UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-62270-RAR

NELY YOHANA TORRES-HUETE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondents.
_____/

RESPONDENTS' RETURN AND MEMORANDUM OF LAW

Respondents, by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause (ECF No. 8). As set forth fully below, the Court should deny the "Petition for Writ of Habeas Corpus" (ECF No. 1) ("Petition").

I. BACKGROUND

Petitioner, Nely Yohana Torres-Huete ("Petitioner"), is a native and citizen of Honduras. *See* Ex. A, Record of Deportable/Inadmissible Alien (I-213), March 23, 2017; *see also* Ex. B, Declaration of Officer Vivian Delgado, ¶ 6. Petitioner first entered the United States without inspection near McAllen, Texas on or about June 17, 2010. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 7.

On November 3, 2015, Petitioner's citation for driving without a license, in violation of Florida Statute 322.03(1), a second-degree misdemeanor, was dismissed through Pre-Trial Intervention. *See* Ex. C, Nolle Prosequi; *see also* Ex. B, Declaration, ¶ 8. On November 10, 2016, Petitioner was convicted of operating a motor vehicle without a license in Monroe County, Florida

and sentenced to six months of probation and other conditions. *See* Ex. D, Court Minutes; *see also* Ex. B, Declaration, ¶ 9.

On March 2, 2017, Petitioner was convicted of operating a motor vehicle without a license in Monroe County, Florida and sentenced to six months of probation and other conditions. *See* Ex. E, Court Minutes; *see also* Ex. B, Declaration, ¶ 10. On March 19, 2017, Petitioner was arrested for operating a motor vehicle without a license. *See* Ex. F, Violation of Probation; *see also* Ex. B, Declaration, ¶ 11.

On March 23, 2017, Petitioner was encountered by U.S. Immigration and Customs ("ICE") Enforcement and Removal Operations ("ERO") at the Monroe County Detention Center following her arrest for probation violation. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 12. On the same day, ICE served Petitioner with a Notice to Appear ("NTA"), charging her with inadmissibility pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Ex. G, NTA; *see also* Ex. B, Declaration, ¶ 13. On March 24, 2017, Petitioner was taken into ICE custody at the Broward Transitional Center ("BTC") in Pompano, Florida. *See* Ex. B, Declaration, ¶ 14.

On April 20, 2017, Petitioner appeared before the Executive Office for Immigration Review ("EOIR") for a bond hearing, and the immigration court denied bond, finding Petitioner to be a danger to the community. *See* Ex. H, Bond Denial; *see also* Ex. B, Declaration, ¶ 15. On May 24, 2017, the immigration court denied Petitioner's renewed request for bond. *See* Ex. I, Bond Reconsideration Denial; *see also* Ex. B, Declaration, ¶ 16. On May 19, 2017, Petitioner appealed

the denial of bond to the Board of Immigration Appeals ("BIA"). *See* Ex. J, Notice of Appeal; *see also* Ex. B, Declaration, ¶ 17. On October 19, 2017, the BIA sustained Petitioner's appeal of the bond order and remanded the record to the immigration court. *See* Ex. K, BIA Order; *see also* Ex. B, Declaration, ¶ 18.

On October 31, 2017, the immigration court granted Petitioner a $2,000 bond. *See* Ex. L, Bond Order; *see also* Ex. B, Declaration, ¶ 19. On November 1, 2017, Petitioner was released from ICE custody on bond. *See* Ex. M, Immigration Bond; *see also* Ex. B, Declaration, ¶ 20.

On December 6, 2018, Petitioner appeared with counsel before EOIR in Miami, Florida for a merits hearing on her applications for relief from removal. *See* Ex. N, Order of the Immigration Judge; *see also* Ex. B, Declaration, ¶ 21. On August 28, 2020, the immigration judge issued a decision ordering Petitioner removed from the United States, but granted Petitioner's application for protection under the Convention Against Torture ("CAT") with respect to Honduras. *See* Ex. N, Order of the Immigration Judge; *see also* Ex. B, Declaration, ¶ 22. On September 25, 2020, Petitioner appealed the removal order to the BIA, which remains pending. *See* Ex. B, Declaration, ¶ 23.

On November 13, 2023, Petitioner pled no contest in Monroe County, Florida to two counts of Fraudulent Use of Personal Identification, in violation of Florida Statute 817.568, a third-degree felony, and one count of Petit Theft, in violation of Florida Statute 812.014, a first-degree misdemeanor, and was sentenced to twenty-four months of probation with conditions. *See* Ex. O, Plea Form; s*ee also* Ex. B, Declaration, ¶ 24.

On March 13, 2025, Petitioner was convicted in Monroe County, Florida of Uttering a Forgery (checks), in violation of Florida Statute 831.09, a third-degree felony, and sentenced to 200 days of incarceration, followed by one year of probation. *See* Ex. P, Judgement and Conviction; s*ee also* Ex. B, Declaration, ¶ 25.

On August 6, 2025, Petitioner was encountered by ICE at the Monroe County Jail after completing her criminal sentence. *See* Ex. Q, I-213, August 6, 2025; s*ee also* Ex. B, Declaration, ¶ 26. On August 9, 2025, Petitioner was taken into ICE custody at BTC. *See* Ex. B, Declaration, ¶ 27. On August 10, 2025, ICE revoked Petitioner's bond. *See* Ex. R, Bond Revocation; s*ee also* Ex. B, Declaration, ¶ 28.

On August 14, 2025, Petitioner was issued a notice of removal to a third country in error. *See* Ex. S, Notice of Removal; s*ee also* Ex. B, Declaration, ¶ 29. The notice was cancelled on November 13, 2025. *See* Ex. S, Notice of Removal; s*ee also* Ex. B, Declaration, ¶ 30.

On October 9, 2025, with regards to Petitioner's outstanding appeal of her removal order, the BIA requested that DHS provide Petitioner's background check results. *See* Ex. T, BIA Background Check Hold Notice; *see also* Ex. B, Declaration, ¶ 31. On November 3, 2025, DHS provided Petitioner's background check results to the BIA. *See* Ex. B, Declaration, ¶ 32. Petitioner's appeal from the Immigration Judge's removal order remains pending with the BIA. *See* Ex. B, Declaration, ¶ 32. To date, Petitioner has not requested a custody redetermination before EOIR. *See* Ex. B, Declaration, ¶ 33.

Petitioner now challenges her detention on August 9, 2025, asserting that her detention is in violation of 8 CFR Sections 241.4 and 421.13 and the Due Process clause of the U.S. Constitution. (ECF No. 1).

ARGUMENT

Section 1225(b)(2)(A) mandates detention for "an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(A). Pursuant to § 1225(a), "[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Petitioner is a native and citizen of Honduras who "has resided in the United States for the past 13 years..." (ECF No. 1). Through a Notice to Appear, Petitioner is charged with inadmissibility pursuant to Section 212(a)(6)(A)(i) of the INA, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Accordingly, under a plain language reading of § 1225, Petitioner is an applicant for admission and is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the reasons explained more fully below, the Petition should be denied.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as either an "alien *present in the United States who has not been admitted* or [an alien] who arrives in the United States []whether or not at a designated port of arrival." 8 U.S.C. § 1225(a)(1) (emphasis added); *see generally Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission."). Accordingly, by its very definition, the term "applicant for admission" as used in § 1225 includes two categories of aliens: (1) aliens, such as Petitioner, present in the United States without admission; and (2) arriving aliens. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("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"); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission … includes, inter alia, any alien present in the United States who has not been admitted" (citing 8 U.S.C. § 1225(a)(1))).

All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection"). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal … and is entitled, under all of the applicable provisions of the immigration laws … to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] … is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Here, Petitioner does not allege that she was admitted into the United States or that she presented herself at a POE. Rather, Petitioner merely alleges that she is a native and citizen of Honduras who has been living in the United States for the last 13 years. (ECF No. 1) Petitioner is, therefore, an alien present without being admitted or paroled and, consequently, an applicant for admission.

Pursuant to § 1225(b)(2), "an alien who is an applicant for admission," such as Petitioner, "shall be detained for a proceeding under section 1229a of this title" "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). Aliens present in the United States without admission placed in § 1229a removal proceedings are applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and are, therefore, aliens "seeking admission," as contemplated in § 1225(b)(2)(A). The term "seeking admission" as used in § 1225(b)(2)(A) refers to legal admission, not mere entry into the United States. Such aliens are subject to mandatory detention under § 1225(b)(2)(A) and are not eligible for release on bond.

On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens 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." *Yajure Hurtado*, 29 I&N Dec. at 220.[1] The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United

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[1] Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal proceedings. *See, e.g.*, *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*; *see Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (concluding that 1996 amendments to the INA were passed to address the unintended and undesirable result of the pre-1996 law in which "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings" (internal quotation marks omitted)). In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Yajure Hurtado*, 29 I&N Dec. at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original).

The BIA's decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with *Jennings v. Rodriguez*, 583 U.S. 281 (2018) and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that

"the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).[2]

A review of the 1996 amendments to the INA supports the reading advocated by the Respondents here. "The statutory definition of an 'applicant for admission' at … § 1225(a)(1), was added to the INA in 1996, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA'), Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579." *Yajure Hurtado*, 29 I&N Dec. at 222.

> Prior to the 1996 amendment, the INA assessed status on the basis of "entry" as opposed to "admission." *See* 8 U.S.C. § 1101(a)(13) (1994) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise"). Non-citizens who had "entered" the United States were processed for deportation; those who had not "entered" were sent into exclusion proceedings. Charles Gordon, Stanley Mailman & Stephen Yale–Loehr, 1–1 IMMIGRATION LAW AND PROCEDURE § 1.03(2)(b) (2010). As a result, "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," while non-citizens who actually presented themselves to authorities for inspection were restrained by "more summary exclusion proceedings." *Hing Sum*, 602 F.3d at 1100. To remedy this unintended and undesirable consequence, the IIRIRA substituted "admission" for "entry," and replaced deportation and exclusion proceedings with the more general "removal" proceeding.

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[2] There is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens. Where Congress means for a rule to apply only to "arriving aliens," it uses that specific term of art or similar phrasing. See, e.g., id. §§ 1182(a)(9)(A)(i), 1225(c)(1).

Martinez, 693 F.3d at 413 n.5 (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)).

Congress's use of the present participle—seeking—in § 1225(b)(2)(A) further supports the Respondents' position. *See generally United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking," § 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). Present participles, such as "seeking admission," "do[] not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that "having" is a present participle, which is "used to form a progressive tense" that "means presently and continuously" (citing Bryan A. Garner, *Garner's Modern American Usage* 1020 (4th ed. 2016))).

Accordingly, for the reasons discussed above, Petitioner is an applicant for admission and an alien seeking admission and is therefore subject to detention under § 1225(b)(2)(A) and ineligible for release on bond.

Finally, the fact that Petitioner was granted CAT is irrelevant to her detention pursuant to Section 1225(b)(2), because the removal order and grant of CAT are not final. Section 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A) (emphasis added). Petitioner was ordered removed from the United States and granted CAT protection solely with respect to Honduras. *See* Ex. S, Notice of

Removal. Petitioner's appeal of this order remains pending with the BIA, and as such is non-final. Therefore, she falls squarely within the statutory definition. She was "present in the United States," and there is no dispute that she has "not been admitted." 8 U.S.C. § 1225(a). Moreover, Petitioner cannot—and did not—establish that she is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner "shall be detained for a proceeding under [8 U.S.C. § 1229a]."

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being FedExed to Petitioner, Nely Yohana Torres-Huete, Broward Transitional Center, 3900 N. Powerline Rd., Pompano Beach, Fl. 33073 on this day.

/s/Michele S. Vigilance

Michele S. Vigilance, AUSA