

TODD BLANCHE
United States Deputy Attorney General
ALINA HABBA
Acting United States Attorney
Special Attorney
KEVIN J. MAGGIO
Assistant United States Attorney
401 Market Street, 4th Floor
Camden, NJ 08101
(973) 986-6708
Kevin.Maggio@usdoj.gov
Attorneys for Respondents

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALEX YOVANYS PEREZ,

Petitioner,

v.

TODD LYONS, *et al.*,

Respondents.

Hon. Edward S. Kiel, U.S.D.J.

Civil Action No. 25-17186 (ESK)

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

On the Answer:

KEVIN J. MAGGIO
Assistant United States Attorney

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PRELIMINARY STATEMENT

On October 27, 2025, immigration officials detained Petitioner under 8 U.S.C. § 1225(b), which requires detention of “applicants for admission” 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”), Due Process Clause of the Fifth Amendment, and relevant regulations. This Court issued an order directing Respondents to answer the Petition (ECF No. 1) within seven days. Order to Answer, ECF No. 3

U.S. Immigration and Customs Enforcement (“ICE”) respectfully asserts that its detention of Petitioner under § 1225(b) is lawful while acknowledging that many federal district courts, including this one, have rejected ICE’s interpretation of § 1225(b). *See, e.g., Ayala Amaya v. Bondi*, No. 25-cv-16428-ESK, 2025 WL 3033880, at *2 (D.N.J. Oct. 30, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025); Pet. ¶ 30 (collecting cases). The Board of Immigration Appeals (“BIA”), the highest administrative body that interprets immigration law in the immigration courts, has held that § 1225(b)(2) does apply to noncitizens like Petitioner. ICE and the immigration judges accordingly must follow that decision in litigation relating to a noncitizen’s detention in immigration proceedings. ICE continues to respectfully assert that position before this Court in the absence of precedential authority to the contrary from the Third Circuit Court of Appeals.

STATEMENT OF THE CASE

A. Relevant Statutory and Regulatory Background

This case concerns the detention authorities governing noncitizens 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. Detention of “Applicants for Admission” (8 U.S.C. § 1225(b))

Section 1225 of the INA applies to “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*, 583 U.S. at 287.

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.*; *see also* 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 persecution, or does not “have such a fear” after inquiry by an officer, they are 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.* (citing 8 U.S.C. § 1225(b)(2)(A), (B)). 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); *see also 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.” (citing *Jennings*, 583 U.S. at 300)).

The U.S. 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 also 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).

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 the pendency of 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 “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. *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. &

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).

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 (citation omitted).

B. Petitioner’s Immigration History

Petitioner is a citizen of Honduras. Ex. 1 at 1 (Form I-213).² According to ICE records, on October 27, 2025, ICE Enforcement and Removal Operations (“ERO”) encountered Petitioner in Springfield, New Jersey, and took him into custody. *Id.* at 2; Ex. 2 (Form I-200); *see also* Pet’r’s Decl., ECF No. 4 at 1. That day, ERO issued Petitioner a Notice to Appear, the initiating document for removal proceedings. Ex. 3 (Notice to Appear). 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. *Id.* at 4.

Petitioner was detained at the Delaney Hall Detention Facility in Newark, New Jersey, when this action was filed. Pet. ¶ 1, ECF No. 1; Pet’r’s Decl., ECF No. 4 at 2. On November 4, 2025, ICE transferred Petitioner from Elizabeth Detention Center in Elizabeth, New Jersey, to Pine Prairie ICE Processing Center in Pine Prairie, Louisiana. Resp’ts’ Letter, ECF No. 9 at 1-2; Pet’r’s Decl., ECF No. 4 at 3.

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)).

Petitioner is scheduled to appear before an immigration judge on November 13, 2025. Ex. 3 at 1 (Notice to Appear).

C. Procedural History

Petitioner filed this habeas petition on November 4, 2025. Pet., ECF No. 1. He asserts that ICE unlawfully detained him without a bond hearing in violation of the INA, Due Process Clause of the Fifth Amendment, and relevant regulations. *Id.* ¶¶ 5-6, 44-54. Petitioner seeks an order declaring his detention under § 1225(b) unlawful and requiring his immediate release from ICE custody or, in the alternative, that Respondents provide him a bond hearing under § 1226(a) within seven days. *Id.*, Prayer for Relief ¶ c-d.

On November 5, 2025, the Court issued an Order to Answer directing Respondents to file an answer to the Petition within seven days and enjoining Respondents “from moving [P]etitioner outside of the District of New Jersey pending further order of the Court.” Order to Answer, ECF No. 3 at 2. On November 7, 2025, Respondents filed a letter respectfully advising the Court that ICE transferred Petitioner to Pine Prairie ICE Processing Center in Pine Prairie, Louisiana, on November 4, 2025, one day prior to entry of the Order to Answer. Letter, ECF No. 7 at 1. On November 10, 2025, the Court ordered Respondents to “file proof of [P]etitioner’s location at 10:42 AM EST on November 5, 2025.” Letter Order, ECF No. 8 at 2. On November 12, 2025, Respondents filed proof of ICE’s transfer of Petitioner from Elizabeth Detention Center in Elizabeth, New Jersey, to Pine Prairie ICE Processing Center in Pine Prairie, Louisiana, on November 4, 2025. Resp’ts’ Letter, ECF No. 9 at 1-2 (citing Form I-830E).

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).

ARGUMENT

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 October 27, 2025, an immigration officer encountered Petitioner “during a targeted operation of” another suspected noncitizen in Springfield, New Jersey, determined that he was unlawfully present without admission or parole, and arrested him. Ex. 1 at 2 (Form I-213); *see also* Ex. 2 (Form I-200). Accordingly, it is ICE’s

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).

position that Petitioner is an “applicant for admission” as defined by 8 U.S.C. § 1225(a), and his detention is mandatory. *See, e.g., Pipa-Aquise v. Bondi*, No. 25-cv-1094, 2025 WL 2490657, at *1-2 (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-cv-11983, 2025 WL 2108913, at *1-2 (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.⁴ *See generally Matter of Yajure Hurtado*, 29 I. & N. Dec. 216; *see also Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 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 an alien who 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

⁴ *See also Ahmed v. Ashcroft*, 341 F.3d 214, 217 (3d Cir. 2003) (“We defer to the BIA’s interpretation of the [INA] unless the interpretation is arbitrary, capricious, or manifestly contrary to the statute.” (internal quotation marks and citation omitted)).

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)”⁵).

Petitioner argues that § 1225(b)(2) applies to only aliens “seeking admission.” and that an alien is “seeking admission” only when taking an affirmative step to gain admission. *See* Pet. ¶¶ 19, 35; *cf. Rivera Zumba*, 2025 WL 2753496, at *7-9. But the BIA does not interpret the phrase “seeking admission” that way:

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.

⁵ Even though § 1225(b) requires the detention of both types of applicants for admission—that is, those who have “arrived in the United States” and those “who ha[ve] not been admitted”—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 that 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. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216; *see also Matter of Q. Li*, 29 I. & N. Dec. 66; *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).

Matter of Lemus, 25 I. & N. Dec. 734, 743 (BIA 2012) (footnote omitted). 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).

This 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 for admission.” *Id.* § 1225(a)(2). In addition, an applicant for admission must be physically present in the United States, while an alien 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-cv-11631, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (although ruling against ICE, noting 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—that is, 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 that § 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.⁶ Accordingly, because Petitioner is present in the United States without being admitted, he is an applicant for admission and subject to § 1225(b)(2).

When the plain text of a statute is clear, that meaning controls and courts “need not consider . . . extra-textual evidence” like legislative “history, purpose, and post-enactment practice.” *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 305 (2017). 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) (citations omitted). 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). ICE’s reading of § 1225(b)(2) makes sense. It would not put noncitizens who “crossed the border unlawfully” in a better position than those

⁶ 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.” (internal quotation marks and citation omitted)).

“who present themselves for inspection at a port of entry.” *Id.* Otherwise, noncitizens 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 Matter of Yajure Hurtado*, 29 I. & N. at 222-25 (discussing legislative history in detail).

ICE’s 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, H-1B specialty occupations, etc. *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.⁷

⁷ Several district courts have addressed ICE’s interpretation of § 1225(b)(2) since early July 2025, and while some courts have adopted it, the vast 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*, 2025 WL 2403827, at *1 (collecting

For the foregoing reasons, Petitioner's detention is lawful under § 1225(b)(2). 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.⁸

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. ¶¶ 51-54. 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 131, 140). That is because "the

cases holding that ICE's interpretation is "contrary to the plain text of the statute and the overall statutory scheme"), *and Ayala Amaya*, 2025 WL 3033880, at *2 (collecting cases), *and Pet.* ¶ 30 (collecting cases), *with Pipa-Aquise*, 2025 WL 2490657, at *1-2 (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)), *and Pena*, 2025 WL 2108913, at *1-2 (upholding mandatory detention under §1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission"), *and Chavez v. Noem*, No. 25-cv-2325, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (similar), *and Vargas Lopez v. Trump*, No. 25-cv-526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (similar).

⁸ *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*, 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").

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); *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.” (internal quotation marks and citation omitted)). Here, once ERO determined that Petitioner entered the United States without admission, it follows that Petitioner is an “applicant for admission” and subject to mandatory detention.

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 in custody since October 27, 2025, a period of approximately 16 days. Ex. 1 at 2 (Form I-213). Therefore, it is ICE’s position that his detention is presumptively reasonable. *See, e.g., Pena*, 2025 WL 2108913, at *2-3 (holding detention of 17 days under § 1225(b) comported with due process); *Pipa-Aquise*, 2025 WL 2490657, at *1 (holding that “Petitioner’ two-month detention” under § 1225(b) did not violate due process).

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-cv-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *Rodriguez v. Bondi*, No. 25-cv-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025). 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 foregoing reasons, the Court should dismiss or deny the Petition.

Respectfully submitted,

TODD BLANCHE
United States Deputy Attorney General

ALINA HABBA
Acting United States Attorney
Special Attorney

By: *s/ Kevin J. Maggio*
KEVIN J. MAGGIO
Assistant United States Attorney
Attorneys for Respondents

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