UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-CV-26037-DPG

YANSIER NODARSE PEREIRA,

Petitioner,

v.

WARDEN OF KROME NORTH
SERVICE PROCESSING CENTER
et al.,

Respondents.
_____/

RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents by and through the undersigned Assistant United States Attorney hereby file its Response to Petitioner's Petition for Writ of Habeas Corpus [DE 1] (the "Petition") and request that it be denied stating in support thereof as follows:

I. INTRODUCTION

Petitioner, Yansier Nodarse Pereira ("Petitioner") attempts to circumvent 8 U.S.C. § 1225(b)(2)(A), the statute under which he is lawfully detained by virtue of filing this Petition and requesting that he be released or provided a bond hearing under 8 U.S.C. § 1226(a). *See* [DE 1 ¶ 6]. Petitioner argues that the authority for his detention instead arises under § 1226(a) because he "was released from initial custody, placed into standard removal proceedings, and has been residing in the United States for several years...." *See* [DE 1, ¶¶ 82-83]. In sum, Petitioner's position is that the application of § 1225(b) is improper as a matter of law, treats him as ineligible for bond, prevents any custody redetermination, and has effectively nullified the protections

afforded by § 1226(a). *Id.* However, Petitioner's argument overlooks that he falls squarely within the statutory definition of aliens subject to detention under § 1225(b)(2)(A), which is also consistent with the Board of Immigration Appeal's ("BIA") decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025).[1] Accordingly, the Petition should be denied.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Cuba. *See* Ex. 1, Record of Deportable/Inadmissible Alien (Form I-213), dated February 24, 2022. Petitioner entered the United States without inspection from Mexico at or near San Luis, Arizona on or about February 20, 2022. *Id.* On that same date, U.S. Customs and Border Protection (CBP), encountered the Petitioner and determined that the Petitioner was illegally in the United States. *Id.* Petitioner was transferred to Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) and detained at Eloy Detention Center. *See* Ex. 2, Notice of Custody Determination (Form I-286), dated February 24, 2022; *see also* Ex. 3, Detention history. On February 26, 2022, ICE ERO made a custody determination, and the Petitioner was released on bond on March 4, 2022. *See* Ex. 4, Notice of Custody Determination (Form I-286), dated February 26, 2022; *see also* Ex. 5, Warrant of Arrest of Alien (Form I-200), dated February 24, 2022; *see also* Ex. 3, Detention history.

On March 2, 2022, ICE placed Petitioner in removal proceedings by filing a Notice to Appear (NTA) with the Executive Office for Immigration Review (EOIR), charging the Petitioner with inadmissibility under INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Ex. 6, Notice to Appear (Form I-862), dated February 24,

[1] Respondents recognize that adverse district court decisions from the Southern District of Florida have been issued with respect to this argument. However, Respondents must preserve this argument for appeal as evinced by the pending appeals nationwide, including before the Eleventh Circuit Court of Appeals.

2022. Petitioner submitted a parole request to ICE ERO and on May 25, 2023, it was denied. *See* Ex. 7, Declaration, ¶ 11. On November 5, 2025, Petitioner attended his initial master calendar hearing with EOIR Miami Immigration Court, during which he admitted the allegations and conceded to the charge of removability. *See* Ex. 8, Notice of Hearing, dated September 28, 2024; *see also* Ex. 7, Declaration, ¶ 12.

On November 21, 2025, Border Patrol agents encountered Petitioner in or around Key Largo, Florida. *See* Ex. 7, Declaration, ¶ 13. They conducted a brief interview and determined Petitioner previously entered the United States illegally and did not have any additional immigration documents that would allow him to remain in the United States legally. *See* Ex. 7, Declaration, ¶ 14. On November 21, 2025, Petitioner was taken into custody and then on November 23, 2025, Petitioner was transferred to ICE custody. *See* Ex. 3, Detention History; *see also* Ex. 7, Declaration, ¶ 15. Petitioner's bond was ultimately cancelled on December 12, 2025. *See* Ex. 7, Declaration, ¶ 16.

On December 15, 2025, Petitioner had a custody redetermination hearing at Krome Immigration Court, and the Immigration Judge found that *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2005), applies and therefore the court does not have jurisdiction to redetermine custody. *See* Ex. 9, Immigration Judge Decision, dated December 15, 2025. The Petitioner reserved appeal but to date has not filed an appeal with the Board of Immigration Appeals. *Id.*

Petitioner once again submitted two more requests to ICE ERO for parole which were ultimately denied on January 20, 2025. *See* Ex. 7, Declaration, ¶ 19. Petitioner is scheduled to appear for his master calendar hearing on January 15, 2026. *See* Ex. 10, Notice of Hearing, dated January 5, 2026. The Petitioner is currently detained at the Krome North Service Processing Center as an applicant for admission who is seeking admission, under § 1225(b)(2)(A).

III. ARGUMENT

A. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is Inapplicable which was Clarified in the BIA's Decision in Matter of Yajure Hurtado.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as an "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 . . .) . . . ." 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.").

By its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep't of Homeland Sec. 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*, 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 . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted"). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry [("POE")] . . . ." 8 C.F.R. §§ 1.2, 1001.1(q).

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) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . ."). An applicant for admission at a United States POE "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) (explaining that an applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under 8 U.S.C. § 1182 in removal proceedings pursuant to § 1229a). "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 [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Petitioner did not present himself at a POE but instead entered the United States without inspection from Mexico at or near San Luis, Arizona on or about February 20, 2022. *See* Ex. 1, Form I-213, dated February 24, 2022. Petitioner is, therefore, an alien present in the United States without admission or parole and, consequently, an applicant for admission. The recently published decision issued by the BIA in *Matter of Yajure Hurtado* is instructive here. In *Matter of Yajure Hurtado*, 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.'" 29 I&N Dec. 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 BIA's decision is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and subsequent caselaw post *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.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), recognized that §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission or parole who are placed into expedited removal proceedings are detained under § 1225 even if later placed in § 1229a removal proceedings after establishing a credible fear of persecution or torture. *Id.* at 518-19; *see also* 8 § U.S.C. 1225(b)(1)(B)(ii)(providing that if an alien subject to expedited removal demonstrates a credible fear of persecution or torture, the alien "shall be detained" for further consideration of an asylum application in § 1229a removal proceedings).

Additionally, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that an alien who unlawfully entered the United States between POEs, was arrested and detained without a warrant while arriving, and was previously released from DHS custody pursuant to an 8 U.S.C. § 1182(d)(5)(A) parole is detained under § 1225(b) upon re-detention. 29 I&N Dec. at 70-71. This ongoing evolution of the law makes clear that all applicants for admission in various procedural postures are subject to detention under § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that "no amount of policy-talk can overcome a plain statutory command"); *see generally 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"). *Florida's* conclusion "that § 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

B. Petitioner is an Applicant for Admission in 8 U.S.C. § 1229a Removal Proceedings and as such his Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A) is Proper.

Both arriving aliens and aliens present without admission or parole, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under § 1225(b)(1) or removal proceedings before an immigration judge under § 1229a.; §§ 1225(b)(1), (b)(2)(A). *See Jennings,* 583 U.S. at 287 (describing how "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)"). For aliens amendable to expedited removal, immigration officers have discretion to apply expedited removal under § 1225(b)(1) or to initiate removal proceedings before an immigration judge under § 1229a. *See also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) ("DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]" (citations omitted)).

There is no question that Petitioner entered the United States without admission or inspection, and that he is present in the United States. *See* Ex. 1, Form I-213; *see also* Ex. 7, Declaration ¶¶ 13-14. Therefore, Petitioner is an applicant for admission, as defined by § 1225(a)(1), was determined to not be clearly and beyond a doubt entitled to be admitted, and remains in § 1229a removal proceedings, thus subjecting Petitioner to detention under § 1225(b)(2)(A). *See* Ex. 6, NTA, dated February 24, 2022. Under § 1225(b)(2)(A), "an alien who is an applicant for admission" "*shall be detained* for a proceeding under [8 U.S.C. § 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); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 "shall be detained" pursuant to § 1225(b)(2)). As the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2)(A) "says anything whatsoever about bond hearings." 583 U.S. at 297. There is also no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens as no provision therein refers to "arriving aliens," or limits that paragraph to arriving aliens. Where Congress means for a rule to apply only to "arriving aliens," it uses that specific term of art or similar phrasing. *See, e.g.*, 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(c)(1).

C. Section 1226 does Not Impact the Detention Authority that Governs with respect to Applicants for Admission in Removal proceedings.

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are subject to removal proceedings under § 1229 and this does not impact the directive in § 1225(b)(2)(A) that "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [8 U.S.C. § 1229a]," § 1225(b)(2)(A). Petitioner is unlawfully in the United States, and he is not in possession of documentation allowing him to remain here lawfully. Ex. 7, Declaration, ¶ 14. As the Supreme Court explained, § 1226(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings." *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a "permissive" detention authority separate from the "mandatory" detention authority under 8 U.S.C. § 1225).

Generally, such aliens may be released on bond or their own recognizance, also known as "conditional parole." 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to be released on bond; rather, both DHS and immigration judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, bond issued under § 1226(a) may be revoked at any time. *See* 8 U.S.C § 1226(b); *see also* 8 CFR 1236.1(c)(9). Lastly, to interpret § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. There would have been no need for Congress to make such a change if § 1226(a) was meant to apply to aliens present without admission.

D. Applicants for Admission may Only be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

DHS has the exclusive authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes temporary release from detention under § 1225(b). 583 U.S. at 300.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is "delegated solely to the Secretary of Homeland Security." *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor immigration judges have authority to parole an alien into the

United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that "parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS" and "reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security"). Moreover, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an immigration judge or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

IV. CONCLUSION

Based upon the foregoing, the Petition should be denied as detention is lawful under § 8 U.S.C. § 1225(b).

Dated: January 12, 2025

Respectfully submitted,

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