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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MOHAMMED IBRAHIM, *Petitioner*, v. ERIC ROKOSKY, *et al.*, *Respondents*.	Hon. Jamel K. Semper, U.S.D.J. Civil Action No. 25-17189 (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 detention of aliens apprehended near a port-of-entry 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"), the Due Process Clause, and the Administrative Procedure Act ("APA").

Petitioner's detention is lawful because § 1225(b)(1) requires ICE to detain Petitioner until his removal proceedings conclude. Under § 1225(b)(1)(A), if an immigration officer determines that an "arriving alien" or a "certain other alien" is inadmissible under § 1182(a)(6)(C) for seeking to procure a benefit by fraud or willful material misrepresentation, or under § 1182(a)(7) for lacking proper documents, the officer shall order the alien removed from the United States without further hearing or review, unless the alien indicates an intention to apply for asylum or a fear of persecution. Such aliens are considered "applicants for admission." 8 U.S.C. § 1225(a)(1); 8 C.F.R. § 235.3(b). Here, Petitioner is a "certain other alien" within the meaning of the statute; that is, he has been designated by the Secretary of Homeland Security to be an alien "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)); *Matter of M-S-*, 27 I&N Dec. 509, 511 (A.G. 2019) (discussing the subset class of aliens described in Designating Aliens for Expedited Removal, 69 Fed Reg. 48877-01 (Aug. 11, 2004)).

Petitioner was apprehended by immigration officers after stowing away on a cargo ship bound for the United States. Petitioner acknowledges that he was apprehended near a port-of-entry and thus is "ineligible for bond under 8 U.S.C. § 1225(b)." ECF No 1, Pet. ¶ 3. However, he argues that the Fifth Amendment requires a bond hearing at this point because his detention is allegedly "prolonged" during his appeal of a denial of asylum. *Id.* ¶¶ 4, 26-37. He also argues that ICE's decision not to grant him discretionary parole during the pendency of his immigration case violates the APA. *Id.* ¶¶ 38-45. He has been detained for just over twelve months while his appeal is pending, a period that remains reasonable under the applicable precedent for § 1225(b)(1) detentions.

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.").

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.* 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

[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).

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 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 native and citizen of Sudan. Pet.¶¶ 21. According to DHS records, he entered the United States on October 28, 2024 after stowing away on a cargo vessel. Pet., Exs. A (Notice to Appear or "NTA"); Ex. B at 34-35 (portion of Petitioner's sworn statement). Immigration officers brought him to Newark Liberty International Airport and placed him into expedited removal proceedings for violating 8 U.S.C. § 1182(a)(7)(A)(1)(I). *See* Ex. 1, Form I-213 dated October 28, 2024. On November 4, 2025, after finding Petitioner demonstrated a credible fear of persecution or torture, a supervisory asylum officer with U.S. Citizenship and Immigration Services issued Petitioner a Notice to Appear (NTA), the initiating document for removal proceedings. The NTA charged Petitioner with removability under Immigration and Nationality Act ("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 § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant applicant for admission without possession of a valid entry document. NTA; Pet. ¶ 22. Following several immigration court appearances and a merits hearing, Pet. ¶ 23, an Immigration Judge denied asylum, withholding under INA § 241(b)(3), and withholding under the Convention Against Torture. Pet. Ex. C. The Immigration Judge also ordered Petitioner removed to Sudan. *Id*. Petitioner has appealed those rulings to the Board of Immigration Appeals ("BIA"). Pet., Ex. D. Petitioner contends that he "filed a request for release on parole under 8 C.F.R. § 212.5(b) as implemented by ICE Directive 11002" that remains pending. Pet. ¶ 25.

Petitioner is detained at the Elizabeth Detention Facility in New Jersey.

III. Procedural History

Petitioner filed this habeas petition on November 4, 2025. ECF No. 1. He asserts that ICE is unlawfully detaining him without a bond hearing in violation of the INA, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act ("APA"). Petitioner seeks, *inter alia*, immediate release or an order for Respondents to seek a bond hearing before an immigration court, at which the government would bear the burden of proof. *Id*., Prayer for Relief. On November 5, 2025, Petitioner filed an Application for Issuance of an Order to Show Cause. ECF No. 2. The Court issued a Show Cause Order on November 18, 2025. 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 October 2024, Petitioner was apprehended by immigration officers near a port-of entry after stowing away on a cargo vessel. Ex. 1 (I-213). 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 demonstrated a credible fear of persecution or torture, he was placed into full removal proceedings under § 1229a. Ans Ex. B, NTA.

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).").

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*, 533 U.S. at 690, 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 an alien 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 28, 2024, just over 12 months. Pet. ¶ 22. Further, Petitioner has received due process while detained, including a credible fear screening and upon demonstrating a credible fear of persecution or torture, a referral to full removal proceedings under § 1229a rather than expedited removal. *See Kabine F. v. Green*, No. 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 Respondents' 's position that his detention is presumptively reasonable. *See, e.g.*, *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657 at *1(E.D. Va. Aug. 5, 2025) (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). Respondents respectfully submits that if the Court finds that Petitioner's detention is unreasonable, it should order a bond hearing at which Petitioners bears the burden, instead of release.

III. The Court Lacks Jurisdiction Over Petitioner's APA Claim

Finally, Petitioner references the APA and the *Acardi* doctrine, arguing that ICE is obligated to grant him discretionary parole because of the credible fear finding. Pet. ¶¶ 38-45. Not so. Petitioner's APA claim fails for at least two reasons. First, Petitioner lacks standing to bring an APA claim. Second, parole decisions are committed to the sole, unreviewable discretion of DHS.

A. Petitioner Lacks Standing

The APA is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Petitioner is pursuing his remedies in a § 2241 habeas petition, so his APA claim is barred is barred § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under

the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). Thus, the Court should dismiss Petitioner's APA claim for lack of standing.

B. Parole Decisions Are DHS's Sole Discretion

Parole decisions are committed to the sole, unreviewable discretion of DHS. *See Doe v.* , 2018 WL 620898, at *8 ("The effect of [8 U.S.C. § 1252(a)(2)(B)(ii)] on habeas claims challenging discretionary parole denials is clear—the Government 'can and often does release ... alien[s] on parole, but [the] decision to do so is not judicially reviewable.'" (citing *Bolante v. Keisler*, 506 F.3d 618, 621 (7th Cir. 2007))); *Naul v. Gonzales*, No. 05-4627 (JAG), 2007 WL 1217987, at *2-3 (D.N.J. Apr. 23, 2007) ("[T]he Attorney General's denial of Petitioner's parole requests, pursuant to 8 U.S.C. § 1182(d)(5)(A), is a discretionary decision outside this Court's review."). If Congress stripped courts of jurisdiction to review parole decisions through the INA and related immigration statutes, it follows that the general APA statute cannot serves as end-run around that jurisdiction stripping.

CONCLUSION

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

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