1229a. The Notice to Appear specified that Petitioner is subject to removal from the United States pursuant to § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) because he is an alien 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. *See* 8 U.S.C. § 1182(a)(6)(A)(i) (codifying § 212(a)(6)(A)(i) of the Immigration and Nationality Act).

On or about September 24, 2025, Petitioner filed an application for asylum with EOIR. EOIR has not yet adjudicated Petitioner's claim for asylum and removal, and the removal proceedings are ongoing. Petitioner has been temporarily detained while the removal proceedings are continuing and his application for asylum is considered.

On or about October 22, 2025, Petitioner served a Petition for Writ of Habeas Corpus on the federal Respondents. In his Petition, Petitioner asserted:

- [1] that his detention was in violation of 8 U.S.C. § 1231(a)(6);
- [2] that his arrest was in violation of the Fourth Amendment to the Constitution; and
- [3] that his detention was in violation of the Fifth Amendment to the Constitution.

Petitioner requested, *inter alia*, that the Court issue a writ of habeas corpus directing the Respondents to immediately release him from custody. On Monday, October 27, 2025, the United States Attorney filed a Response to Petition for Habeas Corpus, which was thereafter amended to clarify that the United States Attorney represented only the federal Respondents MARY DE ANDA-YBARRA, KRISTI NOEM, and PAM BONDI. In that document the federal Respondents explained that the Petition was untenable. More specifically:

- [1] 8 U.S.C. § 1231(a)(6) is not applicable because Petitioner's immigration removal proceedings are ongoing;

[2] An alleged violation of the Fourth Amendment will not sustain a habeas corpus petition as a matter of law; and

[3] The detention of an alien during removal proceedings does not violate the Due Process Clause of the Fifth Amendment.

Petitioner did not reply to the response.

When called upon to answer the Respondents arguments during the hearing in this matter on November 7, 2025, Petitioner's counsel instead proposed to withdraw the Petition. The Court did not grant that informal motion but instead afforded Petitioner an opportunity to file an amended petition.

Instead of filing an amended petition, Petitioner has filed an Amendment to his Petition for Writ of Habeas Corpus. Procedurally, the original Petition has not been supplanted or resolved and remains pending.

In addition to the claims advanced in his Petition, Petitioner additionally contends in the Amendment to the Petition that he is entitled to a bond hearing under 8 U.S.C. § 1226, and he requests that this Court order the Respondents to provide him with such a hearing. However, Petitioner has failed to acknowledge that he—an alien who has never been lawfully admitted or paroled into the United States—is being processed for removal under 8 U.S.C. § 1252, which mandates that he shall be detained during removal proceedings. Petitioner also fails to acknowledge that his detention is mandatory while immigration authorities consider his asylum claim.

ARGUMENT

I. PETITIONER’S REMOVAL PROCEEDINGS ARE GOVERNED BY 8 U.S.C. § 1225.

A. The removal of an alien present in the United States who has not been admitted is governed by 8 U.S.C. § 1225, which deems such an alien an applicant for admission for purposes of the Immigration and Nationality Act.

At the threshold, the power to admit or exclude aliens is a sovereign prerogative: “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.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). As an undocumented alien who was not lawfully admitted into the United States, Petitioner “has only those rights regarding admission that Congress has provided by statute.” *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

Over the course of our nation’s history Congress has enacted laws to govern immigration and the admission of aliens into the United States. Those laws have continuously been amended to meet ever-changing immigration issues. In 1952, Congress enacted the Immigration and Nationality Act collecting and reorganizing the immigration laws of the United States. The INA has been amended many times over the years. In 1996, as part of the Omnibus Consolidated Appropriations Act, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amending the Immigration and Nationality Act.

Before 1996, the federal immigration laws drew a distinction between aliens who presented themselves at a port of entry and aliens who successfully evaded inspection at a port of entry and were unlawfully present in the United States. Aliens who presented themselves at a port of entry were subject to summary exclusion proceedings whereas those who successfully gained clandestine entry were afforded full deportation proceedings. This dichotomy created a

perverse incentive for aliens to enter the United States unlawfully rather than to present themselves at a port of entry in accordance with the laws of the United States.

The 1996 amendments to the INA, *inter alia*, abolished the incongruous distinction drawn in earlier statutes between aliens who presented themselves at the nation’s borders and aliens who were present in the United States without lawful admission and established a statutory regime “treating persons present in the United States without authorization as not admitted” and deeming most such aliens “applicants for admission.”

TITLE III—INSPECTION, APPREHENSION, DETENTION,
ADJUDICATION, AND REMOVAL OF INADMISSIBLE AND
DEPORTABLE ALIENS

Subtitle A—Revision of Procedures for Removal of Aliens

SEC. 301. TREATING PERSONS PRESENT IN THE
UNITED STATES WITHOUT AUTHORIZATION
AS NOT ADMITTED.

(a) “ADMISSION” DEFINED.—

Paragraph (13) of section 101(a) (8 U.S.C. 1101(a))
is amended to read as follows:

...

“(13)(A) The terms ‘admission’ and ‘admitted’ mean,
with respect to an alien, the lawful entry of the alien
into the United States after inspection and
authorization by an immigration officer.

...

SEC. 302. INSPECTION OF ALIENS; EXPEDITED
REMOVAL OF INADMISSIBLE ARRIVING
ALIENS; REFERRAL FOR HEARING (REVISED
SECTION 235).

(a) IN GENERAL.—

Section 235 (8 U.S.C. 1225) is amended to read as
follows:

“INSPECTION BY IMMIGRATION OFFICERS;
EXPEDITED REMOVAL OF INADMISSIBLE
ARRIVING ALIENS; REFERRAL FOR HEARING

“SEC. 235. (a) INSPECTION.—

“(1) ALIENS TREATED AS APPLICANTS FOR ADMISSION.—An 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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this Act an applicant for admission.

Omnibus Consolidated Appropriations Act, 1997, PL 104–208, September 30, 1996, 110 Stat 3009.

Although Petitioner summarily declares that his removal is governed by 8 U.S.C. § 1226, the 1996 amendment to the INA treats an alien who in the United States without authorization as not admitted. Codified in 8 U.S.C. § 1225, the 1996 amendment deems such an alien as an applicant for admission for purposes of the INA.

An 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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). As defined in the 1996 amendment, “[t]he terms ‘admission’ and ‘admitted’ mean, with respect to an alien, 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)). Significantly, with certain enumerated exceptions, admitted aliens are generally not deemed applicants for admission and are generally beyond the ambit of § 1225.¹

¹

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien--

The removal of admitted aliens is governed by 8 U.S.C. § 1226.

Despite the unequivocal language of the statute, several courts have ruled that Congress didn't mean what it said. Notwithstanding the statute's categorical declaration that "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission," several judges have held that § 1225 is only applicable to aliens detained at the border. United States Magistrate Judge Laura Fashing recently recited several of those decisions:

Relevant to this case is thus who can be considered an "applicant for admission" or "seeking admission." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court discussed both statutory sections and the classes of individuals they apply to in *Jennings v. Rodriguez*, 583 U.S. 281 (U.S. 2018). The Court explained that "§ 1225 (b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297. The Court then discussed § 1226, explaining that "§ 1226 applies to aliens already present in the United States." *Id.* at 303. The Court further provided that § "1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings," and also "permits the Attorney General to release those aliens on bond." *Id.*

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- (i) has abandoned or relinquished that status,
 - (ii) has been absent from the United States for a continuous period in excess of 180 days,
 - (iii) has engaged in illegal activity after having departed the United States,
 - (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
 - (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
 - (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

8 U.S.C. § 1101(a)(13)(C).

Courts in this district accordingly have granted relief to noncitizens alleging a presence in the United States for years before their arrest, finding that § 1226(a) applied to their detention rather than § 1225(b)(2). *See Salazar*, 2025 WL 2676729, at *4 (finding that a petitioner who has lived in the United States since the 1980s is not “seeking admission” and is subject to § 1226(a)); *Garcia Domingo*, 2025 WL 2941217, at *4 (finding that a petitioner who had been present in the United States for nine years was likely to succeed on the merits of his claim that he had been erroneously classified as an “applicant for admission”); *Pastrana-Saigado*, No. 2:25-cv-00950-MLG-LF, Doc. 17 at 1, Doc. 24 at 1–2 (finding that a petitioner who had been in the United States for over twenty-five years was entitled to a bond hearing pursuant to § 1226); *Cortez-Gonzalez*, No. 2:25-cv-00985-MLG-KK, Doc. 2 at 8, Doc. 16 at 1–2 (ordering a § 1226(a) bond hearing for a petitioner who alleged a presence in the United States since 2005). Federal district courts across the country have also concluded that § 1226 applies in these circumstances. *See, e.g., Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *1, *3 (S.D. Tex. Oct. 7, 2025) (concluding “that § 1226, not § 1225, applies to [a petitioner's] detention” after the petitioner had lived in the U.S. unlawfully for over a decade); *Mosqueda v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at *6 (C.D. Cal. Sept. 8, 2025) (concluding that § 1226(a) rather than § 1225(b)(2) applies “to individuals who, like petitioners, have been residing in the United States and did not apply for admission or a change of status”); *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, — F. Supp. 3d —, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025) (concluding that § 1226 applies to noncitizens who are arrested on a warrant while residing in the United States); *Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) (“Respondents’ position that Section 1225 applies ‘because Petitioner is present in the United States without being admitted’ is contrary to the Supreme Court’s analysis of the application of 1225 to arriving aliens.”); *Malets v. Horton*, No. 4:20-cv-01041-MHH-SGC, 2021 WL 4197594, at *4 (N.D. Ala. 2021) (“In other words, § 1226 authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.”) (internal quotations omitted); *Martinez-Elvir*, 2025 WL 3006772, at *8 (“Based on the Supreme Court’s reading of [§ 1226 and § 1225], then, § 1226 also appears to apply to Petitioner since he was detained not while arriving to the country, but instead while already in the United States.”) (internal quotations omitted)); *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *7 (D. Colo. Oct. 22, 2025) (concluding that a petitioner present in the United States since 2006 “was not seeking lawful entry into the United States at the time he was detained—he was already here”

and “is not subject to § 1225(b)(2)(A)’s mandatory detention provision”).

Tomas Alfredo Molina Ochoa v. Kristi Noem, et al., 2025 WL 3125846 (D.N.M. Nov. 7, 2025).

However, these rulings cannot be squared with the unambiguous language of § 1225.

At the threshold, the Supreme Court’s dicta in *Jennings* that “§ 1225(b) applies primarily to aliens seeking entry into the United States” has been misconstrued. While § 1225 primarily applies to aliens encountered at the United States’ borders, it is by its express terms also applicable to any “alien present in the United States who has not been admitted.” *Jennings v. Rodriguez* does not license lower courts to disregard Congress’ explicit declaration that such an alien “shall be deemed for purposes of this chapter an applicant for admission.” On the contrary, the Supreme Court recognized that § 1225 is applicable to aliens who have not been admitted into the country:

Under § 302, 110 Stat. 3009–579, 8 U.S.C. § 1225, an alien who “arrives in the United States,” or “is present” in this country but “has not been admitted,” is treated as “an applicant for admission.” § 1225(a)(1). Applicants for admission must “be inspected by immigration officers” to ensure that they may be admitted into the country consistent with U.S. immigration law. § 1225(a)(3).

Jennings v. Rodriguez, 583 U.S. at 287. Aliens who have been admitted into the United States enjoy rights and privileges that are not afforded to aliens who have not been lawfully admitted.

Admitted aliens may still be subject to removal under procedures set forth in 8 U.S.C. § 1226.

Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls “within one or more ... classes of deportable aliens.” § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission. See §§ 1227(a)(1), (2).

Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal. As relevant here, § 1226 distinguishes between two different categories of aliens. Section 1226(a) sets out the default rule: The Attorney

General may issue a warrant for the arrest and detention of an alien “pending a decision on whether the alien is to be removed from the United States.” § 1226(a). “Except as provided in subsection (c) of this section,” the Attorney General “may release” an alien detained under § 1226(a) “on ...bond” or “conditional parole.” *Ibid.*

Jennings v. Rodriguez, 583 U.S. at 288.

Although the designation of an undocumented alien who has been present in the United States for years as an “applicant for admission” may appear counter-intuitive, it reflects Congress’ presumption that an alien who is present in the United States is here by choice and would like to remain in the United States. If the statutory presumption is incorrect—if an alien does not want to apply for admission—he can affirmatively withdraw his presumptive application and return whence he came: “An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.” 8 U.S.C. § 1225(a)(4).

When the statute is read in its entirety, it is manifest that Congress meant what it said: “an alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission” subject to the procedures set forth in § 1225. Most notably, although subsection (b) empowers immigration officers to expeditiously remove many inadmissible aliens who have not previously been admitted without further hearing or review, Congress excepted those who have been physically present in the United States for two years.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) *who* is arriving in the United States or *is described in clause (iii) is*

inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, ***the officer shall order the alien removed from the United States without further hearing or review*** unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

...

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and ***who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period*** immediately prior to the date of the determination of inadmissibility under this subparagraph.

8 U.S.C. § 1225(b)(1)(A).²

If Congress had intended that § 1225 was to be applied only to aliens interdicted at this nation’s borders, the exemption from expedited removal carved out for an “alien who has been physically present in the United States continuously” to two years would be nonsensical. Congress inclusion of this provision in § 1225 evinces Congress’ intent that the procedures prescribed in this statute for processing aliens who have not been admitted into the United States

² Subsection (b)(1)(A) repeatedly excludes aliens “described in subparagraph (F).” Subparagraph (F) provides:

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

8 U.S.C. § 1325(b)(1)(F). For example, the provisions set forth in § 1325(b)(1)(A) are not applicable to Cuban nationals who arrive at a port of entry.

are applicable to unauthorized aliens who are present in the United States, specifically including unauthorized aliens who demonstrate that they have been continuously present in the United States for more than two years. The Supreme Court and our Court of Appeals adhere to “the longstanding canon of statutory construction that terms in a statute should not be construed so as to render any provision of that statute meaningless or superfluous.” *Beck v. Prupis*, 529 U.S. 494, 506 (2000). See, e.g., *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant”); *Pennsylvania Dep’t of Pub. Welfare v. Davenport*, 495 U.S. 552, 562 (1990) (“Our cases express a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment”); *Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir.1996) (“We avoid interpreting statutes in a manner that makes any part superfluous”); *Bridger Coal Co./Pac. Minerals, Inc., v. Dir., Office of Workers’ Comp. Programs*, 927 F.2d 1150, 1153 (10th Cir. 1991) (“We will not construe a statute in a way that renders words or phrases meaningless, redundant, or superfluous”). Construing § 1225 in a manner that would exclude aliens who have been in the United States for two years or more would violate this fundamental tenet of statutory construction.

B. Petitioner, an alien present in the United States who has not been admitted into the United States, is to be treated as an applicant for admission under 8 U.S.C. § 1225 of the Immigration and Nationality Act.

Petitioner is a Mexican citizen who unlawfully entered the United States without being inspected, admitted, or paroled by any immigration officer of the United States. By his own account, Petitioner covertly entered the United States and avoided detection for more than 28 years. Immigration authorities discovered Petitioner in California and apprehended him on or

about June 25, 2025. It is undisputed that Petitioner is an alien present in the United States who has not been admitted.

As an alien present in the United States who was not previously admitted, Petitioner is deemed by statute to be an applicant for admission for purposes of the INA. 8 U.S.C. § 1225(a)(1).

That statutory classification has been borne out in this case. Although Petitioner had not previously applied for admission—and by his account had managed to evade immigration authorities for years—after he was apprehended by immigration authorities he has affirmatively sought to remain in the United States and is contesting his removal.

**II. THE IMMIGRATION AND NATIONALITY ACT MANDATES
THAT PETITIONER, AN APPLICANT FOR ADMISSION,
SHALL BE DETAINED DURING REMOVAL PROCEEDINGS.**

Notwithstanding that Petitioner unlawfully entered the United States, Congress has granted him, and other similarly situated aliens who can demonstrate that they have continuously been present in the United States for at least two years, an exemption from expedited removal. Such aliens are afforded a hearing before an immigration judge in accordance with 8 U.S.C. § 1229a.

Once more, Petitioner is unlawfully in the United States. Petitioner has not been admitted into the United States, and he has no right to enter or remain in the United States unless or until admitted by immigration authorities. Congress has decreed that an alien present in the United States who has not previously been admitted shall be treated as an applicant for admission for purposes of the immigration processes prescribed in the INA.

While many aliens are expeditiously removed with little process, Congress has afforded aliens who can demonstrate that they have been in the United States for more than two years a

hearing. *See generally* 8 U.S.C. § 1229 (setting forth procedural requirements to initiate removal proceedings under § 1229a); 8 U.S.C. § 1229a (setting forth procedures for the sole and exclusive immigration proceedings before immigration judges).

Congress has mandated that any alien deemed an applicant for admission for purposes of the INA (and who is not subject to expedited removal) “shall be detained” for immigration proceedings under § 1229a (subject to certain exceptions not applicable here).

Subject to subparagraphs (B) and (C), ***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 of this title.***

8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory mandate is unambiguous. While Congress has excepted aliens who have not been lawfully admitted but have been continuously present in the United States from expedited removal, any such “alien shall be detained for proceedings under section 1229a.”

Having previously bypassed designated ports of entry to covertly enter the United States, Petitioner’s now attempts to also circumvent § 1225. Petitioner claims that because he succeeded in entering and remaining in the United States without inspection for years, he should be accorded the rights and privileges conferred on admitted aliens under § 1226. As discussed in the Response to Petition for Writ of Habeas Corpus, aliens who have not been lawfully admitted into the United States are not accorded the same procedural rights as lawfully admitted immigrants. *See Thuraissigiam*, 591 U.S. at 138-140. Again, Congress has deemed Petitioner and any other alien present in the United States who has not been admitted an applicant for admission for purposes of the INA. 8 U.S.C. § 1225(a)(1). Congress has mandated that in the case of an alien who is an applicant for admission (and who is not subject to expedited removal)

the alien shall be detained for a proceeding under § 1229a. Petitioner’s request for a bond hearing because he previously evaded inspection and entered the United States without being admitted would contravene canons of statutory construction, “undermine the ‘sovereign prerogative’ of governing admission to this country and create a perverse incentive to enter at an unlawful rather than a lawful location.” *Thuraissigiam*, 591 U.S. at 138–140.

**III. THE IMMIGRATION AND NATIONALITY ACT MANDATES
THAT PETITIONER, AN APPLICANT FOR ASYLUM,
SHALL BE DETAINED DURING REMOVAL PROCEEDINGS.**

In addition to excepting aliens who have been in the United States for two years or more from expedited removal, Congress has also carved out an exception to expedited removal for aliens who intend to apply for asylum or express a fear of persecution if removed. 8 U.S.C. § 1225(b)(1)(A)(i) (the immigration officer shall order an inadmissible alien “removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution”).

(A) Screening

...

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

...

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an

alien has a credible fear of persecution (within the meaning of clause (v)), ***the alien shall be detained for further consideration of the application for asylum.***

8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B)(i) and 1225(b)(1)(B)(ii) (emphasis added).

Following his apprehension, Petitioner indicated a fear of persecution if he is returned to Mexico. Petitioner submitted an application for asylum to EOIR on or about September 24, 2025. EOIR has not yet adjudicated Petitioner's claim for asylum, and those proceedings are ongoing in tandem with the removal proceedings under § 1229a.

While Petitioner's application for asylum is pending, § 1225(b)(1)(B)(ii) mandates that he "shall be detained for further consideration of the application for asylum."

When a § 1225(b)(1) applicant for admission applies for asylum and a positive credible fear determination is made, "the alien shall be detained for further consideration of the application for asylum." [*Jennings v. Rodriguez*, 583 U.S. at 289] (quoting § 1225(b)(1)(B)(ii)). Such detention "must continue until immigration officers have finished considering the application for asylum[.]" *Id.* at 299 (citation modified); *Matter of M-S-*, 27 I & N Dec. 509, 511 (U.S. Att'y Gen. 2019) (stating the INA "provides for the detention of aliens originally placed in expedited removal" and that noncitizens found to have a credible fear "shall be detained for further consideration of the application for asylum" (internal quotation marks and citations omitted

M.D. Mursalin v. Dedos, 2025 WL 3140824 (D.N.M. 2025).

CONCLUSION

Petitioner is a Mexican citizen who entered the United States without inspection, admission, or parole by an immigration officer of the United States.

As an alien present in the United States who has not been admitted, Petitioner is treated as an applicant for admission under 8 U.S.C. § 1225. While many undocumented aliens are subject to expedited removal from the United States following initial screening without further

hearing or review, Petitioner has been excepted from expedited removal because he demonstrated that he has been in the United States for more than two years and because he has applied for asylum. *See* 8 U.S.C. § 1225(b)(1)(A). Instead of expedited removal, Petitioner has been accorded extensive process.

Petitioner’s immigration case has been referred to an immigration judge for a hearing (which is continuing) under 8 U.S.C. § 1229a. Subsection § 1225(b)(2)(A) mandates that Petitioner, an applicant for admission who has not been admitted into the United States, shall be detained for those proceedings. 8 U.S.C. § 1225(b)(2)(A)

Petitioner’s asylum claim is also being reviewed by immigration authorities. While his asylum application is considered, § 1225(b)(1)(B)(ii) mandates that Petitioner shall be detained. 8 U.S.C. § 1225(b)(1)(B)(ii).

Under these circumstances, the Supreme Court’s analysis in *Jennings v. Rodriguez* is instructive.

Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for “further consideration of the application for asylum,” and § 1225(b)(2) aliens are in turn detained for “[removal] proceeding[s].” Once those proceedings end, detention under § 1225(b) must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.

. . .
Section 1225(b)(1) mandates detention “for further consideration of the application for asylum,” § 1225(b)(1)(B)(ii), and § 1225(b)(2) requires detention “for a [removal] proceeding,” § 1225(b)(2)(A). The plain meaning of those phrases is that detention must continue until immigration officers have finished “consider [ing]” the application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A).

Jennings v. Rodriguez, 583 U.S. at 297-299.

For all the reasons set forth herein and in the Response to Petition for Writ of Habeas Corpus, the Petition for Writ of Habeas Corpus and the Amendment to Petition for Writ of Habeas Corpus should be denied.

RESPECTFULLY SUBMITTED this 21st day of November 2025.

Ryan Ellison,
Acting United States Attorney

/s/ Timothy S. Vasquez 11/21/25

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 21, 2025, I shall cause the foregoing pleading to be filed electronically through the CM/ECF system, which constitutes service on all parties or counsel by electronic means as reflected on the Notice of Electronic Filing.

/s/ Timothy S. Vasquez 11/21/25

Timothy S. Vasquez
Assistant United States Attorney