UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JESUS HERNANDEZ ALSONSO — PETITIONER

v. — NO. 3:25-CV-652-DJH

JEFF TINDALL, in his Official Capacity as Oldham County Jailer;
RUSSELL HOLT, in his Official Capacity as Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement; and
PAMELA BONDI, in her Official Capacity as Attorney General — RESPONDENTS

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Federal Respondents respond to the Court's Order to Show Cause why Petitioner's writ of habeas corpus should be dismissed.[1]

INTRODUCTION

Petitioner bears the burden to show that his detention is unlawful. *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)). Because Petitioner has not been admitted to the United States, he is lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

[1] This response is filed on behalf of Federal Respondents Russell Holt and Pamela Bondi. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition names Jeff Tindall, the Oldham County Jailer, as a respondent.

RELEVANT FACTUAL BACKGROUND[2]

- Petitioner, a native and citizen of Mexico, entered the United States in 2013. [Doc. 1, PageID. 4., ¶ 18-19] On March 29, 2025, Petitioner was arrested for driving under the influence of alcohol (DUI), speeding, no license, and no insurance. [*See* Exhibit 1, Charge Information.] On August 6, 2025, Petitioner pled guilty to a DUI and the court sentenced him to 30 days. [*Id.*] On August 6, 2025, ICE officials issued a warrant for arrest for Petitioner determining that there was probable cause to believe that he was removable from the United States, that was served on August 14, 2025. [*See* Exhibit 2, Warrant for Arrest.] Although the form ICE used for the warrant cited 8 U.S.C. § 1226 (Immigration and Nationality Act "INA" § 236), ICE detained him under 8 U.S.C. § 1225(b)(2)(A) because he has been present in the United States without admission or parole. As such, he was not issued a Notice of Custody Determination.
- On August 14, 2025, ICE officials initiated removal proceedings and issued Petitioner a Notice to Appear in immigration court, stating that Petitioner had not been admitted or paroled after inspection by an Immigration Officer. [*See* Exhibit 3, Notice to Appear.]
- Afterwards, Petitioner requested a custody redetermination hearing. [*See* Exhibit 4, Bond Order.]

[2] Federal Respondents submit this response in accordance with the Show Cause Order based on the information it could gather and under the strict time constraint. However, Federal Respondents respectfully request that to clarify, expound, or further address issues in this brief, that they be provided supplemental briefing upon conclusion of the hearing.

- The immigration judge denied the Petitioner's change in custody status reasoning that "based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. 1225(b)(2)(A), this Court lacks authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." [*See* Exhibit 4, Bond Order.] The Court also cited *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) in its reasoning. [*Id.*]
- Petitioner is detained at Oldham County Detention Center. [Doc. 1, PageID. 1.]
- On October 7, 2025, Petitioner filed his writ of habeas corpus. [*Id.*]

LEGAL RESPONSE

- Pursuant to 8 U.S.C. §§ 1252(g), 1252(b)(9) and 1252(a)(5), and 1252(a)(2)(B)(ii), this Court lacks jurisdiction to hear Petitioner's claim because he is challenging ICE's decision to detain him under 8 U.S.C. § 1225(b)(2) during his removal proceedings.
- The Court should require Petitioner to exhaust his administrative remedies. Congress has provided an administrative hearing and appeal process for noncitizens in removal proceedings that include evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). The BIA's decision from last month, *Matter of Yajure Hurtado*, 29 I& N Dec. 216 (BIA 2025), may not be the last word in that matter as it may still be reviewed en banc or by the Attorney General. *See* 8 C.F.R. § 1003.1(a)(5); 8 U.S.C. § 1103(g)(2); 8 C.F.R. § 1003.1(h)(1).
- Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2) because he meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support Respondents' interpretation.

- The statute, 8 U.S.C. § 1225(b)(2)(A), reads: "in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title."
- First, Petitioner is an "applicant for admission" because he is a noncitizen, he was not admitted, and he was present in the United States when he was apprehended by ICE. [*See* Exhibit 3, Notice to Appear]; 8 U.S.C. § 1225(a)(1).
- Second, an examining immigration officer determined that Petitioner was "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" as "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).
- Finally, Petitioner must "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Petitioner is not in expedited removal and has been placed in full removal proceedings under § 1229a.
- Additionally, Petitioner is wrong in asserting that all courts addressing the issue of properly interpreting 8 U.S.C. § 1225(b)(2) have "reached the exact same answer". [Doc. 1, PageID.10-11, ¶¶ 40-41.] At least three courts have rejected Petitioner's proposed interpretation of that statute, and determined that the petitioners were applicants for admission and thus subject to mandatory detention despite being present in the U.S. *See Chavez v. Noem*, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24,

2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

- 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). "Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants of admission until certain proceedings have concluded." *Id.* at 297.
- Section 1225(b)(2) "serves as a catchall provision that applies to all applicants not covered by 1225(b)(1) (with specific exceptions not relevant here)."[3] *Jennings*, 583 U.S. at 287. Section 1226 generally governs the process of arresting and detaining noncitizens under 1227 pending their removal. *Jennings* 583 U.S. at 288. 8 U.S.C. § 1227(a) applies to noncitizens "*in and admitted* to the United States."
- The BIA 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 immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). "Seeking admission" does not have a different meaning from applicant for admission ("requesting admission"); the terms within § 1225(b)(2)(A) are thus synonymous. Additionally, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to eliminate "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in

[3] The two exceptions are crewmen and stowaways. *See* 8 U.S.C. §§ 1225(a)(2), 1281, and 1282(b). Neither is relevant to this case.

a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

- The Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025) ("LRA") simply reflects a "congressional effort to be doubly sure" of whom the mandatory detention scheme applies pending removal proceedings and is not redundant. *Barton v. Barr*, 590 U.S. 222, 239 (2020). And the LRA does *not* change what Congress intended in the IIRIRA.
- Any argument that prior agency practice applying § 1226(a) is dispositive fails because under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the plain language of a statute that compels a particular interpretation or application controls.
- Petitioner has not and cannot show that his detention is arbitrary or unreasonable and therefore, his detention does not violate substantive due process. *Perez v. Aviles*, 188 F. Supp. 3d 328, 332 (S.D.N.Y. 2016)(citing *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring).
- The *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) factors do not weigh in Petitioners favor as his due process rights as a noncitizen who has not been admitted to the United States does not overcome the Government's interests in maintaining his detention through his removal proceedings. He also has not identified a statutory procedure, which he is entitled, that ICE has denied him. Thus, Petitioner cannot show that his detention violates his procedural due process. *See Mendez-Garcia v. Lynch*, 840 F.3d 655, 665 (9th Cir. 2016) (citations omitted); *see also Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926-27 (9th Cir. 2007).

CONCLUSION

As such, Petitioner is lawfully detained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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