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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

WASHINGTON MURILLO-CASTILLO,

Petitioner,

v.

ACTING FOD JONATHAN
FLORENTINO, ICE, *et al.*,

Respondents.

Hon. Madeline Cox Arleo, U.S.D.J.

Civil Action No. 25-16728 (MCA)

**RESPONDENTS' ANSWER TO PETITION FOR A WRIT OF
HABEAS CORPUS UNDER 28 U.S.C. § 2241**

On the Answer:

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PRELIMINARY STATEMENT

Petitioner is detained under 8 U.S.C. § 1225(b)(1)(a)(iii), which requires detention of aliens apprehended near the border pending their removal proceedings. Petitioner brings this habeas action under 28 U.S.C. § 2241 alleging that his detention violates the Immigration and Nationality Act (“INA”) and Due Process Clause of the Fifth Amendment.

Petitioner’s detention is lawful because § 1225(b)(1)(a)(iii) requires U.S. Immigration and Customs Enforcement (“ICE”) to detain Petitioner until his removal proceedings conclude. That section applies to aliens such as Petitioner that are “encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border.” *Castro v. U.S. Dep’t of Homeland Sec.*, 835 F.3d 422, 425 (3d Cir. 2016) (citations omitted); *see also Matter of M-S-*, 27 I. & N. Dec. 509, 511 (A.G. 2019).

Petitioner’s claims are premised on the idea that ICE is detaining him under § 1225(b)(2) rather than § 1225(b)(1). *See* Pet., ECF No. 1 at 3. That premise is incorrect. As such, unlike the many federal district courts that have rejected ICE’s interpretation of § 1225(b)(2) concerning aliens detained several years after entering the country, *see, e.g., Ayala Amaya v. Bondi*, No. 25-cv-16428-ESK, 2025 WL 3033880, at *2 (D.N.J. Oct. 30, 2025) (collecting cases), this case concerns the longstanding law that ICE must detain aliens like Petitioner who are apprehended near the border soon after entry. Accordingly, ICE’s detention of Petitioner is required by the INA and comports with Due Process.

STATEMENT OF THE CASE

A. Relevant Statutory and Regulatory Background

This case concerns the detention authorities governing aliens pending removal proceedings. “[T]he power to admit or exclude aliens is a sovereign prerogative.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And “the Constitution gives ‘the political department of the government’ plenary authority to decide which aliens to admit.” *Id.* (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). “[A] concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.” *Id.* (citing *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); see *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.”).

We discuss below the relevant statutory and regulatory backdrop for the two detention provisions at issue here—8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(a).

i. Mandatory Detention under 8 U.S.C. § 1225(b)

An alien “who has not been admitted or who arrives in the United States” is considered an “applicant for admission” under the INA. 8 U.S.C. § 1225(a)(1). All “[a]pplicants for admission must ‘be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). “[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Id.*

Any alien that falls under § 1225(b)(1), as Petitioner does here, is subject to expedited removal. As the Third Circuit has recognized:

[U]nder 8 U.S.C. § 1225(b)(1) and its companion regulations, two classes of aliens are subject to expedited removal if an immigration officer determines they are inadmissible due to misrepresentation or lack of immigration papers: (1) aliens “arriving in the United States,” and (2) aliens “encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border.”

Castro, 835 F.3d at 425 (quoting 8 U.S.C. § 1225(b)(1)(A)(i) & (iii); *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48877-01, 2004 WL 1776983 (Aug. 11, 2004)) (footnote omitted). Section 1225(b) and its regulations thus state that any alien who falls into this latter, 14-day/100-miles category will be treated the same as someone “arriving in the United States,” also known as an “arriving alien.” 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (providing that the “arriving alien” rules in subsection (b)(1)(A)(i) apply to aliens described in subsection (b)(1)(A)(iii)).

Expedited removal means that an immigration officer “shall order” removal without further hearing. *Id.* § 1225(b)(1)(A)(i); *see also* 8 C.F.R. § 1003.19(h)(2)(i)(B) (prohibiting bond hearings for “arriving aliens” in removal proceedings). But an alien subject to § 1225(b)(1) can instead be placed in full removal proceedings under 8 U.S.C. § 1229a. One way for that to occur is if the immigration officer, in his or her discretion, chooses to initiate full removal proceedings. *See Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 521 & n.1 (BIA 2011). Another way is when the alien in expedited removal proceedings announces an intention to apply for asylum or expresses a fear of persecution (including torture under the United Nations Convention Against Torture). In that case, removal is postponed pending further

proceedings on the application. 8 U.S.C. § 1225(b)(1)(A)(ii), (B). If the alien is found to have a credible fear of persecution or torture, the alien is referred from expedited removal to full removal proceedings under 8 U.S.C. § 1229a. *See id.* § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f).

Such full removal proceedings under § 1229a provide more robust procedures and due process than expedited removal, *compare* 8 U.S.C. § 1229a, *with id.* § 1225(b)(1), *and Matter of E-R-M- & L-R-M-*, 25 I. & N. at 521 n.1, including a right to appeal to the Board of Immigration Appeals (“BIA”) and petition for review by a federal appellate court, *id.* § 1252(a)(1). However, the alien “shall be detained” throughout this process. 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV).

Although detention under § 1225(b) is mandatory, it is not indefinite. On the contrary, “§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time.” *Jennings*, 583 U.S. at 299. Specifically, “detention must continue until immigration officers have finished ‘consider[ing]’ the application for asylum or until removal proceedings have concluded.” *Id.* (citations omitted). “Once those proceedings end, detention under § 1225(b) must end as well.” *Id.* at 297.

Although section 1225(b) does not provide for bond hearings, *see id.* at 297-303, it does contain “a specific provision authorizing release from [] detention”: the Secretary of Homeland Security “may ‘for urgent humanitarian reasons or significant public benefit’ temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2).” *Id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)). Federal courts lack jurisdiction “to review

the . . . exercise of discretion in decisions to grant or deny parole.” *Ashish v. Att’y Gen. of U.S.*, 490 F. App’x 486, 487 (3d Cir. 2013); *see* 8 U.S.C. § 1252(a)(2)(B)(ii).

ii. Detention under 8 U.S.C. § 1226(a)

Section 1226 of the INA provides for arrest and detention on a warrant “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), immigration officials may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.¹ Under regulation, immigration officers can release an alien if the alien demonstrates that they “would not pose a danger to property or persons” and are “likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention, release the alien on bond, or release the alien on conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for immigration judges to consider). But regardless of the factors immigration judges consider, an alien “who presents a

¹ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

danger to persons or property should not be released during the pendency of removal proceedings.” *Id.* at 38 (citation omitted).

B. Petitioner’s Immigration History

Petitioner is a 38-year-old citizen and national of Ecuador. Ex. 1 at 1 (Aug. 2025 Form I-213);² Pet., ECF No. 1 at 1. According to U.S. Department of Homeland Security (“DHS”) records, Petitioner “entered the United States on or about October 13, 2022, at or near[] the Rio Grande City, Texas border without inspection.” Ex. 1 at 2 (Aug. 2025 Form I-213); *see also* Pet., ECF No. 1 at 1, 9. On that same day, U.S. Customs and Border Protection (“CBP”) encountered Petitioner in Laredo, Texas, which sits on the U.S./Mexico border. Ex. 1 at 2 (Aug. 2025 Form I-213); *see also* Pet., ECF No. 1 at 1. CBP determined that Petitioner had unlawfully entered without being inspected or paroled and arrested Petitioner. Ex. 6 at 2 (Oct. 2022 Form I-213).

On October 20, 2022, CBP determined that Petitioner was inadmissible under INA § 212(a)(7)(A)(iii), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of valid unexpired entry documents. *See* Ex. 2 at 1 (Notice & Order of Expedited Removal & Related Records). CBP also determined Petitioner was subject to expedited removal under § 1225(b)(1)(A)(iii) because he was apprehended shortly after crossing the international border. *See id.* Specifically, the Notice and Order of Expedited Removal states that, pursuant to 8 U.S.C. § 1225(b)(1), DHS had

² Respondents attach Petitioner’s relevant immigration records as exhibits to this Answer under Federal Rule of Civil Procedure 10(c), which is incorporated by Rule 12 of the Rules Governing Section 2254 Cases in the U.S. District Courts (which is applicable to this § 2241 petition through Rule 1(b)).

determined that Petitioner was inadmissible to the United States under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), in that:

[Petitioner is] an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the [INA]; To wit: [Petitioner was] apprehended within 100 air miles of the international boundary of the United States of America and Mexico within 14 days of having illegally entered the U.S. by crossing the Rio Grande River in the Western District of Texas. [He] illegally entered with the intent to reside and seek employment in the United States. [He] w[as] not inspected or admitted by an Immigration Officer at a port of entry designated by the Secretary of Homeland Security.

Id. While in custody, Petitioner stated that he is a citizen of Ecuador, had crossed the Rio Grande near Rio Grande City, Texas, on October 13, 2022, and was not inspected by an immigration officer at a port-of-entry. *Id.* at 4. At that time, Petitioner also claimed fear of persecution or torture if he were returned to Ecuador. *Id.* at 5; Ex. 1 at 2 (Aug. 2025 Form I-213). As a result, CBP referred Petitioner for a credible fear interview by an asylum officer. Ex. 6 at 3 (Oct. 2022 Form I-213).

On December 14, 2022, ICE paroled Petitioner into the country under its discretionary authority pursuant to INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). Ex. 7 at 1 (Parole Notice); *see also* Ex. 1 at 2 (Aug. 2025 Form I-213). “Sometime in 2023,” Petitioner applied for asylum with USCIS. Pet., ECF No. 1 at 9. USCIS dismissed Petitioner’s application pursuant to 8 C.F.R. § 208.30 on June 12, 2025, because Petitioner remained subject to the credible fear screening process. Ex. 8 (Form I-589 Dismissal Notice).

On August 1, 2025, USCIS determined that Petitioner has a credible fear of persecution or torture if returned to Ecuador, and ICE subsequently took Petitioner

into custody. Ex. 1 at 2 (Aug. 2025 Form I-213); Ex. 3 (Form I-200); Pet., ECF No. 1 at 2, 8, 9. On that same day, USCIS filed a Notice to Appear with the immigration court, thereby commencing “removal proceedings under section 240 of the [INA].” Ex. 4 (Notice to Appear); *see also* Pet., ECF No. 1 at 2. The Notice to Appear charged Petitioner with removability under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), for being present in the United States without admission or parole, and INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without valid documents. Ex. 4 at 1 (Notice to Appear).

Petitioner is detained at the Delaney Hall Detention Facility in Newark, New Jersey. Pet., ECF No. 1 at 2, 4. On October 7, 2025, an immigration judge denied Petitioner requested custody redetermination (i.e., bond hearing) pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Ex. 5 (IJ Order); Pet., ECF No. 1 at 3, 9. The next hearing in his removal proceedings is scheduled for December 3, 2025. Ex. 9 at 1 (Hearing Notice).

C. Procedural History

Petitioner filed the Petition on October 18, 2025. Pet., ECF No. 1. On October 19, 2025, Petitioner filed a motion for an order to show cause. Pet’r’s Mot., ECF No. 2. On November 4, 2025, the Court denied Petitioner’s motion for an order to show cause and ordered Respondents to answer the Petition within 21 days and provide notice within seven days of any change in Petitioner’s custody or immigration status “at any time during the pendency of this case.” Order to Answer, ECF No. 4 at 3-4.

In the Petition, Petitioner asserts that he is being subjected to mandatory detention without bond in contravention of the INA and Due Process Clause of the

Fifth Amendment. Petitioner argues that the proper authority for his detention, if any, arises under 8 U.S.C. § 1226(a), and so he claims that any detention under § 1225(b)—which, unlike § 1226(a), is mandatory and does not allow for a bond hearing—is unlawful. Pet., ECF No. 1 at 10-12. As relief, Petitioner asks this Court to, *inter alia*: (1) issue an order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard; (2) declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment; (3) issue an order requiring Respondent’s to immediately release Petitioner. Pet., ECF No. 1 at 12.

STANDARD OF REVIEW

28 U.S.C. § 2241(c)(3) authorizes a court to grant a writ of habeas corpus where a prisoner “is in custody in violation of the Constitution or laws or treaties of the United States.” Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, which is applicable to § 2241 petitions through Rule 1(b), provides this Court with the authority to dismiss a habeas petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.”³ “Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face” *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing 28 U.S.C. § 2254, Rule 4).

³ See also *Moncrieffe v. Yost*, 367 F. App’x 286, 288 n.2 (3d Cir. 2010) (noting that summary dismissal of a § 2241 petition is appropriate pursuant to Rule 4 of the Rules Governing Section 2254 Cases).

ARGUMENT

I. PETITIONER IS SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(1)

Petitioner's mandatory detention is lawful under § 1225(b)(1). On or about October 13, 2022, Petitioner was apprehended by CBP near the U.S./Mexico border shortly after entering the country illegally. *See supra* p. 6. At that time, CBP determined that Petitioner was subject to expedited removal as an arriving alien under 8 U.S.C. § 1225(b)(1) because he was "apprehended within 100 air miles of the international boundary of the United States of America and Mexico within 14 days of having illegally entered the U.S. by crossing the Rio Grande River in the Western District of Texas." *See supra* pp. 6-7; Ex. 2 at 1 (Notice & Order of Expedited Removal & Related Records). Accordingly, Petitioner falls under the mandatory detention requirements of § 1225(b)(1)(A)(iii) and the 14-day-100-miles regulation interpreting that section. *See Castro*, 835 F.3d at 425 (quoting 8 U.S.C. § 1225(b)(1)(A)(i) & (iii); *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48877-01, 2004 WL 1776983 (Aug. 11, 2004) (footnote omitted); *Matter of M-S-*, 27 I. & N. Dec. at 511 (discussing the subset class of aliens described in *Designating Aliens for Expedited Removal*, 69 Fed. Reg. 48877-01).

Because Petitioner received a finding of a credible fear of persecution or torture on August 1, 2025, he was placed into full removal proceedings under 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f); *see supra* pp. 7-8. His detention is mandatory pending his removal proceedings as per § 1225(b)(1)(B)(ii), which states that, with a positive credible fear determination, the alien "shall be

detained” throughout the removal proceedings. *See Matter of M-S-*, 27 I. & N. Dec. at 512 (stating § 1225(b)(1) “mandates detention throughout the completion of removal proceedings unless the alien is paroled” (quoting *Jennings*, 138 S. Ct. at 844-45)); *see also Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 219-20 (S.D.N.Y. 2020) (“Like all arriving aliens who are not clearly and beyond a doubt entitled to be admitted to this country, Mr. Mendez Ramirez is subject to mandatory detention. As discussed above, an immigration judge may not conduct a bond hearing to determine whether such an arriving alien should be released into the United States during removal proceedings, 8 C.F.R. § 1003.19(h)(2)(i)(B), but DHS may exercise its discretion to release detained aliens in limited circumstances.” (internal quotation marks and citation omitted)).

Petitioner’s argument that he is detained under § 1225(b)(2), and thus his detention should be under § 1226(a), *see* Pet., ECF No. 1 at 3, is incorrect. Shortly after Petitioner entered the United States without inspection or parole, immigration officials issued him a § 1225(b)(1) notice and order of expedited removal. Ex. 2 at 1 (Notice & Order of Expedited Removal & Related Records).⁴ Moreover, that

⁴ While it does not appear that Petitioner is challenging the validity of the notice and order of expedited removal, doing so would not undo § 1225(b)(1)’s application to him. 8 U.S.C. § 1252 delineates the scope of judicial review of all types of removal orders and “narrowly circumscribes judicial review for expedited removal orders issued pursuant to [8 U.S.C.] § 1225(b)(1).” *Castro*, 835 F.3d at 426. It provides that “no court shall have jurisdiction to review . . . the application of [§ 1225(b)(1)] to individual aliens, including the [credible fear] determination made under [§ 1225(b)(1)(B)].” *Id.* (alterations in original) (quoting 8 U.S.C. § 1252(a)(2)(A)(iii)). The statute also provides that “no court shall have jurisdiction to review . . . any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an [expedited] order of removal . . . [;] a decision by

Petitioner was paroled and later re-detained, *see supra* p. 7, does not relieve him from falling under § 1225(b)(1). *See Pipa-Aquise v. Bondi*, No. 25-cv-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (collecting cases).

Accordingly, Petitioner’s mandatory detention under 8 U.S.C. § 1225(b)(1) complies with the INA. However, if the Court holds that § 1226(a) applies to Petitioner, ICE respectfully submits that the appropriate remedy is a bond hearing at which Petitioner bears the burden, not immediate release.⁵

II. DUE PROCESS PERMITS MANDATORY DETENTION PENDING REMOVAL PROCEEDINGS

The Court should also reject Petitioner’s argument that he has not been afforded sufficient process. Pet., ECF No. 1 at 10-12. As a general matter, an applicant for admission who remains in the country unlawfully is entitled to due process rights. *See Pena v. Hyde*, No. 25-cv-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (citing *Wong Wing v. United States*, 163 U.S. 228, 238

the Attorney General to invoke the” expedited removal procedures; or “procedures and policies adopted by the Attorney General to implement the provisions of [8 U.S.C. § 1225(b)(1)].” 8 U.S.C. § 1252(a)(2)(A)(i), (ii) & (iv); *see also Castro*, 835 F.3d at 426.

⁵ *See Valeriano v. Soto*, No. 25-cv-16100 (MAS) (D.N.J. Oct. 1, 2025), ECF No. 4 at 2 (Order) (“As Petitioner acknowledges, even under his reading of the relevant immigration statutes, he is still subject to detention under 8 U.S.C. § 1226(a), albeit with an entitlement to seek bond from an immigration judge. Should Petitioner prevail in this matter, the proper relief would constitute an order directing the Government to provide Petitioner with the bond hearing to which he contends he is entitled under § 1226(a).”); *cf. Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 278-79 (3d Cir. 2018) (holding that Due Process does not require the government to bear the burden of proof in bond hearings under 8 U.S.C. § 1226(a)); *but see, e.g., Rivera Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 WL 2753496, at *10-11 (D.N.J. Sept. 26, 2025) (ordering petitioner’s release and “temporarily enjoin[ing] respondents from re-arresting petitioner under . . . 8 U.S.C. § 1226(a) for 14 days after her release”).

(1896)); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993). But those rights are coterminous “only to those rights and protections Congress set forth by statute[.]” the Due Process Clause “requires ‘nothing more.’” *Pena*, 2025 WL 2108913, at *2 (quoting *Thuraissigiam*, 591 U.S. at 140). That is because “the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted[.]” *Thuraissigiam*, 591 U.S. at 139 (internal quotation marks and citation omitted). Those procedures authorize detention pending removal proceedings, which is a “constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Here, as discussed above, Petitioner is an “applicant for admission” under the plain text of the INA whose detention complies with § 1225(b)(1). “And because Petitioner’s detention complies with the relevant statutes, namely Section 1225(b), the Due Process Clause provides nothing more.” *Pipa-Aquise*, 2025 WL 2490657, at *2 (internal quotation marks and citation omitted); *see also Thuraissigiam*, 591 U.S. at 138 (recognizing that for aliens who have never “been admitted into the country pursuant to law, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law” (internal quotation marks and citation omitted)).

Nor is Petitioner’s detention without bond unconstitutionally prolonged. Although “nothing in the statutory text imposes any limit on the length of detention” under § 1225(b)(2), *Jennings*, 583 U.S. at 297, courts within this District considering

as-applied due process challenges under the statute have looked to whether the detention without bond has become so prolonged as to be considered unreasonable, *see Adel G. v. Warden, Essex Cnty. Jail*, No. 19-cv-13512 (KM), 2020 WL 1243993, at *2 (D.N.J. Mar. 13, 2020) (collecting cases). That, in turn, asks whether the detention has become “so unreasonable as to amount to an arbitrary deprivation of liberty which cannot comport with the requirements of the Due Process Clause.” *Id.* (quoting *Dryden v. Green*, 321 F. Supp. 3d 496, 502 (D.N.J. 2018)). This is a high bar. While there is no “bright line rule which marks the border between constitutional and unconstitutional detention” under § 1225(b), several courts “within this district have previously found that detention for fifteen months or less is insufficient to support an as-applied challenge to detention under § 1225(b).” *Id.* (citing cases).

Here, Petitioner has been detained under § 1225(b)(1) since August 1, 2025, which is approximately three months. Therefore, it is ICE’s position that his detention is presumptively reasonable. *See, e.g., Pipa-Aquise*, 2025 WL 2490657, at *2 (holding “two-month detention” under § 1225(b) did not violate due process); *cf. Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (finding post-final-order detentions under six months presumptively reasonable); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-11 (3d Cir. 2020) (holding that Due Process Clause demands bond hearing only when detention pending removal under § 1226(c)—which, like § 1225(b)(2), requires mandatory detention—has become unreasonably

prolonged, which is a highly fact-specific inquiry without a bright line).⁶

Finally, even where mandatory detention becomes “unreasonable” under the Due Process Clause, ICE respectfully submits that the appropriate remedy is a bond hearing rather than immediate release. *See, e.g., Akhmadjanov v. Oddo*, No. 25-cv-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *Rodriguez*, 2025 WL 2490670, at *3. Accordingly, ICE respectfully submits that if the Court finds that Petitioner’s detention is unreasonable, it should order a bond hearing instead of release.

CONCLUSION

For the reasons set forth above, the Court should dismiss or deny the Petition.

Respectfully submitted,

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⁶ Courts outside this District have similarly held that § 1225(b) detention that is under thirteen months is not unconstitutionally prolonged. *See, e.g., Rodriguez v. Bondi*, No. 25-cv-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025) (collecting cases).