IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GABRIEL JOSE LEON OLIVARES,

Petitioner,

v.

THOMAS BERGAMI, et al.,

Respondents.

Civil Action No. 3:25-CV-3096-K-W

**RESPONDENTS' OBJECTIONS TO THE MAGISTRATE JUDGE'S FINDINGS, CONCLUSIONS AND RECOMMENDATION**

This habeas case was filed by petitioner Gabriel Jose Leon Olivares, a Venezuelan citizen who entered the United States without inspection and was recently detained for removal proceedings by U.S. Immigration and Customs Enforcement (ICE). Although the government has detained Petitioner under the authority of 8 U.S.C. § 1225, which requires mandatory detention, Petitioner claims that he is entitled to a bond hearing in immigration court, and the Magistrate Judge issued a findings, conclusions, and recommendation (FCR) agreeing that a bond hearing is required. (Dkt. No. 19.) The government now objects and asks the Court to reject the FCR, for the reasons explained below.

## I. Background

### A. Petitioner enters the United States without inspection and is placed in removal proceedings.

Petitioner, who is Venezuelan citizen, entered the United States without inspection

in 2021. (*See* Dkt. No. 16 at App. 002.) He is currently in removal proceedings (as an "alien present in the United States who has not been admitted or paroled," Dkt. No. 16 at App. 002)), and he has been detained in connection with those proceedings since approximately October 30, 2025. (Dkt. No. 1, ¶ 47; Dkt. No. 16 at App. 002, 007.)

**B. Petitioner files a habeas petition challenging the government's authority to detain him.**

After Petitioner was detained, he filed his habeas petition. (Dkt. No. 1.) Petitioner generally asserts that in the past, aliens in his position were commonly granted bond in immigration court while their removal proceedings were pending, but that a recent decision of the Board of Immigration Appeals (BIA) known as *Matter of Yajure Hurtado*, 29 I.& N. Dec. 216 (BIA 2025), holds that bond is not available to them. (*See generally* Dkt. No. 1.) Petitioner claims that his detention falls under 8 U.S.C. § 1226, such that he should be eligible for a release on bond by the immigration court, and he argues that he is not subject to mandatory detention under 8 U.S.C. § 1225 because he views that statute as inapplicable and also because he believes the Due Process Clause requires a bond hearing. (*See* Dkt. No. 1, ¶¶ 51–73.) He seeks habeas relief in two counts by which he asserts an entitlement to a bond hearing of the type he could receive if detained under 8 U.S.C. § 1226. (Dkt. No. 1, ¶ 58.)

**C. The Magistrate Judge recommends a limited grant of relief to order that Petitioner receive a bond hearing.**

After receiving briefing from the parties, the Magistrate Judge issued the FCR. (Dkt. No. 19.) The FCR concluded that detaining Petitioner under the authority of 8 U.S.C. § 1225(b) without a bond hearing violated the INA, because in the FCR's view, a

separate provision within the INA that does allow for bond hearings—8 U.S.C. § 1226(a)—actually applies to Petitioner. (Dkt. No. 19 at 9–10.) The FCR additionally concluded that detaining Petitioner without a bond hearing violates his procedural due process rights under a *Mathews v. Eldridge* analysis. (Dkt. No. 19 at 10–15.)

The government now files these objections to the FCR.

## II. Argument and Authorities

In recommending that the Court grant habeas relief by ordering that Petitioner is entitled to a bond hearing in immigration court, the FCR erred in several respects, and therefore this Court should reject the FCR for the following reasons:

### A. The FCR erred in concluding that Petitioner's detention falls under 8 U.S.C. § 1226 (which allows for bond) rather than 8 U.S.C. § 1225.

The FCR first took issue with the government's "detaining [Petitioner] without a bond hearing under [8 U.S.C. §] 1225(b)," because in the FCR's view, § 1225 does not apply to Petitioner and instead the applicable statute is 8 U.S.C. § 1226. (Dkt. No. 19 at 9.) But as explained in the government's prior brief (*see* Dkt. No. 15 at 16–19), Congress created the current version of § 1225 as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, to eliminate certain anomalous provisions of prior law that favored aliens who illegally entered the country without inspection over aliens arriving at ports-of-entry. A rule—such as the one adopted by the FCR to guarantee bond hearings to aliens in Petitioner's situation who have not been lawfully admitted into the country—that treats an alien who enters the country illegally (i.e., without inspection) more favorably than an

alien detained after arriving at a port-of-entry "would 'create a perverse incentive to enter at an unlawful rather than a lawful location.'" *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). Such a scenario reflects "the precise situation that Congress intended to do away with by enacting" the IIRIRA. *Id.* "Congress intended to eliminate the anomaly 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." *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (internal quotation marks and citation omitted).

The FCR erred in holding that § 1225 does not apply because Petitioner is, in fact, considered an applicant for admission under the statute—and therefore is properly subject to mandatory detention. "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). Section 1225(a)(1) deems any "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1); *see also Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) (explaining that an alien who "was present in the country and had been for years," but "whose entry into the United States was not lawful or authorized" was "not considered 'admitted' into the United States," and that such aliens are "treated as 'applicants for admission'" and "deemed to be legally at the border").

Accordingly, by its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, but also (2) aliens present without admission. *See DHS 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'"); *Matter of Lemus-Losa*, 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 . . . ."). Indeed, that "arriving aliens" are just one subset of the larger group of "applicants for admission" is made clear by the fact that "arriving alien" is defined as "an applicant for admission coming or attempting to come into the United States at a port-of-entry"—thus making clear that there are other types of applicants for admission. 8 C.F.R. §§ 1.2, 1001.1(q) (emphasis added).

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). An applicant for admission seeking admission at a port-of-entry "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 also* 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 port-of-entry . . .

is subject to the provisions of [§ 1182(a)] and to removal under [§ 1225(b)] or [§ 1229a]." 8 C.F.R. § 235.1(f)(2). And, an alien who is an applicant for admission "shall be detained for a [removal] proceeding under section 1229a" if not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A).

Here, Petitioner was "not then admitted or paroled after inspection by an Immigration Officer" when he entered the United States. (Doc. 16 at App. 002.) Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission, and the FCR therefore erred in concluding that § 1225 and its mandatory detention provision did not apply.[1]

**B. The FCR further erred in concluding that due process requires a bond hearing for aliens who illegally enter the country.**

Having determined that Petitioner's detention fell under § 1226 rather than § 1225, such that a bond hearing should in the FCR's view be available to Petitioner, the FCR went on to consider whether due process requires that an alien in Petitioner's situation be given a bond hearing. Applying the *Mathews v. Eldridge* test, the FCR concluded that Petitioner's private interest in liberty and the risk of an erroneous deprivation of liberty outweighed the government's interest in detaining him pending the completion of removal proceedings, and therefore that due process principles require a bond hearing.

---

[1] The fact that ICE previously released Petitioner on his own recognizance in 2021 does not change this calculus. As recognized in the *Matter of Yajure Hurtado* decision, bond had regularly been granted to aliens who entered the United States without inspection, but that was before this issue was placed before the Board of Immigration Appeals. *See* 29 I.& N. Dec. at 225 n.6. And even if ICE did exercise some measure of discretion to release Petitioner from custody at some time in the past, he has no right to maintain that non-detained status indefinitely.

(Dkt. No. 19 at 10–15.)

But as explained above, it is § 1225, rather than § 1226, that properly governs Petitioner's detention, and § 1225 is not unconstitutional and does not offend due process by requiring mandatory detention pending the completion of removal proceedings for aliens (like Petitioner) who were not lawfully admitted to the United States. Compounding its statutory error in concluding that § 1226 applies, the FCR also erroneously concluded that the government's interest was not sufficient to outweigh Petitioner's alleged liberty interest and the alleged risk that he would be erroneously deprived of liberty. As an initial matter, because Petitioner entered the country without inspection and without having been lawfully admitted, the FCR erred in placing such weight on his alleged liberty interest. Petitioner's presence in the United States represents "*an ongoing violation* of United States law." *See Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 491 (1999). It is therefore incorrect to reason, as the FCR effectively does, that the fact that Petitioner was previously released by ICE on his own recognizance is a factor in his favor in the due process analysis. (*See* Dkt. No. 19 at 13 (noting that Petitioner had previously been released).) The fact of this release did not grant Petitioner any lawful status in the United States.

In addition, the FCR overlooked the myriad valid reasons for Congress to provide for the mandatory detention of aliens like Petitioner. One such reason is to ensure that such aliens remain in the government's custody so that they can in fact be removed at the conclusion of their removal proceedings, which is a consideration that the FCR improperly discounted. The government also has a heavy interest in removing the

perverse incentives that would be created by a legal regime, like the one the FCR seeks to implement, in which aliens who enter the country without inspection and lawful admission are in effect rewarded by obtaining more rights than other aliens. As detailed in the government's prior briefing, Congress created the present version of § 1225 to do away with such perverse incentives and to place all aliens who have not been lawfully admitted to the country on equal footing. Because the FCR's due process analysis flips this interest on its head and improperly gives too much weight to an alleged interest of persons who have entered the country without inspection, it should be rejected.

## III. Conclusion

The Court should reject the FCR and instead deny any relief in this action.

Respectfully submitted,

Ryan Raybould
United States Attorney

/s/ Brian W. Stoltz
Brian W. Stoltz
Assistant United States Attorney
Texas Bar No. 24060668
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Telephone: 214-659-8626
Facsimile: 214-659-8807
brian.stoltz@usdoj.gov

Attorneys for Respondents

Certificate of Service

On January 22, 2026, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Brian W. Stoltz
Brian W. Stoltz
Assistant United States Attorney