

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

BERTO VALLADARES ROUCO,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Civil Action No. 1:25-CV-00270-H

RESPONSE IN OPPOSITION TO WRIT OF HABEAS CORPUS

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I. Introduction

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his recent detention by Immigration and Customs Enforcement (ICE). He alleges that he cannot be subject to mandatory immigration detention but rather must be given an individualized bond hearing in connection with his pending removal proceeding. As explained herein, Petitioner is not entitled to any relief on his habeas petition.

II. Background

The petitioner is a native and citizen of Cuba who illegally entered the United States in 2022. App. p. 7. He entered without inspection or parole by an immigration officer. *Id.* On April 29, 2022, Petitioner placed into proceedings with the issuance of a Notice to Appear (“NTA”) and was charged as removable under INA §§ 212(a)(6)(A)(i). *Id.* On April 25, 2023, Petitioner filed his I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture with the Immigration Court. App. p. 2. Petitioner seeks habeas relief in three counts by which he asserts an entitlement to a bond hearing of the type he could receive if detained under § 1226. ECF 1, ¶¶ 38-48.

III. Argument and Authorities

The Court should deny Petitioner’s petition for the following reasons:

- A. Petitioner is not entitled to any relief, because he is an applicant for admission who may properly be subjected to mandatory detention under 8 U.S.C. § 1225 without any requirement for a bond hearing.**

Petitioner is correctly detained without bond as an applicant for admission. The provision at § 1225(b)(2)(A) applies specifically to any “applicant for admission”—and

calls for mandatory detention. Thus, Petitioner constitutes an “applicant for admission” who is potentially subject to § 1225(b)(2)(A) and its more restrictive mandatory detention provision.

1. Petitioner is considered an applicant for admission because he entered the United States without being inspected, admitted, or paroled.

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).

Here, Petitioner did not present at a port-of-entry but instead entered the United States elsewhere, in an unlawful fashion and without having been admitted or paroled. ECF 1, p. 13. He is, therefore, an alien present without admission and, consequently, an applicant for admission.

2. Because Petitioner is an applicant for admission, he is subject to detention under 8 U.S.C. § 1225(b)(2).

Applicants for admission may be placed in expedited removal proceedings under § 1225 or, as has occurred here with respect to Petitioner, he may be placed in § 1229a removal proceedings (which are the more comprehensive form of removal proceedings that also generally apply to aliens other than applicants for admission who are charged with removability). But even if placed in § 1229a proceedings, applicants for admission may be subjected to mandatory detention under § 1225 such that they are ineligible for release on bond. Specifically, aliens present without admission placed in § 1229a removal proceedings are both applicants for admission as defined in § 1225(a)(1) *and* aliens “seeking admission,” as contemplated in § 1225(b)(2)(A). Such aliens are subject to detention under § 1225(b)(2)(A) and thus ineligible for release on bond.

Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see* 8 U.S.C. § 1225(b)(2)(A), (B)). Under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under section 1229a” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Thus, according to the plain language of § 1225(b)(2)(A), applicants for admission in § 1229a removal proceedings “*shall be detained.*” *Id.* (emphasis added). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is

rebutted only in ‘rare and exceptional circumstances,’” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). And as the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens—no provision within § 1225(b)(2) refers to “arriving aliens,” or limits that clause to arriving aliens, and Congress instead intended for it to apply generally “in the case of an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to “arriving aliens,” it has used that specific term of art or similar phrasing. *See, e.g., id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

The BIA’s recently issued published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is consistent with these principles. In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.* at 220.¹

¹ Previously, § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747–48 (BIA 2023). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 216.

The BIA concluded that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years. *Id.*

In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original).

The decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303.

Moreover, during the IIRIRA’s legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* 29 I&N Dec. at 222–24 (discussing H.R. Rep. 104-469 (1996)). One goal of the IIRIRA was to “reform the legal immigration system and facilitate legal entries into

the United States.” H.R. Rep. No. 104-828, at 1. Affording bond hearings to aliens present without admission, who have evaded immigration authorities and illegally entered the United States, but not affording such hearings to arriving aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to that goal.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General recognized in *Matter of M-S-* that §§ 1225 and 1226(a) describe “different classes of aliens.” 27 I&N Dec. 509, 516 (AG 2019). And in *Matter of Q. Li-*, the BIA also held that an alien who illegally crossed into the United States between ports-of-entry and was apprehended without a warrant while arriving is detained under § 1225(b). 29 I&N Dec. 66, 71 (BIA 2025). These decisions make clear that all applicants for admission are subject to detention under § 1225(b). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”).

Given that § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under § 1225(b)(1) or placed directly into removal proceedings under § 1229a—and further given that both “§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 302, Petitioner has no

grounds to complain that he is subject to mandatory detention and is not entitled to a bond hearing.

Petitioner is properly considered an applicant for admission specifically, an alien present without admission. He is therefore subject to detention pursuant to § 1225(b)(2)(A) and there is no requirement that he be eligible for bond.

3. Recent court decisions.

Although the Respondents acknowledge that there are district court decisions that hold to the contrary² (including cases identified by Petitioner (*see* ECF 1 p. 9-12)), it bears mention that (1) none of these decisions are binding, (2) *Hurtado* carries far more weight considering the BIA's subject-matter expertise on the matter and the thoroughness of its analysis, and (3) many of the courts that have ruled against the Government "appear to defer substantially to each other." *Olalde v. Noem*, No. 1:25-CV-0168, 2025 WL 3131942 (E.D. Miss. Nov. 10, 2025), at *1. Many district courts have adopted the Respondents' and the BIA's interpretation. *See, e.g., Barrios Sandoval*, 2025 WL 3048926 (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Olalde v. Noem*, No. 1:25-CV-0168, 2025 WL 3131942 (E.D. Miss. Nov. 10, 2025); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb.

² *But see Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at * 3(S.D. Tex. Oct. 7, 2025); *Vieira v. De Anda-Ybarra*, ___ F. Supp. 3d ___, No. EP-25-cv-432-DB, 2025 WL 2937880, at *4-5 (W.D. Tex. Oct. 16, 2025); *Gonzales Martinez v. Noem*, No. EP-25-cv-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025); *Santiago v. Noem*, No. EP-25-cv-361-KC, 2025 WL 2792588, at *7-10 (W.D. Tex. Oct. 2, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 WL 2976923, at *7-8 (W.D. Tex. Oct. 21, 2025).

Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); accord *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (albeit in a different context, but adopted the reasoning at issue here when it stated that a Brazilian national who entered the country illegally in 2005 “remains an applicant for admission” in 2025).

Indeed, as this Court reasoned when denying a temporary restraining order in *Garibay-Robledo*, 1:25-CV-00177, 2025 WL 2638672 (N.D. Tex. Oct. 24, 2025), “the plain language of the mandatory-detention provision weighs *heavily against* the petitioner’s assertion that he is subject only to discretionary detention,” *Id.* at 4. This Court conducted a review of legislative history and further noted that by defining “applicants for admission” broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally. *Id.* at 7-8.

Additionally, a sister Court in this district recently reasoned in *P. B. v. Bergami, et al.* 3:25-CV-02978-O (N.D. Tex. Dec. 15, 2025), “the logical connection then is an “applicant for admission,” i.e., someone present in the country illegally, who is trying to acquire legal status, is clearly an alien “seeking admission.” ECF 21, p. 8. The Court in *P.B.*, concluded that “an unadmitted alien present in the country—the statutory definition of applicant for admission—who also seeks to be admitted, shall be detained.” *Id.*

Respondents respectfully maintain that this Petitioner is an applicant for admission subject to mandatory detention under § 1225(b)(2) in light of the legislative history and the reasoning outlined by the Supreme Court in *Jennings*. The contrary decisions of other districts should not be followed and should not override the clear congressional mandate of detention under the provisions of 8 U.S.C. §1225(b). Accordingly, the Court should not order a bond hearing or release under the reasoning of those decisions.

4. The Due Process Clause does not entitle Petitioner to any relief.

As discussed above, the relevant immigration statutes, properly construed, provide no entitlement to relief for Petitioner. Nor does the Due Process Clause. Instead, mandatory detention under § 1225(b)(2) is constitutionally permissible—particularly where, as here, Petitioner has been detained for a very short period of time. The Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional. In *Demore v. Kim*, the Supreme Court upheld the constitutionality of § 1226(c), which mandates the detention of certain aliens during removal proceedings without access to bond hearings. 538 U.S. 510, 522 (2003). The Court “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,” and also reaffirmed its “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 523, 526. The Court further explained that “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. With respect to due process concerns, the Court recognized that it “has firmly and repeatedly

endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 522.

Here, Petitioner is being detained for the limited purpose of removal proceedings and determining his removability. Such detention is not punitive or done for other reasons than to address removability, which will occur in the removal proceedings. Whether framed as a substantive or procedural due process claim, the principles set forth in *Demore* govern this case. Substantive due process protects “only ‘those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.’” *Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). Any substantive due process claim therefore fails here because “the through line of history” is that the federal government has “sovereign authority to set the terms governing the admission and exclusion of noncitizens.” *Id.* at 911, 912. Indeed, Congress in exercising this “broad power over naturalization and immigration . . . regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522 (internal quotation marks and citation omitted). Consistent with these principles, the Supreme Court has long recognized that “the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 526.

Similarly, Petitioner cannot succeed on a procedural due process claim. Such a claim fails because where Congress has substantively mandated detention pending removal proceedings, an alien cannot displace that substantive choice with a procedural due process claim. As discussed, aliens are not entitled to bond hearings as a matter of

substantive due process. *See Demore*, 538 U.S. at 523–29. Under *Demore*, Congress may reasonably determine—as it did here—to subject aliens who were never inspected or admitted to this country to detention without bond while the government determines their removability. And “an alien in [that] position has only those rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140. Congress has not created any procedural rights to a bond hearing for applicants for admission. *See Jennings*, 583 U.S. at 297. “Read most naturally,” § 1225 “mandate[s] detention of applicants for admission until certain proceedings have concluded.” *Id.* And the statute says nothing “whatsoever about bond hearings.” *Id.* No procedural due process claim is stated.

IV. Conclusion

Petitioner is lawfully detained pending removal proceedings, and he does not claim any immigration status that would entitle him to immediate release from custody. The petition for writ of habeas corpus should be denied.

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CERTIFICATE OF SERVICE

On December 23, 2025, 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).

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