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

ELDER DAVID FUENTES  
VELASQUEZ,

*Petitioner,*

v.

KRISTI NOEM, *et al.*,

*Respondents.*

Hon. Julien X. Neals, U.S.D.J.

Civil Action No. 25-16797 (JXN)

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**ANSWER TO THE VERIFIED PETITION FOR WRIT OF HABEAS CORPUS  
AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

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**PRELIMINARY STATEMENT**

On July 23, 2025, U.S. Immigration and Customs Enforcement (“ICE”) detained Petitioner pending removal proceedings in accordance with 8 U.S.C. § 1225(b)(2), because he is present in the United States without admission or parole. Petitioner now brings this habeas action under 28 U.S.C. § 2241, seeking release from § 1225(b)(2) detention or a ruling that his detention is governed by 8 U.S.C. § 1226(a), entitling him to a bond hearing before an Immigration Judge. ECF 1 (Petition) at 2.<sup>1</sup>

Respondents respectfully submit that Petitioner is being lawfully detained under § 1225(b)(2), while acknowledging that Courts in this District have rejected Respondents’ interpretation of § 1225(b)(2). *See, e.g., Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025). Respondents assert this position because the Board of Immigration Appeals (“BIA”), the highest administrative body interpreting immigration law in the Immigration Courts, has held that § 1225(b)(2) applies to aliens present without admission or parole, like Petitioner. Respondents continue to respectfully assert the position before this Court, absent contrary precedent from the Third Circuit.

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<sup>1</sup> Pursuant to the October 23, 2025 Memorandum and Order, Respondents provide a “paragraph by paragraph” Answer to the Petition after they address Petitioner’s detention under § 1225(b)(2) and § 1226(a). *See* ECF 2 (Oct. 23, 2025 Order) at 4. Respondents note that the Petition does not state any cause of action. Respondents do not address Petitioner’s Motion for a Temporary Restraining Order, ECF 1-3, or his request for an Order to Show Cause, which were denied by the Court in the October 23, 2025 Memorandum and Order. *See* Oct. 23, 2025 Order at 4-5.

However, if the Court agrees with Petitioner that his detention is governed by § 1226(a), *see* Petition at 2, Respondents respectfully request that the Court order an Immigration Judge to conduct a bond hearing rather than release Petitioner. For the reasons addressed below, the Court should dismiss or deny the Petition.

## **BACKGROUND**

### **I. Relevant Legal Background**

This case principally concerns the detention authority for Petitioner pending his removal proceedings. Accordingly, we discuss the relevant detention provisions at issue—8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1226(a)

#### A. Detention of “Applicants for Admission” (8 U.S.C. § 1225(b))

“The power to admit or exclude [non-citizens] is a sovereign prerogative.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (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 [non-citizens] to admit.” *Id.* (emphasis added) (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 a[] [non-citizen] should be admitted.” *Id.*; *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.”).

Section 1225 governs the detention of “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or

“who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). 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).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings, unless they indicate an intention to apply for asylum or other forms of relief. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (ii). If the alien does not indicate an intent to apply for asylum, does not express a fear of prosecution, or does not “have such a fear” after inquiry by an officer, he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2)—which ICE argues applies to Petitioner here—is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) (“[A]liens 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.”).

The Department of Homeland Security (“DHS”) has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). But “such parole . . . shall not be regarded as an admission,” and upon its termination, the alien’s “case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

B. Detention under 8 U.S.C. § 1226(a)

Section 1226 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.<sup>2</sup> By regulation, immigration officers can release an alien if the alien demonstrates that he “would not pose a danger to property or persons” and “is 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 before a

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<sup>2</sup> 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).

final order of removal is issued. *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 danger to persons or property should not be released during the pendency of removal proceedings.” *Id.* at 38.

## **II. Petitioner’s Criminal and Immigration History**

Petitioner is a native and citizen of Guatemala who entered the United States at an unknown place on an unknown date. Exhibit A (Notice to Appear) at 1; Exhibit B (Record of Deportable/Inadmissible Alien) at 2.<sup>3</sup> On July 23, 2025, ICE encountered Petitioner at the Passaic County Jail in Wayne, New Jersey, where he was detained for obstructing the administration of law, hindering oneself, and operating a motor vehicle during license suspension. Exhibit B (Record of Deportable/Inadmissible Alien) at 3. That same day, ICE served Petitioner with a Notice to Appear charging him with removability for being “an alien present in the United States without being

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<sup>3</sup> Respondents attach Petitioner’s relevant immigration records as exhibits to this Answer pursuant to Federal Rule of Civil Procedure 10(c), which is incorporated by Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts (which is applicable to this § 2241 Petition through Rule 1(b)).

admitted or paroled,” in violation of INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and for being an immigrant not in possession of any valid entry document in violation of INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). Notice to Appear at 2, 4. ICE placed Petitioner into removal proceedings. Notice to Appear at 1. Petitioner has been detained at the Delaney Hall Detention Facility in Newark, New Jersey, since July 23, 2025. Exhibit C (Notice to EOIR: Alien Address).

The U.S. Citizenship and Immigration Services (“USCIS”) approved Petitioner’s application for Consideration of Deferred Action for Childhood Arrivals (“DACA”) on November 1, 2016. Record of Deportable/Inadmissible Alien at 2. The approval was valid until October 31, 2018. Exhibit D (DACA Approval Notice Valid from 11/1/2016 to 10/31/2018). On August 13, 2020, Petitioner filed another application for Consideration of DACA, Record of Deportable/Inadmissible Alien at 2, and the application is pending with USCIS. Exhibit E (Notice to Applicants). USCIS informed Petitioner that his application is not an approval of DACA and “does not grant any immigration status or benefit.” *Id.*; ECF 1-7 (Aug. 25, 2020 Notice to Applicants) at 4.<sup>4</sup>

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<sup>4</sup> Petitioner claims that he “also retains Deferred Action for Childhood Arrivals (DACA) protection, as his renewed application remains pending and has not been denied.” Petition at 10. Petitioner is mistaken.

A DACA beneficiary who files an application for renewal, more than one year after the expiration of his DACA benefits, will need to submit “a new initial request.” <https://www.uscis.gov/DACA> at Q53 (last visited on Nov. 12, 2025) (“If you file after your most recent DACA period expires, but within 1 year of its expiration, you may submit a request to renew your DACA. If you are filing beyond 1 year after your most recent period of DACA expired, or if your most recent grant of DACA was terminated at any time, you may still request DACA by submitting a new initial request.”)

On September 17, 2025, an Immigration Judge denied Petitioner's request for bond under 8 C.F.R. § 1236, finding Petitioner is mandatorily detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Exhibit F (Sept. 17, 2025 IJ Order).

On October 15, 2025, Petitioner filed an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents before the Immigration Court. Petition at 6. Petitioner was scheduled to appear before an Immigration Judge on October 28, 2025, for a merits hearing in his removal proceedings. Exhibit G (Notice of Internet-Based Hearing). However, according to ICE, the Immigration Judge adjourned the hearing at Petitioner's counsel's request.

### **III. Petitioner's Habeas Claims**

Petitioner filed this habeas action on October 21, 2025, arguing that the Immigration Judge lacks jurisdiction to release him on bond pursuant to the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025), which

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Petitioner's DACA benefits expired on October 31, 2018, *see* DACA Approval Notice Valid from 11/1/2016 to 10/31/2018, and he filed a "renewal" application on August 13, 2020. Therefore, USCIS is treating his August 13, 2020 application as "a new initial request," and he currently has no DACA benefits. Further, as provided by the USCIS website:

On Jan. 17, 2025, the U.S. Court of Appeals for the Fifth Circuit [issued a decision](#) regarding the DACA Final Rule. Pursuant to the court's order, USCIS will continue to accept and process DACA renewal requests and accompanying applications for employment authorization under the DACA regulations at 8 CFR 236.22 and 236.23. USCIS will continue to accept initial requests but will not process initial DACA requests at this time. Current grants of DACA and related Employment Authorization Documents remain valid until they expire, unless individually terminated.

<https://www.uscis.gov/DACA> (last visited on Nov. 12, 2025).

found that aliens present in the United States without admission are applicants for admission and must be detained for the duration of their removal proceedings under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). *See* Petition at 2. Petitioner asks the Court:

to enjoin Respondents from effectuating his removal from the United States and order his immediate release from custody, because he is unlawfully detained under § 1225(b)(2)(A). Petitioner further requests that he is not subject to detention because of his DACA status, *and if any detention authority is warranted, it would be pursuant [to] § 1226(a).*

Petition at 2 (emphasis added). Petitioner argues that he has been unlawfully detained under § 1225(b)(2)(A) in violation of the Due Process Clause. *Id.*, Prayer for Relief. The Court should dismiss or deny the Petition.

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

## ARGUMENT

### THE COURT SHOULD DISMISS OR DENY THE HABEAS PETITION

**I. Petitioner is an “Applicant for Admission” Subject to Mandatory Detention Under § 1225(b)(2).**

Section 1225(b)(2) 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.” Petitioner’s detention is lawful under the plain text of § 1225(b)(2).

On July 23, 2025, ICE arrested Petitioner and charged him with being unlawfully present without admission or parole and without a valid entry document. Notice to Appear at 2, 4; Record of Deportable/Inadmissible Alien at 3. Accordingly, Petitioner is an “applicant for admission” as defined by § 1225(a), and his detention is mandatory. *See, e.g., Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at \*1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an “applicant for admission” subject to mandatory detention under § 1225(b)); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at \*2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who “is present in the country but has not yet been lawfully granted admission”). The BIA, the highest-level administrative body for interpreting immigration law, recently adopted this understanding of § 1225(b)(2) in a decision that binds all immigration judges and is persuasive authority here. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216; *see also Matter of Q. Li*, 29 I. & N. Dec. 66 (2025).

By its plain text, § 1225(b) requires ICE to detain two types of “applicants for admission”—those who have “arrived in the United States” and those “who ha[ve] not been admitted.” 8 U.S.C. § 1225(a)(1). “[A]rrive[d] in the United States” means the noncitizen has just entered the country—such as at the airport or at the U.S. border—or did so very recently. *See Thuraissigiam*, 591 U.S. at 139. Noncitizens “have not been admitted” if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining “admission”). That latter category is broader and includes Petitioner because he is present in the United States without admission or parole. Accordingly, he is subject to § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (noting § 1225(b)(2) is a “broader,” “catchall provision” that “applies to all applicants for admission not covered by § 1225(b)(1)”).<sup>5</sup>

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<sup>5</sup> Even though § 1225(b) requires the detention of both types of applicants for admission, immigration officials did not always interpret it that way. Specifically, DHS’s predecessor agency, the U.S. Immigration and Naturalization Service (“INS”), read § 1225(b) to apply only to those who have arrived in the United States. That is, while INS detained arriving aliens, INS chose whether to detain aliens who have not been admitted. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131, (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”). Noncitizens who were present without admission were detained under the discretionary rules of 8 U.S.C. § 1226(a). *See id.*

As of July 8, 2025, however, ICE has taken the position all applicants for admission, including those who are present without admission, are subject to mandatory detention under § 1225(b)(2). ICE takes this position because it accords with the plain language of the statute and is consistent with recent caselaw from the BIA, the highest-level administrative body for interpreting immigration law. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *see also Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025); *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).

Section 1225(b)(2) applies to aliens “seeking admission,” like Petitioner.

According to the BIA:

Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . . In other words, 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 the immigration laws.

*Matter of Lemus*, 25 I. & N. 734, 743 (BIA 2012). As such, the phrase “seeking admission” in § 1225(b)(2)(A) should be read to include an “applicant for admission.”

Put differently, all “applicants for admission” are, by definition, “seeking admission.” That is why, in § 1225(a)(3), Congress stated that immigration officers must inspect all aliens “who are applicants for admission *or otherwise* seeking admission.” 8 U.S.C. § 1225(a)(3) (emphasis added).

That is not to say the words “seeking admission” and “applicant for admission” are identical. The former is broader than the latter. For example, the INA contemplates that “stowaways” may seek admission by requesting asylum, yet stowaways are excluded from the definition of “applicant of admission.” 8 U.S.C. § 1225(a)(2). In addition, an applicant for admission must be physically in the United States; a noncitizen can “seek admission” in the United States or outside of it, such as in an embassy before a consular officer. *See Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at \*9 (D. Mass. Aug. 19, 2025) (although ruling against ICE, noting that the terms have slightly different breadth).

Those phrases play out in a commonsense way in § 1225(b)(2). The statute begins with a limiting or qualifying clause (i.e., it says the subsection applies only to “any applicant for admission,” which means only to those who are physically present). This limiting clause avoids the conclusion that the subsection would apply to those abroad; say, in an embassy. Congress having made clear § 1225(b)(2) applies only to those present here, the second clause says that detention is mandatory if the immigration officer determines the “alien seeking admission” is not entitled to it. *See Adamowicz v. I.R.S.*, 552 F. Supp. 2d 355, 367–68 (S.D.N.Y. 2008) (“[A] limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.’ This approach is successful not merely as a matter of grammar, but also as a matter of internal logic: the set of information defined in the first clause is specific and in no need of further restriction, whereas the set of information defined in the second clause more appropriately lends itself to such restriction.”). Accordingly, because Petitioner is an applicant for admission in that he is present without being admitted, he is subject to § 1225(b)(2).

When the plain text of a statute is clear, “that meaning is controlling” and courts “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act to correct “an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse

position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). It “intended to replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). Respondents’ reading of § 1225(b)(2) makes sense because it would not put aliens who “crossed the border unlawfully” in a better position than those “who present themselves for inspection at a port of entry.” *Id.* Otherwise, aliens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a). *See generally Matter of Hurtado*, 29 I. & N. Dec. at 222–25 (discussing legislative history in detail).

Respondents’ reading of § 1225(b)(2) also works hand in hand with § 1226(a)’s discretionary detention authority. The two sections are not duplicative; instead, § 1226(a) applies to any noncitizen who is present in the country but not an applicant for admission. In other words, it applies to any noncitizen who was admitted, but then something happened that made them deportable under 8 U.S.C. § 1227(a) (listing classes of deportable aliens as “any alien . . . in and admitted to the United States” who fall under any of several classes of deportable alien). Some examples include noncitizens who violate their nonimmigrant status—e.g., a tourist, student visa holder, or H-1B specialty occupations. *Id.* § 1227(a)(1)(c). These are noncitizens who were admitted into the country (so they are not applicants for admission) but then

engage in a deportable act such as overstaying their tourist visa, failing to comply with their student visa requirements, or losing their job that granted them H-1B status. Without § 1226(a), there would be no statutory authority for ICE to detain such noncitizens.<sup>6</sup> Accordingly, Petitioner’s detention is lawful under § 1225(b)(2).

If, however, the Court holds that § 1226(a) applies to Petitioner, the appropriate remedy is a bond hearing before an Immigration Judge at which Petitioner bears the burden, not immediate release. *See Valeriano v. Bondi*, No. 25-16100 (MAS), ECF 4 (D.N.J. Oct. 1, 2025), at 2. (“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*

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<sup>6</sup> Numerous courts have addressed ICE’s interpretation of § 1225(b)(2) since early July 2025, and while some courts have adopted it, the overwhelming majority have not. *Compare Rivera Zumba*, 2025 WL 2753496, at \*9 (holding that a noncitizen residing in the United States for 20 years was not affirmatively “seeking admission” and therefore not subject to § 1225(b)(2)) and *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at \*1 (D. Mass. Aug. 19, 2025) (collecting cases holding that ICE’s interpretation is “contrary to the plain text of the statute and the overall statutory scheme”), with *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at \*1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an “applicant for admission” subject to mandatory detention under § 1225(b)); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at \*2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who “is present in the country but has not yet been lawfully granted admission”); *Chavez v. Noem*, No. 25-2325, 2025 WL 2730228, at \*4 (S.D. Cal. Sept. 24, 2025) (similar); and *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (similar).

*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*, 2025 WL 2753496, at \*10–11 (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”); *Bethancourt Soto v. Soto*, No. 25-16200 (D.N.J. Oct. 22, 2025), ECF 9 (Order).

## **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. Petition at 12-13. As a general matter, “applicants for admission are entitled only to those rights and protections Congress set forth by statute,” and “the due process clause requires ‘nothing more.’” *Pena*, 2025 WL 2108913, at \*2 (citing *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 (citation omitted) (cleaned up); *see also id.* (“[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border.”).

Here, once ICE determined that Petitioner entered the United States without admission (a fact that Petitioner does not dispute), it follows that Petitioner is an “applicant for admission” and subject to mandatory detention.

Petitioner's current detention also comports with due process. Although the due process clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), some amount of detention is generally permissible, *Demore v. Kim*, 538 U.S. 510, 511 (2003). The Third Circuit's decision in *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203 (3d Cir. 2020), is instructive on this point. There, the Court held that when ICE detains a noncitizen pending removal proceedings under 8 U.S.C. § 1226(c) (which, like § 1225(b)(2), requires mandatory detention), the Due Process Clause demands a bond hearing only once detention has become "unreasonably prolonged." *Id.* at 210–11. This is a "highly fact-specific inquiry" without a bright line. *Id.* But Courts in this District have held that detentions under § 1225(b) considerably longer than Petitioner's were not unreasonable. *See Adel G. v. Warden, Essex Cnty. Jail*, No. 19-13512 (KM), 2020 WL 1243993, at \*2 (D.N.J. Mar. 13, 2020) (collecting cases holding that "detention for fifteen months or less is insufficient to support an as-applied challenge to detention under § 1225(b)"). *See also Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at \*3 (E.D. Va. June 24, 2025) (same; collecting cases).

Here, Petitioner has been in immigration custody since July 23, 2025, and his detention is presumptively reasonable.

Finally, even where mandatory detention becomes "unreasonable" under the Due Process Clause, the appropriate remedy is a bond hearing before an Immigration Judge, rather than immediate release. *See, e.g., Akhmadjanov v. Oddo*, No. 25-35, 2025 WL 660663, at \*5 (W.D. Pa. Feb. 28, 2025); *Rodriguez v. Bondi*, No. 25-791, 2025

WL 2490670, at \*3 (E.D. Va. June 24, 2025). If the Court finds that Petitioner's detention is unreasonable, it should order an Immigration Judge to conduct a bond hearing rather than release Petitioner.

### **CONCLUSION**

For the foregoing reasons, the Court should dismiss or deny the Petition.

### **PARAGRAPH BY PARAGRAPH ANSWER TO THE HABEAS PETITION<sup>7</sup>**

1. Respondents admit that Petitioner is a citizen of Guatemala and is present in the United States without admission or parole or any valid entry document. Respondents lack sufficient information to admit or deny the remaining allegations in Paragraph 1, thus they deny the allegations in Paragraph 1.

2. Respondents admit that ICE detains Petitioner under § 1225(b) and deny the remaining allegations in Paragraph 2.

3. Respondents admit that ICE served Petitioner with a Notice to Appear charging him with removability for being "an alien present in the United States without being admitted or paroled," in violation of INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and for being an immigrant not in possession of any valid entry document in violation of INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). Respondents deny the remaining allegations in Paragraph 3.

4. Respondents admit the allegations in Paragraph 4.

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<sup>7</sup> The Petition does not state any cause of action or provide numbered paragraphs. In order to assist with review of the Paragraph by Paragraph Answer below, the Respondents attach the Petition with numbered paragraphs at Exhibit H.

5. Paragraph 5 sets forth Petitioner's requests for relief, which do not require a response. However, if the Court determines that a response is required, Respondents deny the allegations in Paragraph 5.

6. Paragraph 6 sets forth Petitioner's argument and legal conclusions, which Respondents addressed in the above brief. To the extent an additional response is required to Paragraph 6, Respondents deny the allegations in Paragraph 6.

## **I. PARTIES**

7. Respondents lack sufficient information to admit or deny the allegations in Paragraph 7, thus they deny the allegations in Paragraph 7.

8. Respondents admit that Kristi Noem is the U.S. Secretary of Homeland Security.

9. Respondents admit that Pamela Bondi is the Attorney General of the United States of America and the senior official of the U.S. Department of Justice.

10. Respondents deny the allegations in Paragraph 10.

11. Respondents admit that Todd M. Lyons is the Acting Director of ICE.

## **II. JURISDICTION & VENUE**

12. Respondents admit that the Court has jurisdiction over § 2241 habeas actions and deny the allegations in Paragraph 12. Respondents deny that Petitioner is detained unlawfully and assert that Petitioner is detained under § 1225(b). Respondents address Petitioner's allegations and arguments in the above brief.

13. Respondents admit that the Court has jurisdiction to review detention under § 2241 and deny the allegations in Paragraph 13. Respondents address Petitioner's allegations and arguments in the above brief.

### **III. FACTS GIVING RISE TO THE HABEAS PETITION**

14. Respondents admit that Petitioner is in removal proceedings before the Immigration Court and that he had a merits hearing scheduled for October 28, 2025, which was adjourned at his counsel's request. Respondents further admit that Petitioner has a pending application for Consideration of DACA and deny the remaining allegations in Paragraph 14, because they lack sufficient information to admit or deny the allegations.

15. Respondents admit that Petitioner is a citizen of Guatemala and deny the remaining allegations in Paragraph 15, because they lack sufficient information to admit or deny the allegations.

16. Respondents admit that USCIS granted Petitioner DACA in 2016. Respondents further admit that Petitioner again applied for DACA in 2020. Respondents deny the remaining allegations in Paragraph 16.

17. Respondents lack sufficient facts to admit or deny the allegations in Paragraph 17 and thus they deny the allegations in Paragraph 17.

18. Respondents admit that Petitioner filed a motion for custody redetermination on September 9, 2025, and the Immigration Court denied bond on September 17, 2025 because Petitioner is detained under INA § 235. Respondents deny the remaining allegations in Paragraph 18.

19. Respondents deny the allegations and arguments in Paragraph 19. Respondents address Petitioner's allegations and arguments in the brief above.

#### **IV. APPLICABLE LAW**

20-26. Paragraphs 20 to 26 consist of allegations and arguments, which Respondents address in the above brief.

##### **A. REQUEST FOR RELIEF**

27-31. Paragraphs 27 to 31 consist of Petitioner's requests for relief, to which no response is required. To the extent a response is required, Respondents deny the allegations in Paragraphs 27 to 31.

#### **EXHAUSTION OF REMEDIES**

32-35. Paragraphs 32 to 35 consist of allegations and arguments, which Respondents address in the above brief. To the extent that any allegation or argument is not addressed in the above brief, Respondents deny them.

#### **V. REQUEST FOR ORAL ARGUMENT**

36. Respondents take no position with request to Petitioner's request for oral argument.

#### **VI. PRAYER FOR RELIEF**

No response is required to the Prayer for Relief, including subparts 1 to 12. To the extent a response is required, Respondents deny that Petitioner is entitled to any relief and deny the allegations and arguments in Prayer for Relief, including subparts 1 to 12.

Respondents deny all allegations not admitted.

Respectfully submitted,

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ALINA HABBA  
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Special Attorney

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Dated: November 12, 2025