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Via ECF
Honorable Evelyn Padin, U.S.D.J.
U.S. District Court for the District of New Jersey
50 Walnut Street
Newark, NJ 07102

Re: *Orozco Alfonso v. Soto*, No. 25-17371
Expedited Answer to § 2241 Petition

Dear Judge Padin:

This Office represents Respondents in the above habeas matter filed by a noncitizen challenging the legality of her detention by U.S. Immigration and Customs Enforcement ("ICE") pursuant to 8 U.S.C. § 1225(b)(1). We respectfully submit this expedited letter answer in light of the Court's recent decision in a § 1225(b)(1) case. *See Rodriguez v. Rokosky*, No. 25-17419 (CPO), 2025 WL 3485628, at *1 (D.N.J. Dec. 3, 2025) (granting petition in § 1225(b)(1) matter; collecting cases); *Perez Silva v. Soto*, No. 25-16577 (JKS) (D.N.J. Dec. 4, 2025) (same). Respondents acknowledge that this Petition involves the same statutory arguments and salient facts as those in the *Rodriguez v. Rokosky*, No. 25-17419 (CPO) (D.N.J.) and *Perez Silva v. Soto*, No. 25-16577 (JKS) (D.N.J.).[1] Respondents accordingly submit this expedited answer given the similar issues, the importance of efficient resolution of this habeas petition, and the preservation of the Court's and the parties' resources.

Petitioner, a citizen of Columbia, has been in ICE custody since November 6, 2025. Pet. ¶ 1, 26. Respondents detained Petitioner under 8 U.S.C. § 1225(b)(1)(B)(ii), because Petitioner was (i) apprehended at a port of entry or near the border, (ii)

[1] The same § 1225(b)(1) issue has been briefed before most judges in this District. *See, e.g.*, *Polat v. Soto*, No. 25-cv-16893 (JKS); *Akoujdad v. Soto*, No. 25-18033 (ES); *Fabian Delgado v. Bondi*, No. 25-18478 (GC); *Frias-Ortega v. Soto*, No. 25-17848 (RK); *Lopez Salas v. Soto*, No. 25-17339 (MAS); *Monorov v. Noem*, No. 25-16732 (JKS); *Huertas Falcon v. Bondi*, 25-17164 (KMW); *Villa Morocho v. Bondi*, 25-17603 (BRM); *Mejia Rivera v. Florentino*, No. 25-18063 (SDW); *Jalali Rad v. Bondi*, 25-17279 (RMB).

placed into expedited removal proceedings, and (iii) passed a credible-fear screener interview for an asylum claim. Petitioner thus falls under the mandatory detention requirements of § 1225(b)(1). *See 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 (2019) (discussing the subset class of aliens described in Designating Aliens for Expedited Removal, 69 Fed Reg. 48877-01 (Aug. 11, 2004)). Because Petitioner received a finding of credible fear of persecution, an asylum officer properly placed Petitioner into full removal proceedings under § 1229a.

That Petitioner was released after being first apprehended, Pet. ¶ 2, and later re-detained does not change detention from § 1225(b)(1) to §1226(a). *See Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (collecting cases); *but see Rodriguez v. Rokosky*, No. 25-17419 (CPO), 2025 WL 3485628, at *1 (D.N.J. Dec. 3, 2025) (granting petition in § 1225(b)(1) matter because petitioner was released after entry).

Petitioner's detention is thus mandatory pending 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); *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).").

Alternative, if the Court holds that Petitioner's detention is 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 No. 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 she contends she is entitled under § 1226(a)."); *cf. Borbot v. Warden Hudson Cnty. Corr. Facility,* 906 F.3d 274, 278–79 (3d Cir. 2018) (holding that Due Process does not require the government to bear the burden of proof in bond hearings under 8 U.S.C. § 1226(a)); *but see, e.g.*, *Rivera Zumba*, 2025 WL 2753496, at *10–11 (ordering petitioner's release and "temporarily enjoin[ing] respondents from re-arresting petitioner under . . . 8 U.S.C. § 1226(a) for 14 days after her release"); *Bethancourt Soto v. Soto*, No. 25-16200 (D.N.J. Oct. 22, 2025), ECF No. 9 (Order).

Lastly, Petitioner has 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 immigration officials apprehended Petitioner near the border after entering the United States, 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) *See also German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203 210-11 (3d Cir. 2020) (noting in another mandatory detention context, § 1226(c), that Due Process demands a bond hearing only once detention has become "unreasonably prolonged") 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).

Further, Petitioner has received due process while detained, including a finding of credible fear and referral to full removal proceedings under § 1229a. *See Kabine F. v. Green*, No. CV 19-16614 (JMV), 2019 WL 3854304, at *5 (D.N.J. Aug. 15, 2019) (finding petitioner detained under § 1225(b)(1) received all procedural safeguards afforded to an arriving alien). Petitioner's 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."). Even if it were 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*, 2025 WL 2490670, at *3.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

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