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

NATASHA JETCAY CORTEZ-GONZALEZ,

Petitioner,

vs. No. 2:25-cv-00985-MLG-KK

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; TODD M. LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; MARY DE ANDA-YBARRA, in her official capacity as Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and DORA CASTRO, in her official capacity as Warden of the Otero County Processing Center,

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 in her official capacity as Attorney General of the United States (collectively "Respondents")[1], hereby submit this Response to Petitioner's Writ of Habeas Corpus (Doc. 1).

[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.

Petitioner is a noncitizen of the United States and national of Mexico who asks this Court to order Respondents to release her from federal custody or, in the alternative, order a bond review hearing before the immigration court. *See* Doc. 1 at 15. Petitioner is currently detained pursuant to § 235(b)(2) of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1225(b)(2)(A). Petitioner alleges violations of Fifth Amendment due process, the Administrative Procedure Act ("APA"), the Fourth Amendment and *Accardi* Doctrine. *See generally* Doc. 1 at 10-14.

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* and Petitioner's arrest and detention have incurred no constitutional or regulatory violations. *See* 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Additionally, even should the Court find relief under habeas appropriate, there is no legal basis for the grant of immediate release or shifting the burden of proof at future immigration proceedings. *See* Doc. 1 at 15.

FACTUAL BACKGROUND[2]

Petitioner entered the United States unlawfully, without admission or parole, at a time and place unknown to Respondents. On July 10, 2025, Petitioner was encountered by United States Border Patrol ("USBP") agents in Los Angeles, California. Petitioner admitted to being a citizen and national of Mexico, who had entered the country illegally and was currently unlawfully present in the United States. *See* Doc. 1, Exhibit A at 20. Petitioner was subsequently taken into custody by Respondents pursuant to 8 C.F.R. § 287.8(b)(2) and 8 C.F.R. § 287.8(c). On July 11, 2025,

[2] Respondents submit this section upon information and belief and under expedited briefing deadlines. 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.

Petitioner was served a Form I-862 Notice to Appear pursuant to INA § 212(a)(6)(A)(i) as well as Form I-200 Warrant for Arrest. *See* Exhibit A, Warrant for Arrest; *See also* Doc. 1, Exhibit B at 19-21. Petitioner had a merits hearing in U.S. Immigration Court scheduled for October 21, 2025. This hearing was postponed at Petitioner's request and rescheduled for November 17, 2025.

LEGAL BACKGROUND

I. Detention of "Arriving Aliens" Under §1225 and Aliens Under §1226

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 statue. *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").

V. Judicial Review

Judicial review of immigration matters, including of detention issues, is limited. *See generally I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993);

Hampton v. Mow Sun Wong, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.")

The Supreme Court has thus long recognized the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit

or exclude aliens "have been legion"). The Executive Branch is therefore provided significant deference when it decides to admit or exclude noncitizens, as this power is a sovereign prerogative. *Thuraissigiam*, 591 U.S. at 139 (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Control of the nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

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 she 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 statue, 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 Count One. Should the Court disagree, however, the appropriate remedy would be a bond review under §1226 rather than immediate release.

II. Pending Visa Applications Irrelevant to Detention Analysis

Petitioner extensively cites a pending T-1 visa application and argues that application is likely to be granted. *See* Doc. 1 at 1, 3, 6, 11, 13; *See also* Doc. 2 at 6-8, 12, 20-1. Simultaneously, Petitioner concedes that "the filing of an application for T nonimmigrant status has no effect on DHS authority or discretion to execute a final order of removal." *See* Doc. 2 at 12 (citing 8 CFR 241.6(a)). Petitioner has not been granted a T visa and references to pending applications should be dismissed as having no legal significance to the detention or removal authority presently at issue.

To the extent Petitioner argues that detention during the pendency of a visa application constitutes a violation of the APA as "arbitrary and capricious" conduct, the Court should similarly dismiss these arguments. *See* Doc. 1 at 11. Petitioner cites no authority to support the cursory assertion that Respondent's conduct, even as alleged, constitutes an APA violation. *Id.* The Court should therefore deny or dismiss Count Two.

III. Petitioner's Arrest Did Not Violate Fourth Amendment or *Accardi* Doctrine

Immigration officers are generally permitted to question any person as long as the immigration officer does not restrain the freedom of an individual. *See* 8 C.F.R. § 287.8(b)(1). Per the documentation submitted by Petitioner, Petitioner had a "consensual encounter" with USBP agents where Petitioner admitted to being a citizen of Mexico without legal status in the United States. *See* Doc. 1, Exhibit A at 20. Once Petitioner admitted to her illegal entry and status, her subsequent arrest was permissible pursuant to 8 C.F.R. 287.8 (b)(2) and 8 C.F.R. 287.8 (c). Additionally, Respondents obtained and served a I-200 Warrant for Arrest. *See* Exhibit A. Similarly, there is no violation of the *Accardi* doctrine as Respondent's followed the necessary procedures and appropriately exercised its discretion to arrest. For these reasons the Court should deny or dismiss Counts Three and Four.

IV. No Legal Authority for Immediate Release or Burden Shifting

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 the requested relief or immediate release or burden shifting at future immigration proceedings. *See generally* Doc. 1 at 15; Doc. 2 at 8. Granting this relief would be a misapplication of the law governing immigration proceedings and should be rejected. The appropriate relief, if any, would be to return Petitioner to her requested status: classification under §1226 and eligibility for a

bond review in the normal course. Petitioner does not cite a single case which entitles her to further relief. *Id*.

Respondents note that there are *some* circumstances in which courts have found burden shifting appropriate. *See e.g. L.G. v. Choate,* 744 F. Supp. 3d 1172 (D. Colo. 2024) (inquiry as to whether burden shifting at bond review under 8 U.S.C. § 1226(a) was appropriate after thirty months of detention). However, almost universally, these cases involve significantly prolonged detention that is not applicable to the present case.[3] Petitioner has been detained less than 4 months, far less than in those cases where burden shifting was found to be warranted. *See supra* n.3.

Specific to Petitioner's request for immediate release, even should the Court view a bond review under §1226 appropriate, Petitioner must still prove eligibility for release on bond. *See e.g.* 8 C.F.R. § 236.1 (c)(8). For example, in the context of noncitizens detained under § 1226(c), courts have repeatedly held that they lack authority to order a mandatory detainee's release pending conclusion of his immigration proceedings. *See generally Nyamekye v. Oddo*, 2023 WL 9271844, at *5 (W.D. Pa. Mar. 28, 2023) (denying request for immediate release and noting lack of authority to support such a request); *Davis v. Warden of Pike Cnty. Corr. Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022) ("The only remedy for an alien challenging their mandatory detention is a bond hearing") (*citing Hernandez T. v. Wolf*, 2020 WL 634235, at *3 (D.N.J. Feb. 11, 2020)).

[3] *See e.g. Basri v. Barr*, 469 F. Supp. 3d 1063, 1065-66 (D. Colo. 2020) (court found that for petitioner detained over 2 months the Constitution did not require the government to prove detention is necessary); *Diaz-Ceja v. McAleenan*, 2019 WL 2774211, at *10, *12 (D. Colo. 2019) (court found that for petitioner detained over 27 months, burden shifted to government to prove continued detention justified); *Molina v. Choate*, 2019 WL 13214049, at *2-3 (D. Colo. 2019) (court found burden remained on petitioner *despite detention of 11 months*) (emphasis added).

The Court should decline Petitioner's invitation to circumvent the immigration court in this way, particularly as §1226 determinations (the type of which Petitioner is seeking) are not subject to judicial review. 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole."); *See also Demore v. Kim*, 538 U.S. 510, 516 (discussion regarding challenges to discretionary decisions that are barred under §1226(e) and challenges to statutory framework as a whole permitting detention without bail that are not barred under §1226(e)).

Whether or not to grant release or bond under §1226 would be a discretionary decision, barred from judicial review under §1226(e). *Id.* It would make little sense for Congress' clear intent to be so easily thwarted by proactive habeas filings demanding immediate release from federal courts. For these reasons, Petitioner's requested relief of immediate release should be denied.

CONCLUSION

The Court should deny or dismiss Petitioner's Writ for Habeas Corpus (Doc. 1) for the following separate and independent reasons: (1) Petitioner is appropriately classified as §1225 pursuant to BIA guidance in *Hurtado*; (2) Petitioner's due process rights as a §1225 "arriving alien" have been met as a matter of law; (3) Petitioner's arrest and detention did not violate any other constitutional protections, regulatory authorities or the *Accardi* doctrine. For these reasons the Court should deny or dismiss the petition (Doc. 1).

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