

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

RONI ESDUARDO LOPEZ HERNANDEZ,

Petitioner,

v.

Civil Action No. 1:25-CV-527

PATRICIA HYDE, Director, Boston Field Office,
U.S. Immigration and Customs Enforcement,
MICHAEL KROL, Special Agent in Charge,
Homeland Security Investigations, TODD LYONS,
Acting Director U.S. Immigration and Customs
Enforcement, and KRISTI NOEM, U.S. Secretary of
Homeland Security, *in their official capacities.*

Respondents.

**RESPONDENTS' OPPOSITION TO PETITIONER'S PETITION
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2241**

The United States of America, on behalf of Respondents Patricia Hyde, Michael Krol, Todd Lyons and Kristi Noem, in their official capacities, by and through their attorney, Acting United States Attorney Sara Miron Bloom, respectfully submit this opposition to Petitioner Lopez Hernandez's Petition for Habeas Corpus.

Petitioner, a native and citizen of Guatemala, was detained by federal immigration agents on September 29, 2025. On October 23, 2025, an immigration judge ordered Petitioner detained finding that he was statutorily ineligible for bond. Ex. 1. Petitioner claims that his detention is unlawful and asks this Court to grant his petitioner and order his release.

Petitioner also alleges that he has a pending application for a U Visa and that United States Citizenship and Immigration Services (USCIS) has determined his application is "bona fide." Further, Petitioner maintains he has a pending asylum claim and as a result is in possession of a

valid work authorization. The Court's October 14, 2025, Order directed Respondents to include status updates on both and so in addition to responding to the claims in the Petition, Respondents have provided the Court with the requested updates.

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. As a result, Petitioner has been provided with all process that is due to him as an applicant for admission, and his period of detention is presumptively reasonable under the Constitution. Because Petitioner's detention is fully supported by statute, regulation, and the Constitution, the Petition should be denied.

I. BACKGROUND

A. Petitioner's Immigration History

Petitioner is a native and citizen of Guatemala who entered the United States at an unknown time and place. Ex. 2, Chan Decl. ¶¶ 5, 6. At that time, Petitioner did not present a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. *Id.* ¶ 6.

On or about November 21, 2017, Petitioner filed a Form I-918, Petition for U Nonimmigrant Status ("U visa"), with U.S. Citizenship and Immigration Services ("CIS"). Petitioner's U visa petition remains pending with CIS. *Id.* ¶ 7; Pet. Ex 1-4.

On February 23, 2024, USCIS notified Petitioner that his petition for U nonimmigrant status was bona fide and that he "warrant[s] a favorable exercise of discretion" that he "may be issued an employment authorization document" and "may be placed in deferred action."¹ Pet. Ex. 1-4. In

¹ The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. U Visa Nonimmigrant Status.

addition, since on or about 2017, as a beneficiary asylee applicant of his spouse, Petitioner has also had pending an application for asylum and withholding of removal. Ex. 2, Chan Decl. ¶ 8. That asylum application remains pending.

On or about August 6, 2025, USCIS approved Petitioner's work authorization card under 8 C.F.R. § 274a.12(c)(8). Ex. 2, Chan Decl. ¶ 9; Pet. Ex. 1-6.

On or about August 6, 2025, the Rhode Island State Police arrested the Petitioner for driving under the influence of liquor or drugs – 1st offense. The criminal charge remains pending in the Rhode Island 3rd Division District Court. Ex. 2, Chan Decl. ¶ 10. On or about September 29, 2025, ICE encountered the Petitioner and detained him under 8 U.S.C. § 1225 and served the Petitioner with a Notice to Appear (“NTA”) charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). Ex. 2, Chan Decl. ¶¶ 10, 11.

II. ARGUMENT

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

Petitioner is properly detained 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 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). See also *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 2025 WL 2674169 (BIA 2025).

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. Petitioner is an “applicant for admission,” is an alien present in the United States

who has not been admitted. 8 U.S.C. § 1225(a)(1). 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); *see also Alvarenga Pena v. Hyde*, Civil Action No. 25-cv-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. Jul. 28, 2025) (“Because petitioner remains an applicant for admission, his detention is authorized so long as he is not clearly and beyond doubt entitled to be admitted to the United States.”). *But see Jimenez v. FCI Berlin*, 2025 WL 2639390, *9 n. 8 (D.N.H. Sept. 8, 2025) (finding petitioner held under § 1226, not § 1225 and citing *Romero v. Hyde*, 2025 WL 2403827, at *1 (D. Mass Aug. 19, 2025) (collecting similar cases)).

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) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). Thus, the Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he “shall be” detained.

This reasoning is supported by the Supreme Court. As explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), 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 who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. Section 1225(b)(1)(A)(i). Section 1225(b)(2), on the other hand, is “broader” and “serves as a catchall provision that applies to *all* applicants for admission not covered by 1225(b)(1) (with specific exceptions not relevant here).” *Jennings*, 583 U.S. at 837 (emphasis added). Put another way, 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 inspected at a time other than his immediate arrival in the United States. 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)).²

This reasoning was also recently adopted by another court. *See Alvarenga Pena*, 2025 WL 2108913, at *1. In that case, Alvarenga Pena illegally entered the United States in 2005 and was subsequently placed in immigration proceedings that were terminated. *Id.* Approximately 20 years later, ICE encountered Alvarenga Pena following a traffic stop in 2025 and detained him under Section 1225(b)(2). *Id.* The Court stated that “[b]ecause petitioner remains an applicant for admission, his detention is authorized [under Section 1225(b)(2)(A)] so long as he is not clearly and beyond doubt entitled to be admitted to the United States.” *Id.* at *2. Alvarenga Pena suggested that he was lawfully in the United States because he was the recipient of an approved I-130 petition, but the Court rejected that argument as “the approval of a visa petition does not, by itself, entitle an alien to permanent resident status.” *Id.* (citing *Firstland Int’l, Inc. v. INS*, 377 F.3d 127, 132 n.6 (2d Cir. 2004)). The Court went on to point out that not only was petitioner’s detention authorized by Section 1225(b)(2)(A)—it was mandated by Section 1225(b)(2)(A). *Id.*

² The only means to obtain release for an applicant for admission is through parole. CBP and ICE have discretion to parole applicants for admission into the United States. *See* 8 U.S.C. § 1182(d)(5). For those detained under § 1225(b), regulations provide that ICE or CBP may grant parole if the alien is “neither a security risk nor a risk of absconding,” and (1) has a serious medical condition; (2) is pregnant; (3) falls within certain categories of juveniles; (4) will be a witness; or (5) if continued detention is otherwise “not in the public interest.” 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(c).

Respondents recognize that other courts have reached different conclusions. *See Romero v. Hyde*, 2025 WL 2403827, at *1 (D. Mass Aug. 19, 2025) (collecting cases). Respectfully, however, this Court should decline to following the reasoning in these cases. These courts generally have concluded that Section 1225(b) authorizes the government to detain aliens *seeking admission* to the country, *i.e.*, upon immediate arrival in the country, whereas Section 1226(a) authorizes the government to detain certain aliens *already in* the country. The courts have focused on the fact that petitioners in those cases have resided in the United States for periods of time and then were, in some cases, arrested on warrants issued pursuant to Section 1226 (not the case here). But, by its plain language, Section 1225(b) does not apply just to aliens arriving in the United States. Again, while Section 1225(b)(1) concerns aliens “arriving” in the United States, Section 1225(b)(2) is a “catch-all” that applies to all “other” aliens who are applicants for admission. Simply put, one cannot read a temporal limitation into Section 1225(b) that is not supported by the text of the statute.

Moreover, to the extent Petitioner claims his detention falls under 8 U.S.C. § 1226(a) and is discretionary simply because he has been placed in full removal proceedings, his argument is belied by the language of Section 1225(b) itself, which states that the alien “shall be detained for a proceeding under *section 1229a* of this title.” (emphasis added). Moreover, in *Matter of Q. Li*, 29 I&N Dec. 66, 2025 WL 1442892 (BIA 2025), the Board of Immigration Appeals held that mandatory detention under 8 U.S.C. § 1225(b) applies to *all* “applicant[s] for admission,” whether they are placed in expedited removal proceedings or in full removal proceedings under 8 U.S.C. § 1229a. *Id.* at 67-68; *see also Matter of M-S-*, 27 I&N Dec. 509, 2019 WL 1724249 (Atty.Gen. 2019) (holding that aliens who are present in the United States without admission or parole and

placed into expedited removal proceedings are detained under Section 1225 even if later placed into full removal proceedings).

Accordingly, because Petitioner is an applicant for admission who had not demonstrated “clearly” and “beyond doubt” that he is “entitled to be admitted,” his detention is authorized—and mandated—by 8 U.S.C. § 1225(b)(2)(A).

III. CONCLUSION

For the reason described above, the Petition should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on October 27, 2025, I caused the foregoing Opposition to be filed by means of this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Fed. R. Civ. P. 5(b)(2)(E) and Local Rules Gen 304.

/s/ Dulce Donovan
DULCE DONOVAN
Assistant United States Attorney