

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-04559-KMM-DJF

Bashir Khalif Abdi,

Petitioner,

v.

Eric Klang, Sheriff, Crow Wing County,
MN, in their official capacities; Samuel
Olson, Director of St. Paul Field Office,
U.S. Immigration and Customs
Enforcement, in their official capacities;
Kristi Noem, Secretary of the U.S.
Department of Homeland Security, in
their official capacities; and Pamela
Bondi, Attorney General of the United
States, in their official capacities,

Respondents.

**FEDERAL RESPONDENTS' ANSWER
BRIEF IN RESPONSE TO
PETITIONER'S AMENDED PETITION
FOR WRIT OF HABEAS CORPUS**

Federal Respondents¹ submit this brief in answer to Petitioner Bashir Khalif Abdi's amended petition for writ of habeas corpus, ECF No. 7, pursuant to the Court's briefing order, ECF No. 8.

This is *not* one of the now familiar cases about the government's interpretation of 8 U.S.C. § 1225(b)(2). *See, e.g., Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025). This case is different. Petitioner is a noncitizen who was arrested and detained seven minutes after crossing the border in September 2024 and placed in expedited removal proceedings under § 1225(b)(1). He avoided expedited

¹ The "Federal Respondents" are Samuel Olson, Director of St. Paul Field Office, U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of the U.S. Department of Homeland Security; and Pamela Bondi, Attorney General of the United States. The response is not offered on behalf of Eric Klang, Sheriff, Crow Wing County.

removal by claiming a fear of persecution and ultimately applying for asylum, resulting in his mandatory detention “for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (summarizing § 1225(b)’s mandatory-detention authorities).

Petitioner is not, as he suggests, “misclassified as a noncitizen seeking admission under 8 U.S.C. § 1225(b)(2).” Am. Pet. ¶ 3. This case is therefore materially different from *Belsai D.S. v. Bondi* and others like it in this district and elsewhere, addressing the government’s contested interpretation of § 1225(b)(2). *See, e.g.*, 2025 WL 2802947. The government’s position in this case does not depend on the contested interpretation of § 1225(b)(2) but instead follows from a plain text analysis of § 1225(b)(1).

Even if the government were wrong, and Petitioner is not subject to § 1225(b)(1)’s mandatory detention provision for asylum applicants, *Belsai D.S.*’s narrow definition of “seeking admission” in (b)(2) applies—he is “presently attempting to gain admission into the United States” through his pending asylum application. *Belsai D.S.*, 2025 WL 2802947, at *6. The government does not need the Court to agree with the government’s broader interpretation of (b)(2); Petitioner must be detained even under this Court’s contrary interpretation. Petitioner is therefore properly subject to mandatory detention under § 1225(b), and the Court should dismiss his habeas petition.

BACKGROUND

Petitioner is a citizen and national of Somalia present in the United States without admission. Am. Pet. ¶ 15; Declaration of Deportation Officer Angela Minner (“Minner Decl.”) ¶ 4. He entered the United States without inspection in the late evening of

September 23, 2024. Minner Decl. ¶ 4, Ex. A at 2; Am. Pet. ¶ 15. Seven minutes later, U.S. Border Patrol arrested Petitioner and processed him as an Expedited Removal under 8 U.S.C. § 1225(b)(1) by serving him Form I-860. Minner Decl. ¶ 5, Ex. A at 2 (recording that Petitioner entered the country at 2306 on September 23 and was apprehended at 2313). Border Patrol later turned Petitioner over to ICE for detention and removal. *Id.*

While in detention pending his expedited removal, Petitioner claimed a fear of returning to Somalia. *Id.* ¶ 6. ICE therefore referred his case to the U.S. Citizenship and Immigration Services Asylum Office for a credible fear interview, as required by § 1225(b)(1)(A)(ii). *Id.* Petitioner later filed an I-589 Application for Asylum, Withholding of Removal, and Convention Against Torture, which remains pending. *Id.*; Am. Pet. ¶ 17. USCIS then issued Petitioner a Form I-862, Notice to Appear in Removal Proceedings in October 2024. Minner Decl. ¶ 7, Ex. B.²

ICE released Petitioner on Interim Parole with enrollment in the Alternatives to Detention program, or ATD, in October 2024. *Id.* ¶ 8. Later that year, Petitioner filed a Motion for Change of Venue to Fort Snelling, Minnesota, which the immigration judge

² Petitioner's asylum application is subject to "defensive asylum processing" through his removal proceeding. U.S. CITIZENSHIP & IMMIG. SERVS., *Obtaining Asylum in the United States*, [https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states#:~:text=A%20defensive%20application%20for%20asylum,for%20Immigration%20Review%20\(EOIR\)](https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states#:~:text=A%20defensive%20application%20for%20asylum,for%20Immigration%20Review%20(EOIR)) (last visited Dec. 12, 2025) (explaining "defensive asylum processing" applies to those placed in removal proceedings after being apprehended by U.S. Border Patrol "trying to enter the United States without proper documentation, were placed in the expedited removal process, and were found to have a credible fear of persecution or torture by an asylum officer").

granted. *Id.* ¶¶ 9–10. While out of custody and enrolled in ATD, Petitioner incurred several violations of the ATD program agreement, including two missed virtual office visits and a GPS monitor strap tamper alert. *Id.* ¶ 11.

Officers with ICE’s Enforcement and Removal Operations office in St. Paul arrested Petitioner on December 4, 2025, for continuation of removal proceedings. *Id.* ¶ 12. ICE maintains that Petitioner is properly subject to mandatory detention “for further consideration of the application for asylum,” as required in 8 U.S.C. § 1225(b)(1)(B)(ii).

ARGUMENT

The Court is familiar by now with the detention provisions in §§ 1225 and 1226. But most of the recent litigation has focused specifically on § 1225(b)(2), which imposes mandatory detention on “applicants for admission . . . seeking admission” into the United States. 8 U.S.C. § 1225(b)(2)(A). But this case is different: Petitioner is an asylum seeker subject to § 1225(b)(1), not (b)(2).

I. Petitioner is properly subject to mandatory detention pending the outcome of his asylum application under § 1225(b)(1)(B)(ii).

This case involves § 1225(b)(1) and is different from the extensive litigation over § 1225(b)(2)’s mandatory-detention framework. *E.g.*, *Belsai D.S.*, 2025 WL 2802947, at *6 (addressing “Respondents’ interpretation of § 1225(b)(2)”). The Court should begin and end its analysis with the text of that provision paragraph (b)(1).

A. Petitioner is subject to mandatory detention under § 1225(b)(1).

Section 1225(b)(1)(A) creates an expedited removal process for noncitizens “arriving” in the United States who are found inadmissible after initial inspection. 8 U.S.C. § 1225(b)(1)(A)(i). Expedited removal in clause (i) also applies to inadmissible noncitizens

“described in clause (iii),” which includes those who have been in the country less than two years, if designated by the Attorney General in her “sole and unreviewable discretion.” *Id.* § 1225(b)(1)(A)(i), (iii). The Attorney General has designated all noncitizens present less than two years to be subject to “the full scope of” expedited removal under clause (i), *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). Put simply, any person present without admission for less than two years and who lacks valid documentation to remain is subject to the expedited removal proceedings in clause (i). *Jennings*, 583 U.S. at 287.

The only way around expedited removal under clause (i) is for asylum seekers under clause (ii). A noncitizen can invoke the asylum proceedings in clause (ii) by “indicat[ing] either an intention to apply for asylum under section 1158 of this title or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(ii). In that case, an immigration “officer shall refer the [noncitizen] for an interview by an asylum officer under subparagraph (B).” *Id.*

Subparagraph (B), in turn, directs the conduct of the asylum proceeding. *Id.* § 1225(b)(1)(B). The asylum officer first conducts a credible-fear interview. *Id.* § 1225(b)(1)(B)(i). “If the officer determines at the time of the interview that [a noncitizen] has a credible fear of persecution (within the meaning of clause (v)), the [noncitizen] *shall be detained* for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii) (emphasis added). If the officer concludes the noncitizen “does not have a credible fear of persecution, the officer shall order the [noncitizen] removed from the United States without further hearing or review.” *Id.* § 1225(b)(1)(B)(iii)(I). “Any [noncitizen] subject to the procedures under this clause *shall be detained* pending a final determination of credible

fear of persecution and, if found not to have such a fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV) (emphasis added). The plain import of this language is that any noncitizen subject to expedited removal who claims a fear of persecution upon arrival is subject to mandatory detention pending the outcome of their asylum application, whether their expressed fear of persecution is found credible or not. *See Jennings*, 583 U.S. at 287 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. . . . And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”).

The mandatory-detention provision in § 1225(b)(1)(B)(ii) applies to Petitioner. He was apprehended by Border Patrol on the day he entered the country and placed in expedited removal. Minner Decl. ¶ 4, Ex. A at 2. Petitioner affirmatively pled that he applied for asylum and the application remains pending. Am. Pet. ¶ 17; *see also* Minner Decl. ¶ 6. The statute therefore requires that he “shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).³

³ Petitioner is not a member of the class in *Maldonado Bautista v. Santacruz*, as he claims. *See* Am. Pet. ¶ 39. The certified class in that case excludes those who are subject to detention under § 1225(b)(1). --- F.R.D. ---, No. 5:25-cv-01873, 2025 WL 3288403, at *1 (C.D. Cal. Nov. 25, 2025). As the government explained above, Petitioner is subject to detention under § 1225(b)(1) and therefore falls outside the class.

But even if the Court disagrees and finds Petitioner is a member of the class, the Court should dismiss for that reason. Petitioner cannot split his claim by availing himself of the benefits of a favorable class ruling while also seeking the benefits of individual relief in this Court.

B. Petitioner's attempt to invoke § 1225(b)(2) and case law interpreting it misunderstands those authorities and the nature of his status.

Petitioner seeks to ride the wave of recent case law narrowly interpreting § 1225(b)(2), rejecting the government's broader interpretation, and entitling many immigration detainees to bond hearings under § 1226(a). *See, e.g., Belsai D.S.*, 2025 WL 2802947, at *6. Petitioner misunderstands those holdings and the nature of his status. That case law doesn't apply because he is not subject to § 1225(b)(2) or the government's contested interpretation of it. And even if the case law did apply, Petitioner fits within this Court's narrower interpretation of § 1225(b)(2) in *Belsai, D.S.*

The Court invited the government to explain the distinction between this case and *Belsai D.S.*, Order, ¶ 2(d), ECF No. 8. The *Belsai D.S.* case and others like it involve the interplay between the mandatory-detention authority in § 1225(b)(2) and the discretionary-detention authority in § 1226(a). In *Belsai* and numerous other cases, the noncitizen petitioners were detained under the government's interpretation of 8 U.S.C. § 1225(b)(2), as adopted by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). *Belsai D.S.*, 2025 WL 2802947, at *2. The *Hurtado* interpretation holds that a person who is present in the country without admission is an "applicant for admission" under § 1225(a)(1) and is therefore subject to mandatory detention under § 1225(b)(2)(A) and not eligible for release on bond pending the outcome of § 1229a immigration proceedings—regardless of how long the person has been present in the country. *See Hurtado*, 29 I&N Dec. at 220.

This Court in *Belsai*, and most others⁴, have rejected this interpretation, concluding that mandatory under § 1225(b) applies only to those “applicants for admission” who are also “seeking admission.” *Id.* at *6–*7. Crucially, the Court construed “seeking admission” to mean “presently attempting to gain admission into the United States.” *Id.* at *6. The petitioner in *Belsai D.S.* is a DACA recipient who has been present in the United States since arriving “around 1990.” *Id.* at *2. He was not seeking admission, the Court held, because he successfully evaded apprehension and placement in expedited removal proceedings under § 1225(b)(1) and was no longer seeking admission and subject to (b)(2), entitling him to a bond hearing under § 1226(a)’s general discretionary-detention framework. *Id.* at *6–*7. He was not subject to the provisions of § 1225(b)(1) (and no one contended otherwise). *See generally id.*

Petitioner here is indisputably “seeking admission”—even under the Court’s narrow interpretation in *Belsai D.S.*—through his pending asylum claim. Am. Pet. ¶ 17. From the moment he was apprehended in the minutes after crossing the border, Petitioner was subject to expedited removal and mandatory detention. Minner Decl. ¶ 4, Ex. A at 2; 8 U.S.C. § 1225(b)(1)(A)(i). He stayed in mandatory detention until he invoked the asylum

⁴ Most, but not all. A growing minority of district courts have accepted the government’s interpretation of § 1225(b)(2). *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); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-177, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

process in § 1225(b)(1)(B) on October 2, 2024, just days after entering the country. Minner Decl. ¶ 6.

By seeking asylum after he was first apprehended at the border—and by continuing to pursue that status to this day—Petitioner is unambiguously “seeking admission.” His pending asylum application shows he sought to release from expedited removal and detention in the days after being first apprehended at the border by gaining asylum status. An asylum application, if granted, entitles the asylee to “asylum status” under 8 U.S.C. § 1158(c), including a stay of removal, work authorization, and a travel document. *Id.* § 1158(c)(1). “Asylum status” is a form of lawful status that meets the INA’s definition of “admission,” which means “the lawful entry . . . into the United States after inspection and authorization by an immigration officer,” but which does not include parole. *Id.* § 1101(a)(13)(A), (B), 1158(d)(5).

That asylum process has never stopped and continues to pursue lawful status to this day. Am. Pet. ¶ 17. He is “presently attempting to gain admission into the United States,” and is therefore “seeking admission” as this Court interpreted that phrase in *Belsai D.S.* Although he was paroled into the country, that act did not confer admission. 8 U.S.C. §§ 1101(a)(13)(B), 1158(d)(5). He has not withdrawn from the asylum process, and he continues to seek legal status through the process he began over a year ago upon his entry. He is therefore unlike the petitioner in *Belsai D.S.* and others who have successfully disclaimed any attempt at “seeking admission.”

The district court in *Chen* recently considered this issue and agreed that asylum seeker was “seeking admission” under the narrower interpretation adopted by most courts.

Chen v. Almodovar, 1:25-cv-8350, 2025 WL 348455, at *6 (S.D.N.Y. Dec. 4, 2025). The *Chen* court agreed with the government’s interpretation of § 1225(b)(2) but went on to conclude that even under the narrower interpretation like the one this Court adopted in *Belsai D.S.*: “If actively ‘seeking admission’ is a distinct requirement for mandatory detention pursuant to 1225, seeking asylum *is* ‘seeking admission,’ [through asylum] within the meaning of the statute, since ‘admission’ is defined in terms of ‘lawful’ status, 8 U.S.C. § 1101(a)(13)(A), not physical presence on U.S. soil.” *Id.* at *6.

Because Petitioner *is presently* “seeking admission” as the Court defined that term in *Belsai D.S.*—he is presently applying for asylum and is therefore “presently attempting to gain admission into the United States”—he would be subject to § 1225(b)(2).

II. Petitioner’s claims all rely on his mistaken premise, that ICE is seeking to apply § 1225(b)(2) detention, and he has not sought relief on any other basis.

All Petitioner’s claims—whether based on the Constitution, statute, or regulation—rely on the premise that ICE detained him under § 1225(b)(2). But that premise mistaken, and his claims fail.

Petitioner has not challenged the termination of his parole, nor has he challenged the constitutionality of mandatory detention under § 1225(b)(1). *See generally* Am. Pet. His claims relate entirely to the alleged misapplication of § 1225(b)(2) under the inapplicable body of case law discussed above. The Court should deny relief any other basis.

CONCLUSION

Petitioner is subject to mandatory detention under § 1225(b), whether as a noncitizen with a pending asylum claim under (b)(1) or through the “catchall provision” in (b)(2).

Dated: December 12, 2025

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