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

MARCO ANTONIO RENE
HUERTAS FALCON,

Petitioner,

v.

LUIS SOTO, *et al.*,

Respondents.

Hon. Karen M. Williams, U.S.D.J.

Civil Action No. 25-17164 (KMW)

ANSWER TO THE AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

Petitioner is detained under 8 U.S.C. § 1225(b)(1), which mandates the detention of aliens (i) apprehended near the border, (ii) placed into expedited removal proceedings, and (iii) who pass a credible-fear screening interview for an asylum claim. 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 Immigration and Customs Enforcement (“ICE”) to detain him until the conclusion of his removal proceedings. 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's claims are based on the assertion that he is detained under § 1225(b)(2), not (b)(1). ECF 2 (Am. Pet.), ¶ 16 ("Petitioner asserts that his detention is pursuant to § 1225(b)(2)(A), and violates the plain language of the INA and its implementing regulations."). His claims fail because he is in fact detained under § 1225(b)(1). Petitioner was encountered, and was charged by, U.S. Border Patrol ("BP") near the United States/Mexico border shortly after entering the United States illegally, issued an expedited removal order, and expressly detained pursuant to § 1225(b)(1), INA § 235(b)(1). Ex. A (Credible Fear Packet) at 19 (May 19, 2022 Notice and Order of Expedited Removal) ("Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1225(b)(1), the Department of Homeland Security has determined that you are inadmissible to the United States. . . and therefore are subject to removal."). Accordingly, unlike the many courts that have addressed § 1225(b)(2)'s applicability to aliens apprehended several years after entering the United States, 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. 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 aliens 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.* (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 sometimes enter 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 the Convention Against Torture). In that case, expedited 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, an asylum officer refers the alien

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 their removal proceeding, whether expedited or full. *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 danger to persons or property should not be released during the pendency of removal proceedings.” *Id.* at 38.

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).

II. Petitioner's Immigration History

Petitioner is a native and citizen of Peru. Ex. B (Notice to Appear) at 1; Ex. C (Form I-213, Record of Deportable/Inadmissible Alien) at 2. On November 17, 2019, Petitioner entered the United States at John F. Kennedy International Airport in New York with a B-2 visa, which required Petitioner to depart the country by May 16, 2020. Form I-213, Record of Deportable/Inadmissible Alien at 2. On May 14, 2020, Petitioner filed an I-539N, Application to Extend/Change Nonimmigrant Status, which was rejected on May 29, 2020. *Id.* He departed the United States on July 22, 2020, after overstaying his B-2 visa by 67 days. *Id.*

On May 17, 2022, BP arrested Petitioner at Eagle Pass, Texas, near the United States/Mexico border, for entering the country “without being inspected, admitted, or paroled by an Immigration Officer.” *Id.* BP determined that Petitioner 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 document. Credible Fear Packet at 19 (“You illegally entered the United States by crossing the Rio Grande River near the Eagle Pass, Texas Port of Entry on May 17, 2022, with the intention of going to Passaic, New Jersey to reside and seek employment.”). BP also determined Petitioner was subject to expedited removal under § 1225(b)(1), because he was apprehended shortly after crossing the international border. Form I-213, Record of Deportable/Inadmissible Alien) at 2 While in CBP custody, Petitioner claimed a fear of persecution if returned to Peru, and, as a result, CBP referred him to an asylum officer for a credible fear interview. *Id.* On May 27, 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). *Id.*; ECF 1-9 (Interim Notice Authorizing Parole) at 1; ECF 1-14 (Interim Notice Authorizing Parole).

On October 31, 2025, ICE arrested and detained Petitioner.² Form I-213, Record of Deportable/Inadmissible Alien at 2. That day, a supervisory asylum officer with the U.S. Citizenship and Immigration Services (“USCIS”) issued Petitioner a Notice to Appear (“NTA”), the initiating document for removal proceedings under § 1229a, after finding Petitioner had demonstrated a credible fear of persecution or torture.³ Notice to Appear at 1. The NTA charged Petitioner with removability under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i) (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) (immigrant without valid entry document). *Id.*

III. Procedural History

Petitioner filed a habeas petition on November 3, 2025, and filed an amended petition on November 5, 2025. ECF 1 and 2. Petitioner was detained at the Delaney Hall Detention Facility in New Jersey when he filed this action. Am. Pet. ¶¶ 11-12.

In the amended petition, Petitioner asserts that ICE is unlawfully detaining him without a bond hearing in violation of the INA and the Due Process Clause. Am.

² On October 23, 2025, Petitioner filed an I-130 Petition for Alien Relative, which is pending before USCIS. Form I-213, Record of Deportable/Inadmissible Alien at 2.

³ Because Petitioner remained subject to the credible fear screening process pursuant to 8 C.F.R. § 208.30, his relief application filed directly with USCIS was denied on June 9, 2025. *See* Am. Pet. ¶ 55.

Pet. ¶ 16, Counts I-III. Petitioner seeks immediate release or an order directing an IJ to conduct a bond hearing under § 1226(a). Am. Pet., Prayer for Relief. The amended petition mistakenly asserts that Petitioner is detained under § 1225(b)(2), Am. Pet. ¶ 14 (“Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.”), and therefore any argument related to § 1225(b)(2) detention is inapposite.

On November 6, the Court issued an Order directing Respondents to “file a full and complete answer to the amended petition,” including a “paragraph by paragraph” response to the factual and legal allegations in the amended petition. ECF 5. Respondents hereby answer the amended petition and respectfully assert that the amended petition should be dismissed because Petitioner is lawfully detained under § 1225(b)(1).

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 AMENDED PETITION

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

Petitioner’s mandatory detention is lawful under of § 1225(b)(1). Because CBP apprehended Petitioner near the United States/Mexico border shortly after he entered the United States illegally, and issued him an order of expedited removal, Petitioner falls under the mandatory detention requirements of § 1225(b)(1)(a)(iii) and the 14-day-100-miles regulation interpreting that section. *See Castro*, 835 F.3d at 425 (quoting 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 torture, an asylum officer properly placed Petitioner into full removal proceedings under § 1229a. 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 Yajure Hurtado*, 29 I&N Dec. 216, 224 (BIA 2025) (“[U]nder a plain language reading of section 235(b)(1) . . . Immigration Judges do not have authority to hold a bond hearing for arriving aliens and applicants for admission.”); *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 mistakenly argues that he is detained under § 1225(b)(2), and that his detention should be under § 1226(a). Am. Pet., ¶ 17 (“Through this petition, [Petitioner] asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention, if any, is appropriate under § 1226(a).”)

When BP first encountered Petitioner in Texas, BP issued an expedited removal order, which means the detention authority was § 1225(b)(1), not (b)(2), because he had just recently crossed the border. Accordingly, Petitioner must be subject to mandatory detention under § 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)”). USCIS then dismissed Petitioner’s asylum application because he was subject to expedited removal and the credible fear screening process. Petitioner remains subject to 1225(b)(1) detention. *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 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.”).

Because he is detained under § 1225(b)(1), he is entitled to no relief. 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. 25-16100 (MAS), ECF

4 (D.N.J. Oct. 1, 2025), at 2. (“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 9 (Order).

Accordingly, Petitioner’s detention complies with the INA.

II. Due Process Permits Petitioner’s 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 CBP apprehended

Petitioner near the border, after he 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 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 31, 2025. Am. Pet. ¶ 12. 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. 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, 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 of Petitioner. *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 submit that if the Court finds that Petitioner’s detention is unreasonable, it should order an IJ to conduct a bond hearing rather than release Petitioner.

CONCLUSION

For the foregoing reasons, the Court should dismiss the amended petition.

PARAGRAPH BY PARAGRAPH ANSWER TO THE AMENDED PETITION FOR WRIT OF HABEAS CORPUS

1. Respondents admit that Petitioner is a native and citizen of Peru.

2. Respondents state that Petitioner entered the United States at the United States/Mexico border on May 17, 2022, and that Petitioner 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 2, thus they deny the allegations in Paragraph 2.

3. Respondents state that Petitioner entered the United States at the United States/Mexico border on May 17, 2022, and that Petitioner is present in the United States without admission or parole or any valid entry document. Respondents deny the remaining allegations in Paragraph 3.

4. Respondents state that U.S. Border Patrol officers arrested Petitioner on May 17, 2022, as he entered the United States in Texas near the United States/Mexico border, without being inspected, admitted, or paroled by an Immigration Officer. Respondents further state that while in BP custody, Petitioner claimed a fear of harm if returned to Peru, and, as a result, BP referred him to an asylum officer for a credible fear interview, and ICE paroled Petitioner into the country under its discretionary authority under INA § 212(d)(5)(A). Respondents deny the remaining allegations in Paragraph 4.

5. Respondents admit that ICE issued Petitioner a Form I-831 and that Petitioner filed a I-589, Application for Asylum with U.S. Citizenship and Immigration Services on July 5, 2023. Respondents deny the remaining allegations in Paragraph 5.

6. Respondents admit that Petitioner filed an I-589, Application for Asylum with USCIS, but because Petitioner was subject to an order of expedited removal, USCIS did not have jurisdiction to adjudicate his asylum application and dismissed it. Instead, an asylum officer considered Petitioner's asylum claim through the credible fear screening process and found he passed the screening process by demonstrating a credible fear of persecution. Respondents deny the remaining allegations in Paragraph 6.

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

8. Respondents lack sufficient facts to admit or deny the allegations in Paragraph 8, and thus they deny the allegations in Paragraph 8.

9. Respondents admit that ICE detained Petitioner on October 31, 2025, in accordance with 8 U.S.C. § 1225(b)(1). Respondents deny the remaining allegations in Paragraph 9 and address Petitioner's allegations and arguments in the above brief.

10. Respondents admit that on October 31, 2025, USCIS issued Petitioner a Notice to Appear charging him with removability under INA § 212(a)(6)(A)(i) (present in the United States without admission or parole), and INA § 212(a)(7)(A)(i)(I) (immigrant without valid documents) and directed him to appear at Newark Immigration Court on December 1, 2025. Respondents address Petitioner's allegations and arguments in the above brief.

11. Respondents admit the allegations in Paragraph 11.

12. Respondents deny the allegations in Paragraph 12 and address Petitioner's allegations and arguments in the above brief.

13. Respondents state that Petitioner is lawfully detained under § 1225(b)(1), and his legal arguments related to § 1225(b)(2) detention are inapposite. Respondents address Petitioner's allegations and arguments in the above brief.

14. Respondents state that Petitioner is lawfully detained under § 1225(b)(1), and his legal arguments related to § 1225(b)(2) and § 1226(a) detention are inapposite. Respondents address Petitioner's allegations and arguments in the above brief.

15. Respondents lack sufficient facts to admit or deny the allegations in Paragraph 15, and thus they deny the allegations in Paragraph 15.

16. Paragraph 16 sets forth Petitioner's allegations and arguments, which Respondents address in the above brief. To the extent an additional response is required to Paragraph 16, Respondents deny the allegations in Paragraph 16.

17. Paragraph 17 sets forth Petitioner's requests for relief, to which no response is required. To the extent a response is required, Respondents deny the allegations in Paragraphs 17.

CUSTODY

18. Respondents admit that Petitioner is in immigration detention at the Delaney Hall Detention Facility and deny the remaining allegations in Paragraph 18.

JURISDICTION

19.-21. Respondents admit that the Court has jurisdiction to review detention under 28 U.S.C. § 2241. Respondents address Petitioner's allegations and arguments in the above brief.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

22-23. Paragraphs 22 to 23 set forth Petitioner's allegations and arguments to which no response is required from Respondents. To the extent a response is required, Respondents deny the allegations in Paragraphs 22 to 23.

VENUE

24. Respondents admit that venue is proper in the District of New Jersey and deny the remaining allegations in Paragraph 24.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

25.-28. Respondents state that Petitioner is lawfully detained under § 1225(b)(1) and that he was paroled into the country under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). Respondents address Petitioner's allegations and arguments in the above brief. To the extent that any allegation or argument is not addressed in the above brief, Respondents deny them.

PARTIES

29. Respondents admit that Petitioner is a native and citizen of Peru and that he has been detained in ICE custody at Delaney Hall Detention Facility since October 31, 2025. Respondents lack sufficient information to admit or deny the

remaining allegations in Paragraph 29, thus they deny the remaining allegations in Paragraph 29.

30. Respondents admit that Luis Soto is the Warden of the Delaney Hall Detention Facility and that he has been sued in this action in his official capacity.

31. Respondents admit that Jonathan Florentino is the Acting Director of the Newark Field Office of ICE, Enforcement and Removal Operations, and he has been sued in his official capacity in this action. Respondents deny the remaining allegations in Paragraph 31.

32. Respondents admit that in his capacity as Acting Director of ICE, Todd M. Lyons enforces the immigration laws of the United States and that he has been sued in his official capacity in this action. Respondents deny the remaining allegations in Paragraph 32.

33. Respondents admit that in her capacity as U.S. Secretary of Homeland Security, Kristi Noem is responsible for the administration of immigration laws in the United States and that she has been sued in her official capacity in this action. Respondents deny the remaining allegations in Paragraph 33.

LEGAL BACKGROUND

34.-50. Paragraphs 34 to 50 set forth Petitioner's allegations and arguments to which no response is required from Respondents. Respondents address Petitioner's allegations and arguments in the above brief. Any allegation or argument not addressed in the above brief, is denied by Respondents.

STATEMENT OF THE FACTS

51. Respondents lack sufficient facts to admit or deny the allegations in Paragraph 51, and thus they deny the allegations in Paragraph 51.

52. Respondents deny the allegations in Paragraph 52.

53. Respondents deny the allegations in Paragraph 53.

54. Respondents state that on July 5, 2023, Petitioner filed an I-589, Application for Asylum with U.S. Citizenship and Immigration Services. Respondents deny the remaining allegations in Paragraph 54.

55. Respondents state that because Petitioner remained subject to the credible fear screening process pursuant to 8 C.F.R. § 208.30, his relief application filed directly with USCIS was denied on June 9, 2025. Respondents deny the remaining allegations in Paragraph 55.

56. Respondents admit the allegations in Paragraph 56.

57. Respondents admit that ICE arrested Petitioner on October 31, 2025, under § 1225(b)(1). Respondents deny the remaining allegations in Paragraph 57.

58. Respondents deny the allegations in Paragraph 58.

59. Respondents lack sufficient facts to admit or deny the allegations in Paragraph 59, and thus they deny the allegations in Paragraph 59.

60. Paragraph 60 contains Petitioner's argument and request for relief to which no response is required. Respondents address Petitioner's detention in the above brief. To the extent the above brief does not address Petitioner's arguments, Respondents deny the allegations in Paragraph 60.

CLAIM FOR RELIEF

COUNT I

Violation Of 8 U.S.C. § 1226(A), Unlawful Denial Of Release On Bond

61. Respondents repeat and reallege their responses to the previous paragraphs, as if fully set forth herein.

62.-65. In Paragraphs 62 to 65, Petitioner presents claims for relief, which Respondents address in the above brief. To the extent that an allegation or argument is not addressed in the above brief, Respondents deny them.

COUNT II

**Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19
Unlawful Denial of Release on Bond**

66. Respondents repeat and reallege their responses to the previous paragraphs, as if fully set forth herein.

67.-68. In Paragraphs 67 to 68, Petitioner presents claims for relief, which Respondents address in the above brief. To the extent that an allegation or argument is not addressed in the above brief, Respondents deny them.

COUNT III

Continued Detention Constitutes A Violation Of Due Process

69. Respondents repeat and reallege their responses to the previous paragraphs, as if fully set forth herein.

70.-80. In Paragraphs 70 to 80, Petitioner presents claims for relief, which Respondents address in the above brief. To the extent that an allegation or argument is not addressed in the above brief, Respondents deny them.

PRAYER FOR RELIEF

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

Respondents deny all allegations not admitted by them.

Respectfully submitted,

TODD BLANCHE
U.S. Deputy Attorney General

ALINA HABBA
Acting United States Attorney
Special Attorney

By: s/Frances Bajada
FRANCES BAJADA
Assistant United States Attorney

Dated: November 28, 2025