UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RONI ESDUARDO LOPEZ HERNANDEZ, Petitioner, v. PATRICIA HYDE, Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge, and TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, and KRISTI NOEM, U.S. Secretary of Homeland Security, Respondents.	Civil Action No. 1:25-cv-00527

REPLY TO GOVERNMENT OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner Roni Esduardo Lopez Hernandez, by and through their attorney, Hans J. Bremer, respectfully submits this Reply to Respondents' Opposition to Petitioner's Petition for Writ of Habeas Corpus ("Petition"). Doc. 7.

When Petitioner entered the United States, the Department of Homeland Security ("DHS") chose to put Petitioner in full removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a, which is mutually exclusive with expedited removal proceedings under 8 U.S.C. § 1225. DHS is now detaining Petitioner solely on the purported ground that Petitioner is not eligible for bond under 8 U.S.C. § 1225. However, 8 U.S.C. § 1225(b)(l)(B)(iii)(IV) and§ 1225(b)(2)(A) do not apply to Petitioner.

Therefore, Petitioner's detention violates both the Immigration and Nationality Act ("INA") and Petitioner's Fifth Amendment right to due process of law.

PROCEDURAL HISTORY

Petitioner entered the United States through the southern border. *See* Doc. 1. On September 29, 2025, DHS filed a "Notice to Appear" ("NTA") against Petitioner, with the Chelmsford Immigration Court, pursuant to 8 U.S.C. § 1229. When DHS issued the NTA, DHS alleged that the Petitioner was an alien present in the United States who has not been admitted or paroled, not that he was an arriving alien. The NTA charged Petitioner with being "inadmissible" as "present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General" pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and … "as an immigrant, who at the time of application for admission, is not in possession of a valid unexpired immigrant visa…or other suitable document" pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I)." An NTA is the "charging document" that initiates removal proceedings in Immigration Court, before an Immigration Judge, against a noncitizen, and constitutes written notice to the noncitizen of their placement in removal proceedings before the Immigration Court. *See* 8 U.S.C.§ 1229(a) (describing the requirements of a Notice to Appear as the "initiation of removal proceedings."); 8 C.F.R. § 1003.14(a) (2025) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service."). Therefore, DHS's filing of the NTA against Petitioner in this case initiated "full" removal proceedings in Immigration Court pursuant to 8 U.S.C. §

1229a-which vested jurisdiction with the Immigration Judge and constituted "**the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.**" 8 U.S.C. § 1229a(a)(3) (emphasis added). As the Board of Immigration Appeals ("BIA") recently stated, "DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(l) of the INA, 8 U.S.C. § 1225(b)(l), **or** full removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a." *Matter of Q. LI,* 29 I&N Dec. 66, 68 (BIA 2025) (emphasis added). In addition, the Customs and Border Protection issued the Petitioner a Form I-200 on September 15, 2025, a warrant for arrest of alien, indicating initiation of removal proceedings against the Petitioner under § 1229a. Moreover, the Government appears to agree that the Petitioner is not in expedited removal proceedings. *See* Doc. 7.

On October 23, 2025, the Petitioner's request for custody redetermination was denied on the sole and incorrect basis that the Petitioner was subject to mandatory detention pursuant to 8 U.S.C. § 1225. The Petitioner remains detained by the Government..

ARGUMENT

1. Petitioner is Not Subject to Mandatory Detention Under the Expedited Removal Statute

The Government now argues that Petitioner is subject to mandatory detention under the expedited removal statute, 8 U.S.C. § 1225(b). *See* Doc. 7. This argument is inapposite because this statutory provision applies only to noncitizens in the process of Credible Fear Interviews: a process to which Petitioner was not and is not subject. The statute upon which

the Government relies to justify Petitioner's detention applies exclusively to noncitizens formerly in expedited removal proceedings and the "Credible Fear Interview" procedure. 8 U.S.C. § 1225 contains a provision governing "Asylum interviews," or "Credible Fear Interviews." *See§* 1225(b)(l)(B). When a noncitizen that seeks admission to the United States and is in the custody of DHS "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)(l)(A)(ii), "the [immigration] officer shall refer the alien for an interview by an asylum officer." *Id.* This statute further provides that "[i]f the officer determines at the time of the interview that an alien has a credible fear of persecution... the alien shall be detained for further consideration of the application for asylum." *Id.* § 1225(b)(l)(B)(ii). The statute clarifies that a noncitizen subject to the Credible Fear Interview process is subject to mandatory detention: "Any alien **subject to the procedures under this clause** shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."§ 1225(b)(l)(B)(iii)(IV) (emphasis added). Therefore, this provision explicitly limits the application of the mandatory detention provision to noncitizens "subject to the procedures" under the "Asylum interviews" clause.

The mandatory detention provision of 8 U.S.C. § 1225(b) does not apply to Petitioner. Petitioner was never placed in expedited removal proceedings and never underwent a Credible Fear Interview. On the contrary, DHS chose to initiate full removal proceedings under 8 U.S.C. § 1229a. *See* Notice to Appear against Petitioner. DHS did **not** subject Petitioner to a Credible Fear Interview under 8 U.S.C. § 1225(b)(l)(B)(ii), which is indicated by the fact that the box on Petitioner's NTA stating "This notice is being issued after an asylum officer has found that the respondent has

demonstrated a credible fear of persecution or torture," **remains unchecked.** *See id;* Notice to Appear against Petitioner. Full removal proceedings are mutually exclusive with expedited removal proceedings. *See* 8 U.S.C. § 1229a(a)(3)("a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States."). Therefore, Petitioner is **not** subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), which is limited to "alien[s] subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution." 8 U.S.C. § 1225(b)(l)(B)(iii)(IV).

Administrative interpretations of 8 U.S.C. § 1225 confirm that the mandatory detention provision applies only to noncitizens in the expedited removal and Credible Fear Interview procedure. The Attorney General explained that

> **Section 235 of the Act expressly provides for the detention of aliens originally placed in expedited removal.** Such aliens "shall be detained pending a final determination of credible fear." INA § 235(b)(l)(B)(iii)(IV) [8 USC§ 1225(b)(l)(B)(iii)(IV)]. Aliens found not to have a credible fear "shall be detained... until removed." *Id.* Aliens found to have such a fear, however, "shall be detained for further consideration of the application for asylum." *Id.* § 235(b)(l)(B)(ii).

Matter of M-S-, 27 I&N Dec. 509, 512 (A.G. 2019) (emphasis added). This agency interpretation of 8 U.S.C. § 1225(b)(l)(B)(iii)(IV) confirms that the application of this mandatory detention provision applies only to noncitizens in expedited removal proceedings "pending a final determination of credible fear." *Id.* In this case, there is no pending Credible Fear Interview for Petitioner. *See* Notice to Appear against Petitioner.

The DHS documents also demonstrate that Petitioner is not subject to mandatory

detention under 8 U.S.C. § 1225. The Warrant for Arrest of Alien and the NTA indicate that DHS arrested Petitioner pursuant to INA§ 236, 8 U.S.C. § 1226. *See* Warrant for Arrest of Alien against Petitioner; Notice to Appear. As the Attorney General stated in *Matter of M-S-*,

> Section 236 of the Act addresses, more generally, the detention of aliens in removal proceedings. Once an alien has been arrested pursuant to an immigration warrant, DHS "may continue to detain the arrested alien" or "may release the alien on" "bond of at least $1,500" or "conditional parole." INA§ 236(a)(l)-(2), 8 U.S.C. § 1226(a)(l)-(2).

Matter of M-S-, 27 I&N Dec. 509,512 (A.G. 2019). Therefore, DHS's own arrest documents for Petitioner contradict the Government's contention that the Petitioner's "detention is proper under 8 U.S.C. § 1225(b)(2)(A), which mandates he remain in detention during the pendency of his removal proceedings." Doc. 4 at p. 8. Taking DHS's arrest documents against Petitioner into consideration, it is clear that DHS arrested Petitioner pursuant to 8 U.S.C.§ 1226(a), not 8 U.S.C. § 1225(b), and Petitioner is not subject to mandatory detention. The Government also relies on 8 U.S.C. § 1225(b)(2)(A) for the conclusion that Petitioner is not eligible for release. This argument also fails because this statutory provision applies to applicants for admission *before* DHS initiates full removal proceedings by filing an NTA with the Immigration Court. 8 U.S.C. § 1225(b)(2)(A) falls under the subheading "Inspection of other aliens," and states that "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 [full removal] proceeding under section 1229a of this title." *Id.* (emphasis added). The INA defines the "terms 'admission' and 'admitted' [to] 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). Both the plain meaning and the context of this provision-the expedited removal statute-indicate that it applies only at the time DHS initiates full removal proceedings under 8 U.S.C. § 1229a. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) ("[T]he court should not confine itself to examining a particular statutory provision in isolation. Rather, it must place the provision in context."). In this case, DHS arrested Petitioner on September 29, 2025, many years *after* the Petitioner entered the United States and multiple years *after* he filed for Asylum and for a U Visa. Therefore, 8 U.S.C. § 1225(b)(2)(A) does not apply to this case.

The Respondents assert that Petitioner is lawfully detained pursuant to 8 USC § 1225(b)(2) and "acknowledge that questions of law in this case, and the challenges to the government's policy and practice, substantially overlap with those at issue in *Doe* [v. Moniz, No. 25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)] and *Escobar* [v. Hyde, 25-cv- 12620-IT, 2025 WL 2823324 (D. Mass. Oct. 3, 2025)]." In *Doe*, the court noted that "[w]hereas Section 1225(b) authorizes the Government to detain certain aliens seeking admission into the country, Section 1226 authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Doe*, 2025 WL 2576819 at *5 (citation modified). Since there is no dispute that the Petitioner has been living in the United States for several years when the Government detained him, Section 1225 does not apply to Petitioner. *Doe*, 2025 WL 2576819 at *5. More than two dozen courts across the country have rejected the Governments' reinterpretation of the INA in a way that deprives individuals, like Mr. Tomas Elias, of their liberty without any opportunity to seek bond. *See Guerrero Orellana v. Moniz*, 2025 WL 280996, at *5 (D. Mass. Oct. 3, 2025) (collecting cases). And as the Court found in

Escobar, the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is unpersuasive and does not change the analysis. *See Escobar*, 2025 WL 2823324, at *3 (citing cases reaching the same conclusion).

To the extent that *Matter of Q. Li*, and subsequent decisions from the board of Immigration Appeals, *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), permits mandatory detention of Petitioner under 8 U.S.C. § 1225(b), the Court should not follow *Matter of Q. Li*. The Government contends that Petitioner is not eligible for release under the BIA's recent decision in *Q. Li*, 29 I&N Dec. 66 (BIA 2025). The statute at issue in *Q. Li* and *Yajure Hurtado* is 8 U.S.C. § 1225(b)(2)(A), which governs **"Inspection** of other aliens." *Id.§* 1225(b)(2) (emphasis added). The statute provides that "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). This statute applies at the time the noncitizen seeks admission at the border. *See Matter of M-S-*, 27 I&N Dec. 509, 512 (A.G. 2019). If *Q. Li* and *Yajure Hurtado* stands for the proposition that 8 U.S.C. § 1225(b)(2)(A) renders Petitioner ineligible for bond, then the Court should eschew BIA's arbitrary and capricious interpretation of the statute. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 392 (2024) (stating that 5 U.S.C. §706(2)(A) requires "agency action to be set aside if 'arbitrary, capricious, [or] an abuse of discretion.'"). Courts may "hold unlawful and set aside agency action, findings, and conclusions found to be... not in accordance with law." *Id.* at 391 (quoting §706(2)(A)). "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires." *Id.* at 412. Therefore, if the

Court determines that *Q. Li* and *Yajure Hurtado* extend 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention requirement to Petitioner, the Court should *not* follow *Q. Li,* but rather independently rule that 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner because the statute contemplates procedures, expedited removal and admission *before* full removal proceedings commenced, that do not apply to Petitioner.

CONCLUSION

For the reason described above, Petitioner's Petition should be granted, and Respondents should be ordered to release Petitioner immediately pursuant to his statutory eligibility for release.

Dated: October 28, 2025

Respectfully submitted,

//Hans. J Bremer

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CERTIFICATE OF SERVICE

I, Hans J. Bremer, Counsel for Petitioner hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: October 28, 2025

Respectfully submitted,

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