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

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| GOKHAN POLAT,<br><br>*Petitioner*,<br><br>v.<br><br>KRISTI NOEM, *et al.*,<br><br>*Respondents*. | Hon. Jamel K. Semper, U.S.D.J.<br><br>Civil Action No. 25-16893 (JKS) |

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

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## PRELIMINARY STATEMENT

Petitioner is detained under 8 U.S.C. § 1225(b)(1)(A)(iii), which mandates the detention of noncitizens apprehended near the border and placed into expedited 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 the Due Process Clause.

Petitioner's detention is lawful because § 1225(b)(1) requires ICE to detain Petitioner until his removal proceedings conclude. That section applies, *inter alia*, to certain inadmissible aliens "encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border." *Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 425 (3d Cir. 2016) (quoting Designating Aliens for Expedited Removal, 69 Fed Reg. 48877-01 (Aug. 11, 2004)).

Petitioner's claims are based on the assertion that he is detained under § 1225(b)(2) not (b)(1), and his legal arguments rely on the many recent decisions that have found detention under § 1225(b)(2) unlawful. His claims fail because he is in fact detained under § 1225(b)(1). Petitioner first encountered, and was charged by, U.S. Border Patrol ("BP") near the U.S./Mexico border shortly after entering the country illegally, issued an order of expedited removal, and expressly detained pursuant to § 1225(b)(1). As such, unlike the many federal district courts that have rejected ICE's interpretation of § 1225(b)(2) concerning aliens first placed into removal proceedings several years after entering the country, this case concerns the longstanding law that ICE must detain aliens like Petitioner who are placed into

expedited removal after being apprehended near the border. Accordingly, ICE's detention of petitioner is required by the INA and comports with due process.

## BACKGROUND

### I. Relevant Legal Background

A. Mandatory Detention under 8 U.S.C. § 1225(b)(1)

"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.").

A noncitizen "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.* at 287.

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

> under 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." *See* 8 U.S.C. § 1225(b)(1)(A)(i) & (iii); Designating Aliens for Expedited Removal, 69 Fed Reg. 48877–01 (Aug. 11, 2004).

*Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 425 (3d Cir. 2016). 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, 523 (BIA 2011); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025). 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 CAT). In that case, removal is postponed pending further proceedings on the

application. *Id.* § 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* 8 U.S.C. § 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), 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 arriving alien "shall be detained" throughout this process. *Id.* § 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.* (internal citation 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 [non-citizens] 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).

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.[1] 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 ("IJ") at any time before a 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 IJ 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). IJs 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 IJs to consider). But regardless of the factors IJs 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.

## II. Petitioner's Immigration History

Petitioner is a citizen of Turkey. Ans. Ex. A (Form I-213) at 2.[2] According to DHS records, on May 8, 2022, BP encountered Petitioner near the United States/Mexico border in Texas, determined that he had unlawfully entered without being inspected or paroled, and took Petitioner into custody. *Id.* at 2-3. BP determined that he was inadmissible under INA § 212 (a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant not in possession of a valid unexpired entry documents. *Id.* at 2. BP also determined that Petitioner was subject to expedited removal under § 1225(b)(1)(a)(i) because he was apprehended imminently after crossing the international border. *Id.* at 2. While in BP custody, however, Petitioner claimed a fear of persecution if returned to Turkey, and, as a result, BP referred him to an asylum officer for a credible fear interview. *Id.* at 3. On June 2, 2022, ICE paroled Petitioner into the country under its discretionary authority under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). Interim Notice Authorizing Parole, ECF No. 1-7.

On October 20, 2025, ICE arrested and detained Petitioner in New York. Pet. ¶ 28; Ans. Ex. C (Form I-213 dated Oct. 20, 2025). That day, a U.S. Citizenship and Immigration Services ("USCIS") asylum officer issued Petitioner a Notice to Appear

[2] Respondents are attaching 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 United States District Courts (which is applicable to this § 2241 petition through Rule 1(b)).

("NTA"), the initiating document for removal proceedings, after finding Petitioner had demonstrated a credible fear of persecution or torture. Ans. Ex. B (NTA); *see also* Pet. Ex. F, Notice of Dismissal of Form I-589. The NTA 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. Ans. Ex. B (NTA).[3]

Petitioner was detained at the Delaney Hall Detention Facility in Newark, New Jersey, when this action was filed. *Id.* ¶ 27.

## III. Procedural History

Petitioner filed this habeas petition on October 24, 2025. ECF No. 1. He asserts that ICE unlawfully detained him without a bond hearing in violation of the INA, the Due Process Clause of the Fifth Amendment, and the Administrative Procedures Act ("APA"). Petitioner seeks immediate release or an order for Respondents to conduct a bond hearing under § 1226(a), at which the government would bear the burden of proof, within 10 days. *Id.*, Prayer for Relief ¶¶ 82-83. Also

[3] In June 2023, Petitioner filed an asylum application with U.S. Citizenship and Immigration Services ("USCIS") despite being subject to an order of expedited removal. Pet. ¶ 33. Because Petitioner was subject to the 2022 order of expedited removal, and the 2025 NTA, USCIS lacked jurisdiction to adjudicate Petitioner's asylum application. *Id.*; *see also* Ans. Ex. C (Form I-213 dated Oct. 2025 at 2); 8 C.F.R. § 208.2 (explaining immigration court, not USCIS, has exclusive jurisdiction over asylum applications filed by aliens subject to NTAs or orders of removal). Petitioner thus must pursue his asylum claims before the immigration court. *See* 8 C.F.R. § 208.2.

On October 24, the Court issued an Order to Answer, directing Respondents to file an answer to the Petition by October 31. ECF No. 3.

## 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 THE HABEAS PETITION

### I. Petitioner is Subject to Mandatory Detention under § 1225(b)(1).

Petitioner's mandatory detention is lawful under of § 1225(b)(1). In May 2022, Petitioner was apprehended by BP near the U.S./Mexico border shortly after entering the country illegally. Ans. Ex. A, Form I-213 dated May 2022 at 2. He accordingly 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 Designating Aliens for Expedited Removal, 69 Fed Reg. 48877-01 (Aug. 11,

2004)); *Matter of M-S-,* 27 I&N Dec. 509, 511 (2019) (discussing the subset class of aliens described in Designating Aliens for Expedited Removal, 69 Fed Reg. 48877-01 (Aug. 11, 2004)). Because he received a finding of credible fear of persecution, he was placed into full removal proceedings under § 1229a. Ans Ex. B, NTA. That Petitioner was paroled and later re-detained does not relieve him from falling under § 1225(b)(1). *See Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (collecting cases).

His detention is thus mandatory pending his removal proceedings under § 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") (internal quotation marks and alterations omitted) (quoting *Jennings*, 138 S. Ct. at 844-45). *See also Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 219 (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."); *Matter of Q. Li,* 29 I&N Dec. at 69 ("[W]e hold that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently

placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).").

Petitioner's argument that he is detained under § 1225(b)(2), and that his detention should be under § 1226(a), is incorrect. When BP first encountered him in Texas, they issued an expedited removal order and expressly identified his detention authority as § 1225(b)(1) in the Form I-213 because he had just recently crossed the border. Ans. Ex. A (Form I-213 dated May 2022 at 2-3); Pet. Ex. G, Notice and Order of Expedited Removal. Petitioner concedes these facts. Pet. ¶ 5 & Ex. G, Order of Expedited Removal. He accordingly must be subject to § 1225(b)(1). *See Innovation L. Lab v. McAleenan*, 924 F.3d 503, 509 (9th Cir. 2019) (noting § 1225(b)(1) and (b)(2) "create two mutually exclusive . . . categories" and "those who are not processed for expedited removal under § 1225(b)(1) are the 'other aliens' subject to the general rule of § 1225(b)(2)").[4] Then, USCIS terminated Petitioner's asylum application because he was subject to an order of expedited removal. At no time has DHS indicated that he was detained instead under § 1225(b)(2). *See Cf. Pablo Sequen v. Kaiser*, No. 25-6487, 2025 WL 2650637, at *5 (N.D. Cal. Sept. 16, 2025) (finding petitioner detained under § 1226(a) instead of § 1225(b)(1) because she was not placed into expedited removal soon after entry but was released on her own recognizance); *see also Matter*

[4] Petitioner asserts that he was not served with the expedited removal order. Pet. ¶ 5. That fact, even if true, does not undo § 1225(b)(1)'s application to him. *See Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 430 (3d Cir. 2016) (finding courts lack jurisdiction to review procedural challenge to § 1225(b)(1) expedited removal order or to ICE's decision to apply § 1225(b)(1) to an alien).

*of Q. Li*, 29 I&N Dec. at ("[A]]n alien detained under section 235(b) [1225(b)] who is released from detention pursuant to a grant of parole under section 212(d)(5)(A) [1182(d)(5)(A)], and whose grant of parole is subsequently terminated, is returned to custody under section 235(b) [1225(b)] pending the completion of removal proceedings.").

If, despite the established record here, the Court holds that Petitioner is detained under § 1225(b)(2) and then follows those courts finding the detention should instead be under § 1226(a), the appropriate remedy is a bond hearing at which Petitioner bears the burden, not immediate release. *See Valeriano v. Bondi*, No. 25-cv-16100 (MAS), ECF No. 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 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 No. 9 (Order).

Accordingly, Petitioner's detention complies with the INA and the APA.

## 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. 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 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), 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 custody since October 20, 2025, less than two weeks. Pet. ¶ 2. Further, Petitioner has received due process while detained, including a finding of credible fear and referral to full removal proceedings under § 1229a rather than expedited removal. *See Kabine F. v. Green*, No. CV 19-16614 (JMV), 2019 WL 3854304, at *5 (D.N.J. Aug. 15, 2019) (finding petitioner detained under § 1225(b)(1) received all procedural safeguards afforded to an arriving alien). Therefore, it is ICE's position that his detention is presumptively reasonable. *See, e.g.*, *Pipa-Aquise*, 2025 WL 2490657, at *1 (holding that "Petitioner's two-month detention" under § 1225(b) did not violate due process); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 222 (S.D.N.Y. 2020) ("Here, Mr. Mendez Ramirez has been detained for approximately ten months. That is far less time than other courts in this District have held to comport with due process."); *Traore v. Decker*, No. 19-4612, 2019 WL 3890227, at *4-6 (S.D.N.Y. Aug. 19, 2019) (rejecting due process challenge to 20.5-month mandatory detention of arriving alien).

Finally, even where mandatory detention becomes "unreasonable" under the Due Process Clause, the appropriate remedy is a bond hearing, 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). 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 foregoing reasons, the Court should dismiss the Petition.

Respectfully submitted,

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