

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ANTON UDOVENKO,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of  
Homeland Security; ROBERT LYNCH, Field  
Office Director, Detroit Field Office, Immigration  
and Customs Enforcement,

Respondents.

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Case No. 1:25-cv-01492

Hon. Paul L. Maloney  
U.S. District Judge

Hon. Ray Kent  
U.S. Magistrate Judge

**RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, Anton Udovenko, asks this Court to order his release from mandatory immigration detention even though he is an arriving alien in ongoing removal proceedings. Congress has mandated detention of arriving aliens like Petitioner under 8 U.S.C. § 1225(b), and the Supreme Court has confirmed that such detention is required and not subject to bond. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). Petitioner’s due-process challenge likewise fails because detention during removal proceedings is a constitutionally permissible part of the removal process. *Demore v. Kim*, 538 U.S. 510, 531 (2003). The Court should also deny Petitioner’s motion to submit supplemental authority because the *Bautista* rulings are interlocutory orders that do not constitute a final judgment and therefore have no preclusive or precedential effect. Finally, only a detainee’s immediate custodian—the Detroit ICE Field Office Director—is the proper respondent in this habeas case and Secretary Noem should be dismissed.<sup>1</sup>

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<sup>1</sup> Petitioner named Robert Lynch as a Respondent, as Acting Field Office Director for ICE’s Detroit Field Office in his official capacity. Mr. Lynch no longer occupies that position and the

## FACTUAL BACKGROUND

Petitioner is a citizen of Russia, who entered the United States on or about December 1, 2022, at Brownsville, Texas, and applied for admission. (Pet. ¶¶ 2, 14, PageID.1, 3; Ex. A, Notice to Appear (NTA).) ICE encountered Petitioner on July 10, 2024, and issued him a NTA under 8 U.S.C. § 1182(a)(6)(A)(i) as an arriving alien. (Ex. A, NTA.) Petitioner admitted to the charges in the NTA and conceded removability under § 212(a)(7)(A)(i)(I) of the INA. (Ex. B, Pet. Written Pleading.)

ICE encountered Petitioner again on October 10, 2025. (Pet. ¶ 4, PageID.2.) Petitioner is currently detained at the North Lake Correctional Facility in Baldwin, Michigan. (*Id.* ¶ 1, PageID.1.) He is in removal proceedings on the detained docket at the Detroit Immigration Court. (*Id.*) Petitioner is scheduled for a Master hearing before an immigration judge on January 14, 2026. (Ex. C, Notice of Hearing (NOH).) He has not requested a bond hearing.

On November 19, 2025, Petitioner filed a petition in federal court seeking a writ of habeas corpus asking the Court to order Respondents to release Petitioner or provide him with a bond hearing.

## STATUTORY FRAMEWORK

Petitioner is detained as an arriving alien seeking admission to the United States, and his detention is governed exclusively by 8 U.S.C. § 1225(b). *See Jennings*, 583 U.S. at 302 (holding that § 1225(b) “mandate[s] detention of aliens throughout the completion of applicable proceedings”). Under § 1225(b)(2)(A), if an arriving alien is determined not to be “clearly and beyond a doubt entitled to be admitted,” he shall be detained pending removal proceedings under INA § 240. Immigration judges lack authority to grant bond to arriving aliens detained under §

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current Field Office Director, Kevin Raycraft, should automatically be substituted as the Field Office Director Respondent under Fed. R. Civ. P. 25(d).

1225(b), and release may occur only through the Secretary’s discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A). See *Jennings*, 583 U.S. at 308; *Clark v. Martinez*, 543 U.S. 371, 373 (2005). Accordingly, Petitioner’s detention is lawful under § 1225(b), and his request for a bond hearing fails as a matter of law.

## ARGUMENT

### I. **Petitioner’s detention as an arriving alien is mandatory under § 1225.**

Petitioner is properly detained as an arriving alien and applicant for admission under 8 U.S.C. § 1225. His NTA charges him as an arriving alien, and he admitted to applying for admission on December 1, 2022. (Ex. A, NTA.) Because Petitioner entered without inspection and has never been lawfully admitted, he is legally treated “as if stopped at the border,” even though he is physically present inside the United States. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quoting *Shaughnessy v. Mezei*, 345 U.S. 206, 215 (1953)).

#### A. **Section 1225(b)(2) mandates detention of aliens like Petitioner who are present in the United States without having been lawfully admitted.**

The INA mandates detention of any alien “seeking admission” who is not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Because Petitioner has not departed or conceded removability, he is seeking to remain in the United States—an objective that necessarily requires lawful admission. See 8 U.S.C. §§ 1101(a)(13)(A), 1182(a)(6), 1225(a)(3). As the Supreme Court recognized, arriving aliens who enter unlawfully “are treated as applicants for admission.” *Thuraissigiam*, 591 U.S. at 140.

Courts in this circuit likewise hold that such individuals remain applicants for admission until they either obtain lawful status or depart. See, e.g., *Moctezuma-Reyes v. Garland*, 124 F.4th 416, 419 (6th Cir. 2024) (cancellation of removal confers lawful admission only upon approval);

*Lopez-Soto v. Garland*, 857 F. App'x 848, 854 (6th Cir. 2021) (same). Petitioner therefore falls squarely within § 1225(b)(2).

**B. The Court lacks authority to release Petitioner on bond.**

The Supreme Court has held that § 1225(b) detention is mandatory and precludes any bond authority by immigration judges (IJ) or federal courts: “§ 1225(b)(1) and (b)(2) mandate detention and provide no authority for release on bond.” *Jennings*, 583 U.S. at 297. Thus, Petitioner has no statutory right to a bond hearing, and the Court cannot grant one.

Congress provided a single — and narrow — mechanism for release of arriving aliens: discretionary U.S. Department of Homeland Security (DHS) parole “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); see *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 261 (BIA 2010). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes release from detention under § 1225(b), at DHS’s discretion. 583 U.S. at 300. Specifically, the Supreme Court emphasized that “[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . . .” *Id.* at 288. That authority is vested solely in DHS, and courts “lack jurisdiction to second-guess or review” parole decisions. *Matter of Castellon*, 17 I. & N. Dec. 616, 620 (BIA 1981). The parole authority under § 1182(d)(5) is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); see 8 C.F.R. § 212.5(a). Thus, neither the BIA nor IJs have authority to parole an alien into the United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; see also *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that “parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS” and “reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to

refer to the Secretary of Homeland Security”); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that “neither the [IJ] nor th[e] Board has jurisdiction to exercise parole power”). Further, because DHS has exclusive jurisdiction to parole an alien into the United States, the way DHS exercises its parole authority may not be reviewed by an IJ or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; see *Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

Petitioner has not been paroled, and no IJ or court may intervene to create bond jurisdiction that Congress did not authorize.

**C. The text, structure, and purpose of IIRIRA confirm the mandatory nature of detention under § 1225(b)(2).**

Congress enacted IIRIRA to prevent unlawful entrants from gaining procedural benefits unavailable to those who follow inspection rules at ports of entry. H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Courts applying traditional statutory-interpretation tools routinely uphold DHS’s authority under § 1225(b). See *Mejia Olalde v. Noem*, 2025 WL 3131942, at \*1 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351, at \*10 (D. Neb. Sept. 30, 2025); *Barrios Sandoval v. Acuna*, 2025 WL 3048926, at \*5 (W.D. La. Oct. 31, 2025); *Pena v. Hyde*, 2025 WL 2108913, at \*2 (D. Mass. July 28, 2025).

Here, the text, structure, and purpose of § 1225(b)(2) make the correct reading unmistakable: Petitioner’s detention is mandatory. Because Petitioner is an arriving alien in ongoing § 1229a proceedings, DHS must detain him under § 1225(b)(2). Neither the immigration court nor this Court has jurisdiction to order release or bond. His detention is lawful and mandated by statute.

**II. Petitioner’s detention comports with due process.**

The Fifth Amendment’s Due Process Clause protects against the deprivation of life, liberty, or property “without due process of law.” U.S. const. amend. V. That includes freedom from government detention unless “adequate procedural protections” are applied. *Zadvydas*, 533 U.S. at 690.

In the immigration context, arriving aliens are treated as if they remain at the border for due process purposes and are therefore entitled only to the procedures Congress has authorized. *Thuraissigiam*, 591 U.S. at 138–40; *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950). Congress has mandated detention of arriving aliens during removal proceedings under 8 U.S.C. § 1225(b), and the Supreme Court has confirmed that such mandatory detention pending admissibility determinations is constitutionally permissible. *Jennings*, 583 U.S. at 302–08. Because Petitioner is an arriving alien in ongoing § 240 removal proceedings, and he is receiving the precise procedures Congress provided—including notice, counsel, and a hearing before an immigration judge—he has no constitutional right to a bond hearing or release into the United States. Accordingly, his due process claim fails as a matter of law.

**III. The Court should deny Petitioner’s motion to submit supplemental authority because the *Bautista* orders are interlocutory, and therefore, non-final and non-binding.**

Plaintiff’s motion to submit supplemental authority (ECF No. 3) should be denied because the *Bautista* decisions do not constitute a final judgment. As the filings attached to Plaintiff’s motion confirm, the court in *Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal.), granted class certification and granted in part a motion for partial summary judgment, but expressly declined to enter final judgment for the class. (See Pl. Mot., Exs. A & B, PageID.28-60.) The *Bautista* court issued no class-wide declaratory judgment and no class-wide injunction—indeed, the latter would be impermissible under longstanding limits on nationwide or class-wide injunctive relief. Instead,

the court ordered the parties to submit a joint status report by January 9, 2026, and set a January 16, 2026, status conference to determine further proceedings. Because the court has not entered any type of judgment, Rule 54(b)'s second sentence controls: "any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties... does not end the action" and is "subject to revision at any time." Accordingly, the *Bautista* orders remain interlocutory.

Because no judgment exists, the *Bautista* rulings cannot have preclusive effect on this Court's interpretation of the INA's mandatory-detention provisions. Preclusion applies only where a final judgment has issued, *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992), and here the *Bautista* court has explicitly deferred any class-wide declaratory or injunctive relief. The absence of any operative declaratory judgment means there is no class-wide determination binding other courts or cases involving putative class members. As a result, *Bautista* provides no controlling authority and no basis for reopening or supplementing briefing in this case. The Court should deny Petitioner's motion to submit supplemental authority.

**IV. The Detroit ICE Field Office Director is the only proper respondent.**

A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Except in extraordinary circumstances, the only proper respondent in a habeas corpus case is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). In the immigration context, that is the ICE Field Office Director. *Id.*

Here, the petition names Secretary Noem, but she is not a proper respondent to this habeas action. *See Roman*, 340 F.3d at 322 (reasoning that "adopting a broader definition of 'custodian'" that encompasses any official with control over an alien's detention and release "would complicate and extend the duration of habeas corpus proceedings").

The acting Detroit ICE Field Office Director, who is Kevin Raycraft, not Robert Lynch, is a proper respondent in this case and Secretary Noem should be dismissed.

**CONCLUSION**

The government respondents respectfully request that the Court deny the petition for a writ of habeas corpus because Petitioner is not detained in violation of federal law or the Constitution.

Respectfully submitted,

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Dated: December 5, 2025

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