

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

PLINIO DEL JESUS DIAZ  
MUNDARAIN,

Petitioner,

v.

WARDEN, GRANT DICKEY, *et. al.*,

Respondents.

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CIVIL NO. 4:25-cv-5970

**RESPONSE TO SHOW CAUSE ORDER**

Federal Respondents file this response to the Court’s Order to Show Cause why Petitioner should not be released from custody. Dkt. 6.

Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement (“DHS/ICE”). Petitioner brought this habeas corpus petition against various federal officials seeking release from immigration detention. As discussed below, Petitioner is lawfully detained under INA § 235(b), 8 U.S.C. § 1225(b)(2), which subjects Petitioner to mandatory detention.

**BACKGROUND**

Petitioner is a citizen and native of Venezuela. Dkt. 1 at ¶12. Petitioner arrived in the United States without inspection in 2021. *See* Dkt. 1 at ¶13. Petitioner has been in ICE custody since November 13, 2025. A Notice to Appear was filed charging the respondent with violating INA 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). Dkt. 1-2 at 17. After full consideration of his case, an immigration judge denied the Petitioner bond for a lack of jurisdiction and alternatively because the respondent was a flight risk. Dkt. 1-2 at 26.

## THE BASIS OF PETITIONER'S DETENTION

The Petitioner is detained under 8 U.S.C. § 1225(b)(2), which allows for the mandatory detention of aliens who are applicants for admission. When it comes to detention of an alien without status to remain in the United States, it is well-taken that the authority to detain is elemental to the authority to deport, as “[d]etention is necessarily a part of th[e] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952). As the Supreme Court has stated, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003). Here, Petitioner is detained so that ICE can conduct removal proceedings and effectuate his removal.

The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “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); *see also Fla. v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Under the plain language of INA § 235, 8 U.S.C. § 1225, Petitioner—who is present in the United States without being admitted—is subject to detention under § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded.”).

Finally, to the extent Petitioner argues that he is entitled to a bond hearing – he has had one. The Immigration Judge did not merely establish that she had no jurisdiction to grant bond pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 229 fn.8 (BIA 2025), she also

denied bond after determining that Petitioner was a flight risk. Dkt. 1-2 at 26. “An alien in a custody determination under [INA 236(a)] must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006).

The foregoing responds to the Court’s show cause order. Federal Respondents reserve the right to separately file a dispositive motion.

Dated: December 19, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on December 19, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Christina Cullom  
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Assistant United States Attorney