

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
No. 0:25-cv-4601-NEB-EMB

Edison Vera Bermeo,

Petitioner,

v.

Pamela Bondi, Attorney General, *et al.*,

Respondents.

**FEDERAL RESPONDENTS'  
COMBINED RESPONSE TO  
PETITION AND MOTION  
FOR TEMPORARY  
RESTRAINING ORDER**

Federal Respondents<sup>1</sup> submit this memorandum in response to the petition for writ of habeas corpus, ECF No. 1, and motion for temporary restraining order (“TRO”), ECF 2-3, pursuant to the Court’s briefing order, ECF No. 6. The United States respectfully requests that this Court deny the petition and motion for TRO.

**BACKGROUND**

Petitioner Edison Bermeo is a citizen and native of Ecuador present in the United States without inspection or admission. ECF 1 ¶ 22; Declaration of William Robinson (“Robinson Decl.”) ¶ 4, Ex. A. Petitioner alleges that he entered the United States in June 2023 near El Paso, Texas without inspection by United States officers. ECF 1 ¶22; Robinson Decl. ¶ 5, Ex. A.

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<sup>1</sup> The Federal Respondents are Pamela Bondi, Attorney General; Kristi Noem, Secretary of the U.S. Department of Homeland Security; the Department of Homeland Security (“DHS”); Miguel Vergara, Field Office Director of ERO, Harlingen Field Office, Immigration and Customs Enforcement; David Easterwood, Acting Field Office Director, ICE St. Paul Field Office, who should be substituted as a matter of law for the named defendant, Peter Berg under Fed. R. Civ. P. 25(d); and Assistant Field Office Director, Port Isabel Service Processing Center, ICE.

Petitioner was encountered on December 10, 2025 by ICE in Minneapolis, Minnesota. ECF 1 ¶ 23; Robinson Decl. ¶ 4, Ex. A. ICE officers determined that Petitioner was in the United States unlawfully and arrested him and transferred him to Fort Snelling for processing. Robinson Decl. ¶ 4, Ex. A. ICE personally served Petitioner with a Notice to Appear in immigration court on December 10, 2025, charging him removability under 8 U.S.C. § 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I). Robinson Decl. ¶ 5, Ex. B; ECF 1 at 29. While the NTA currently lists a hearing date for Petitioner in 2027, the immigration court has told ICE that it will set a date for Petitioner on its next available detained master calendar.

### ARGUMENT

Federal Respondents contend Petitioner is an applicant for admission subject to mandatory immigration detention under 8 U.S.C. § 1225(b)(2). Contrary to his arguments in Petitioner is not in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). He is in removal proceedings under 8 U.S.C. § 1229a. Robinson Decl., Ex. B (noting that he is in removal proceedings under INA section 240, codified at 8 U.S.C. § 1229a). Petitioner is an “applicant for admission” under § 1225 and is therefore subject to mandatory detention under § 1225(b).

Petitioner is properly subject to mandatory detention according to the plain text, context, and structure of § 1225.<sup>2</sup> The United States acknowledges that this Court has

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<sup>2</sup> 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 but

heard and ruled on the government's arguments on this issue before. *Andres R.E. v. Bondi*, No. 25-CV-3946 (NEB/DLM), 2025 WL 3146312, at \*1 (D. Minn. Nov. 4, 2025); Order for Preliminary Injunction, *Wuilmer F. v. Bondi, et al.*, Civ. No. 25-cv-3236 (NEB/JFD) (D. Minn. Aug. 18, 2025), ECF No. 18 (granting motion for TRO and 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. The United States, however, respectfully request that the Court reconsider its prior holding. *E.g., Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 LX 568700 (C.D. Cal. Nov. 12, 2025).

The United States submits this abbreviated memorandum and requests that the Court hold the arguments below, and those raised in full in *R.E. v. Bondi* and *Wuilmer F.*, are preserved for appeal. The United States has appealed the decision *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 filed its opening brief in that case on December 12, 2025. *Avila v. Bondi*, No. 25-3248 (8th Cir.). The Eighth Circuit has granted the United States' request for expedited consideration of the case, with briefing set to be complete on January 20, 2026.

The government writes to summarize the legal basis for the government's statutory interpretation. Courts across the country have accepted the government's interpretation of

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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). No class-wide relief has been granted in that case, and its partial summary judgment decision is not binding on this Court.

8 U.S.C. § 1225, in factually similar cases, including some cases that were not cited to the Court in the United States’ prior briefing. *See, e.g., Melgar v. Bondi, et al.*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-CV-867 (JLS), 2025 LX 554394 (W.D.N.Y. Dec. 4, 2025); *Suarez v. Noem*, No. 1:25-cv-202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 LX 568700 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 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).

Admittedly, 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 “many 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 authorities before once again addressing the interpretive question.

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

The Court should uphold Petitioner's mandatory detention under § 1225(b)(2). 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 1 ¶¶ 22-23 ("entered without inspection in June of 2023" and "had no contact with immigration authorities since his arrival here"). 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).

This Court's prior order in *Andres R.E.*, 2025 WL 3146312 at \*3, relying on the majority interpretation, emphasizes the phrase "seeking admission" in the text of § 1225(b)(2)(A). 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, limits § 1225(b)(2)'s scope and does not apply to noncitizens, like Petitioner, who are clearly present within the United States but are located nowhere near the border and may have been present in the United States for many years.

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

*First*, the 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.

*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).

**B. The appropriate remedy is not immediate release but ordering a custody redetermination hearing.**

If the Court rules for Petitioner and concludes he is detained under § 1226(a) and not § 1225(b)(2), the appropriate remedy would be to order a custody redetermination hearing, not immediate release.

Remedies that exceed the scope of the violation are disfavored. *Id.* (quoting *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022); *see also Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (staying preliminary injunctions "to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue"). As a result, "Most courts confronting claims analogous to" those raised by Petitioner

“order a bond hearing, not immediate release, as a remedy.” *Mata Fuentes v. Olson*, No. 25-cv-4456 (LMP/ECW), 2025 WL 3524455, at \*5 (D. Minn. Dec. 9, 2025) (citing cases).

That rule applies here.

Under Petitioner’s theory, he is not subject to expedited removal proceedings and not subject to detention under any provision of section 1225. If he is correct, then he would have to be subject to discretionary detention under § 1226(a). But § 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23 I. & N. Dec. 572, 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Instead, the statute provides that the government “*may* release the [noncitizen] on . . . bond of *at least* \$1,500” or on conditional parole. 8 U.S.C. § 1226(a)(2) (emphasis added). Under this plain text, posting bond of “at least \$1,500” is a condition precedent to release. *Id.* And whether a person is entitled to release on bond in the first place depends on if he can prove he “is not a danger to the community or a flight risk.” *Miranda v. Garland*, 34 F.4th 338, 347 (4th Cir. 2022). Petitioner is not entitled to immediate release, unmediated by the immigration-court procedures ordinarily applicable to custody redetermination proceedings under § 1226(a).

## **II. No hearing is necessary.**

The Court can rule on the Petitioner’s habeas petition without a hearing. The facts are not likely to be disputed, and the only issue before the Court is one of legal interpretation capable of resolution on the papers.

### **CONCLUSION**

Federal Respondents request the Court hold Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny the habeas petition.

Dated: December 18, 2025

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