UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-04546-SRN-EMB

Guillermo Hernandez Nanduca,

Petitioner,

v.

Pamela Bondi, et. al.,

Respondents.

CONSOLIDATED RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Federal Respondents[1] submit this combined response to Petitioner Hernandez Nanduca's ("Petitioner" or "Hernandez") motion for a temporary restraining order (ECF No. 5) and verified petition for writ of habeas corpus (ECF No. 1) pursuant to the Court's briefing order. (ECF No. 9.) Petitioner wants an immigration court to conduct a bond hearing in connection with his detention by the U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is not entitled to habeas relief because his detention is mandatory—he is not eligible for bond or a bond hearing. Petitioner claims he is entitled to a bond hearing under § 1226(a). But he is an "applicant for admission" under § 1225

[1] The Federal Respondents are Pamela Bondi, Attorney General, Kristi Noem, Secretary, U.S. Department Homeland Security, Department Homeland Security, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement, Immigration and Customs Enforcement, Daren K. Margolin, Director for Executive Office for Immigration Review, Executive Office for Immigration Review, David Easterwood, Acting Director, St. Paul Field Office, Immigration and Customs Enforcement ("ICE"). This response is not offered on behalf of any state authority.

and is therefore subject to mandatory detention under § 1225(b). In the alternative, the Petitioner's detention is mandatory under § 1226(c) due to his theft conviction. Accordingly, his temporary restraining order motion should be denied and his petition should be dismissed.

RELEVANT BACKGROUND

Petitioner is a native and citizen of Mexico. (Declaration of James L. Van Der Vaart ("Van Der Vaart Decl.") ¶ 10, Ex. 6 at 1.) He entered the United States without inspection, admission, or parole. (*Id.* at 2; ECF No. 1 at ¶ 13.) On October 30, 2007, Hernandez entered a guilty plea for Theft-Take/Use/Transfer Movable Prop-No Consent in violation of Minn. Stat. § 609.52.2(1) in Anoka County, Minnesota. (Van Der Vaart Decl. ¶ 4, Exs. 1, 2.) Hernandez was placed in the diversion program and placed on probation. (*Id.*) Hernandez was discharged from probation on September 28, 2009. (*See id.* ¶ 5, Ex. 2 at 2.)

On August 10, 2022, Hernandez submitted Form I-601A, Application for Provisional Unlawful Presence Waiver, with U.S. Citizenship and Immigration Services (USCIS). (Van Der Vaart Decl. ¶ 6, Ex. 3.) USCIS issued receipt number [redacted] and Alien Registration Number [redacted] (*See id.*)

On May 7, 2025, USCIS issued a Request for Evidence (RFE) for case number [redacted]. (Van Der Vaart Decl. ¶ 7, Ex. 4.) USCIS noted Hernandez may be inadmissible under INA § 212(a)(2)(A)(i)(I) based on the theft charge under Minn. Stat. § 609.52.2(1) that Hernandez did not disclose on his Form I-601A. (*See id.*) Hernandez

submitted a response to the RFE in which he admits he stole lottery tickets. (*Id.* ¶ 8, Ex. 1.) Hernandez's response also included court documents that revealed the total value of the lottery tickets was $2,429.00. (*See id.* ¶ 8, Ex. 3 at 2.)

On June 24, 2025, USCIS sent a Denial Notice for case number [redacted] (Van Der Vaart Decl. ¶ 9, Ex. 3.) USCIS noted Hernandez was charged with Theft under Minn. Stat. § 609.52.2(1) and subsequently required to attend a diversion program while having a two-year probation period. (*See id.* at 2, 3-4.) As such, USCIS found Hernandez did not meet his burden to establish he is not inadmissible under INA § 212(a)(2)(A)(i)(I) -- Conviction/Commission of a Crime Involving Moral Turpitude. (*See id.*)

On December 6, 2025, St. Paul, MN Immigration officers encountered Hernandez during routine at-large enforcement operations. Immigration Officers conducted record checks and determined that Hernandez was unlawfully present in the United States. (Van Der Vaart Decl. ¶ 10.) Immigration Officers fingerprinted Hernandez and asked alienage and removability questions at the ICE field office. (*Id.*) A fingerprint match was made to the application Hernandez had submitted to USCIS verifying the identity and biometrics of Hernandez. (*Id.* ¶ 10, Exs. 5.)

On December 11, 2025, the respondent was served with a Notice to Appear charging him as inadmissible under INA § 212(a)(6)(A)(i). (Van Der Vaart Decl. ¶ 11, Ex. 7.) Hernandez is currently awaiting his initial hearing before an immigration judge. (*Id.* ¶ 12.) Due to an issue with the immigration court scheduling system, Hernandez's initial

immigration hearing is currently set for February 4, 2027 (Ex. 7), however, ICE is actively working to obtain an earlier hearing date in January 2026. (*Id.*)

ARGUMENT

The parties' disagreement in this case comes down to whether Petitioner is detained pursuant to § 1225 or § 1226. ICE says it's § 1225, which governs the detention of noncitizens who are "applicants for admission." 8 U.S.C. § 1225(a)(3). Congress says so as well, expressly directing that noncitizens like Petitioner who get into the United States without being inspected "shall be deemed for purposes of this chapter an applicant for admission" and then detained pursuant to § 1225(b)(1) or § 1225(b)(2) *Id.* § 1225(a)(1). Under a straightforward reading of the statute, Petitioner is subject to mandatory detention under § 1225(b)(2). He is not entitled to a bond hearing, and the Court should deny his habeas petition.[2] Alternatively, because Petitioner was convicted of a crime of moral turpitude, he is subject to mandatory detention under 1226(c)(1)(B).

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[2] The United States recognizes that other courts in this district have decided cases raising nearly identical issues to those addressed by this Court. The United States has appealed *Avila v. Bondi*, No. 25-cv-3741 (JRT/SGE), 2025 WL 2976539, at *1 (D. Minn. Oct. 21, 2025), to the Eighth Circuit. The United States has requested an expedited briefing schedule. *Avila v. Bondi*, No. 25-3248 (8th Cir.). The United States also notes that a district court in California certified a class and issued an order finding 1226 applied to that class, rather than 1225. Order, *Bautista v. Santacruz, et al.*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025) (ECF 81) (certifying class); Order, *Bautista v. Santacruz, et al.*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025) (ECF 82) (granting partial summary judgment on 1225/1226 issues). The court in that case specifically declined to enter judgment or issue any declaratory relief, and the case is therefore pending and not final.

I. Petitioner is properly subject to mandatory detention according to the plain text, context, and structure of § 1225.[3]

Petitioner's primary contention—that the government improperly subjected him to mandatory detention without bond under § 1225(b)(2)—is familiar by now. This Court has heard and ruled on the government's arguments on this issue before. *See, e.g.*, *E.M. v. Noem*, 25-cv-3975 (SRN/DTS), 2025 WL 3157839 (D. Minn. Nov. 12, 2025); *Aguilar-Maldonado v. Olsen et al.*, 25-cv-3142 (SRN/SGE), ECF No. 17, 2025 WL 2374411 (D. Minn. Aug. 12, 2025) (granting preliminary injunction). And the Court has undoubtedly read and considered the decisions of other courts in this district and elsewhere that favor Petitioner's interpretation. (*See* ECF No. 1 at ¶ 63.)

The government will not belabor these proceedings further by re-arguing points the Court has already considered and rejected. Instead, the government writes to (A) offer additional authority the Court had not previously considered and (B) summarize the legal basis for the government's interpretation.

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[3] Petitioner may belong to a recently certified class of noncitizens present in the United States without admission. *See* Order Granting Pl. Pet'rs' Mot. for Class Cert., *Maldonado Bautista v. Santacruz*, 5:25-cv-01873 (C.D. Cal. Nov. 25, 2025) (ECF No. 82). The court in that case had earlier granted partial summary judgment for the named petitioners in that matter but declined to enter final judgment. Order Granting Pet'rs' Mot. For Partial S.J. & Denying Request to Enter Final J., *Maldonado Bautista v. Santacruz*, 5:25-cv-01873 (C.D. Cal. Nov. 20, 2025) (ECF No. 81). The government will alert the Court if any developments in the class proceedings bear on this case.

A. The Court should consider more recent authority it hasn't previously considered.

The Court indicated in its ruling in *E.M.* that it "the vast majority of district courts throughout the country" have found that the "applicable scheme for noncitizens already residing in the country is under 1226(a), absent any exceptions under § 1226(c)." 2025 WL 3157839, at *6. The government respectfully requests the Court consider several recent authority where courts have accepted the government's interpretation. *See, e.g.*, *Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Cabanos v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025). These decisions reflect the minority position, but that minority has been growing since the BIA reached its conclusion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). *See Sandoval*, 2025 WL 3048926, at *6 (noting "rnany of the[] cases" taking the majority position did so "before—or soon after—the BIA issued its opinion in" *Hurtado*). The minority position is likely to continue persuading as these complex interpretive issues percolate throughout the country, including now in pending appeals. The Court should consider these additional authorities before once again addressing the interpretive question.

B. Petitioner is subject to mandatory detention under § 1225(b)(2)'s plain text, context, and structure.

The Court should reject Petitioner's request to convert his mandatory detention under § 1225(b)(2) into discretionary detention under § 1226(a). Petitioner does not dispute he is a noncitizen "present in the United States who has not been admitted"—that he is "deemed" an "applicant for admission" under § 1225(a)(1). (ECF No. 1 ¶ 47.) Under

§ 1225's "catchall provision"— paragraph (b)(2)—a noncitizen such as Petitioner, who is deemed an applicant for admission and who is not subject to paragraph (b)(1), must be detained during removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Petitioner's interpretation to the contrary emphasizes the phrase "seeking admission" in the text of § 1225(b)(2)(A). (ECF No. 1 at ¶¶ 48-51.) That provision, in its entirety, states:

> Subject to subparagraphs (B) and (C), in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A) (emphasis added). This phrase, he argues, limits § 1225(b)(2)'s scope to only those arriving at the border and seeking admission from outside the country. (ECF No. 1 ¶ 72.)

The Court should reject Petitioner's interpretation for multiple reasons evident from the statute's text, context, and structure.

First, Petitioner's argument is contrary to § 1225's plain text, which "deem[s]" people, like Petitioner, who are already "present in the United States" without admission to be applicants for admission. *See* 8 U.S.C. § 1225(a)(1). While paragraph (b)(1) applies to those "arriving" in the United States and other more recent arrivals, paragraph (b)(2) is not so limited and applies instead to any "other" noncitizen "who is an applicant for admission." *Compare id.* § 1225(b)(1)(A)(i) *with id.* § 1225(b)(2)(A); *accord Jennings*, 583 U.S. at 287. The term "seeking admission" does not implicitly narrow this provision

to just those applicants for admission who are "arriving" at the border. Such an interpretation would render paragraph (b)(2) essentially redundant of (b)(1). Rather, (b)(2) includes all people who Congress deemed to be applicants for admission who are not already covered by paragraph (b)(1).

Second, the context of § 1225's passage in a 1996 reform package shows Congress intended to place noncitizens who are present without admission on equal footing with those who are apprehended upon arrival. Before the current version of § 1225 was enacted, under the entry doctrine, inadmissible noncitizens who successfully evaded apprehension and gained entry enjoyed greater rights than those who were found inadmissible after appearing for inspection. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (explaining history of § 1225), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). But Congress did away with the distinction by, among other changes, deeming both categories to be treated as applicants for admission in § 1225(a) and treating them similarly in § 1225(b). Interpreting § 1225(b) to turn on physical entry rather than lawful admission after inspection would reinvigorate the entry doctrine, contrary to Congress's legislative efforts.

And *third*, Petitioner's argument contradicts the structure of the statute, both within § 1225 itself and between §§ 1225 and 1226. Section 1225(b) divides applicants for admission between two subparagraphs: (b)(1) for those applicants for admission who are arriving, and (b)(2) for "other" applicants for admission. Section 1225(b) treats all "applicants for admission"—whether arriving or already present—as mandatory detainees

under either (b)(1) or (b)(2), unlike admitted noncitizens who subject to discretionary detention and allowed bond under § 1226.

Based on § 1225's plain text, context, and structure, the Court should hold Petitioner is properly subject to mandatory detention under § 1225(b)(2). As such, he does not have a substantial likelihood of succeeding on the merits of this claims. Denial of the Petitioner's temporary restraining order motion is amply justified, as is dismissal of the petition.

II. In the alternative, Petitioner's detention is mandatory under 8 U.S.C. § 1226(c) due to his conviction for theft.

In the event that the Court does not find the Hernandez is subject to detention under 8 U.S.C. § 1225, his detention is mandatory under 8 U.S.C. § 1226(c). Because Hernandez's removal order is not final, he is currently in immigration detention under 8 U.S.C. § 1226(c) due to his felony conviction. (Van Der Vaart Decl. ¶ 4, Exs. 1, 2.) He has been detained for six days. (*Id.* ¶ 10, Ex. 5.)

The Eighth Circuit Court of Appeals' decision in *Banyee v. Garland,* 115 F.4th 928, 933-934 (8th Cir. 2024) controls regarding the constitutionality of Hernandez's detention under § 1226(c). In that case, the circuit court rejected the multi-factor test previously used in this District to assess the constitutionality of detention under § 1226(c) and held that detention required during removal proceedings is "constitutionally valid." *Id.* at 931 (citing *Demore v. Kim*, 538 U.S. 510 (2003)); *see also Gach,* 2024 WL 4774175 at *3 (following *Banyee*).

Hernandez's situation does not differ -- §1226(c)(1)(B) requires his detention during his removal proceedings due to the nature of his theft conviction. (*See* Van Der Vaart Decl. ¶ 4, Exs. 1, 2.) Hernandez entered a guilty plea and was placed in a diversion program. (*See id.*) Under INA § 101(a)(48)(A), "conviction" is defined as "a formal judgment of guilt of the alien entered by a court, or if adjudication of guilt is withheld where (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty. . . or (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed." Therefore, for immigration purposes, Hernandez was convicted of theft because it is a crime of moral turpitude under 8 U.S.C. § 1226(c)(1)(B). Additionally, no petty crime exception applies because the maximum penalty is 5 years of incarceration. (Van Der Vaart Decl. ¶ 6, Ex. 3, ¶ 7, Ex. 4.) Because Hernandez is not likely to succeed on his habeas claim due to his theft conviction, his temporary restraining order motion should be denied, and his petition should be dismissed.

III. An evidentiary hearing is unnecessary.

In a habeas corpus proceeding an evidentiary hearing is necessary only where material facts are in dispute. *See Ruiz v. Norris*, 71 F.3d 1404, 1406 (8th Cir. 1995). Such is not the case here where the parties dispute a legal question – whether Hernandez should be subject to detention under 1225, 1226(a), or 1226(c). Consequently, no evidentiary hearing is necessary.

CONCLUSION

For the foregoing reasons, the Court should deny the motion for temporary restraining order and dismiss the petition for lack of jurisdiction or deny it on the merits.

Dated: December 12, 2025

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