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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

JHAIR RICSE MENDOZA,

Petitioner,

v.

BRIAN HENKEY, Field Office Director of Enforcement and Removal Operations, Salt Lake City Field Office, Immigration and Customs Enforcement; KENNETH PORTER, Acting Director of the Boise U.S. Immigration and Customs Enforcement Field Sub-Office; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General, and MIKE HOLLINSHEAD, Sheriff of Elmore County,

Respondents.

Case No. 1:26-CV-00020-AKB

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (Dkt. No. 1)

RESPONSE TO PETITION FOR HABEAS CORPUS
(Jhair Ricse Mendoza)

INTRODUCTION

In this case, Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which requires the mandatory detention of noncitizens pursuing asylum and related protection following a showing of credible fear of return to their country. While this Court has addressed many habeas petitions over the last few months, none of those petitions involves the application of 8 U.S.C. § 1225(b)(1)(B)(ii).[1] Because Petitioner is properly detained under 8 U.S.C. § 1225(b)(1)(B)(ii), the Court should deny the Petition and lift the Temporary Restraining Order (Dkt. No. 5).

FACTUAL AND PROCEDURAL BACKGROUND

This case presents materially different facts than those previously addressed by this Court. Contrary to Petitioner's claims, Petitioner was initially detained when he entered the United States on August 5, 2023. (Declaration of Jared D. Callahan ¶ 5.) He was placed in expedited removal proceedings under 8 U.S.C. § 1225, but expressed a fear of returning to Peru. (*Id.*). U.S. Citizenship and Immigration Services then conducted a credible fear interview and determined that his fear of return to Peru was credible. (*Id.* ¶¶ 6-7.) Petitioner was then immediately placed into removal proceedings, issued a Notice to Appear, and released. (*Id.* ¶¶ 7-8.)

Thereafter, on July 12, 2024, Petitioner applied for asylum and related protection before an immigration judge. (*Id.* ¶ 10.)

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[1] Although the Government maintains its position set forth in its briefing in *Ayala v. Henkey*, 25-CV-682-AKB, Dkt. No. 7, that the Court lacks jurisdiction to hear this case and that Section 1225(b)(2) mandates detention of applicants for admission, regardless of how long they have resided in the United States, the Government recognizes that the Court has rejected those arguments. Accordingly, in the interest of efficiency, the Government has sought to raise only issues that distinguish this case from *Ayala v. Henkey* in this response.

On January 11, 2026, Petitioner was arrested for driving under the influence. (*Id.*¶ 13.) That case remains pending. (*Id.*) On January 13, 2026, Immigration and Customs Enforcement took custody of Petitioner and detained him at Elmore County Jail. (*Id.* ¶ 15.)

On January 13, 2026, Petitioner filed his Petition for Habeas Corpus along with a Motion for a Temporary Restraining Order (Dkt. Nos. 1, 2.) The Court granted the Temporary Restraining Order on January 14, 2026 (Dkt. No. 5).

I. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii).

Unlike other recent petitioners seeking immigration habeas relief before this Court, Petitioner was arrested at the border, immediately detained, and then sought a pathway to admission based on his alleged fear of returning to Peru. (Callahan Decl. ¶¶ 5-10.) An immigration officer determined that he had a credible fear of return. (*Id.* ¶ 6.) Under 8 U.S.C. § 1225(b)(1)(B)(ii), if an immigration officer determines at the time of the credible fear interview "that an alien has a credible fear of persecution . . . the alien *shall be detained* for further consideration of the application for asylum." (emphasis added); *see also Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (explaining that 8 U.S.C. § 1225(b)(1)(B)(ii) "mandate[s] detention" of asylum applicants). And although Customs and Border Protection released Petitioner and placed him in removal proceedings under 8 U.S.C. § 1229, he is still deemed to be pursuing the asylum claim that arose in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). *See Matter of M-S-*, 27 I. & N. Dec. 509, 511-12 (A.G. 2019). Because Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(1)(B)(ii), the Court should deny the Petition.

Petitioner's detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) does not violate due process because the "procedure authorized by Congress" in 8 U.S.C. § 1225(b)(1)(B)(ii) constitutes "due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Dep't of Homeland Sec. v. Thuraissigiam*, 590 U.S. 103, 140 (2020); *see also Angov v. Lynch*,

788 F.3d 893, 898 (9th Cir. 2015) (for noncitizen who "never technically 'entered' the United States," "procedural due process is simply whatever the procedure authorized by Congress happens to be"); *De La Cruz Bejarano v. Robbins*, No. 1:25-CV-01537, 2025 WL 3187623, at *2 (E.D. Cal. Nov. 14, 2025) (finding that detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) does not violate due process); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151, 2023 WL 3103811, at *4 (S.D. Cal. Apr. 25, 2023) (same).[2] And because 8 U.S.C. § 1225(b)(1)(B)(ii) does not "say[ ] anything whatsoever about bond hearings," petitioner is not entitled to one. *Jennings*, 583 U.S. at 297.

II. Alternatively, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

If the Court concludes that 8 U.S.C. § 1225(b)(1)(B)(ii) does not apply, Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). Under Section 1225(b)(2), "an alien who is an applicant for admission . . . shall be detained for [removal proceedings]." And 8 U.S.C. § 1225(a)(1) defines "applicant for admission" to include all aliens present without admission or those arriving in the United States. In this case, Petitioner is undisputably an "applicant for admission." His request for admission at the border in 2023 resulted in Customs and Border Protection issuing him a Notice to Appear. Petitioner then cemented his status as an applicant for admission in submitting an application for asylum (Callahan Decl. ¶ 10), which is a pathway to admission as a lawful permanent resident (8 U.S.C. § 1159(b); 8 C.F.R. § 209.2). Not only does Petitioner meet the statutory definition of "applicant for admission," *see* 8 U.S.C. § 1225(a)(1), he sought admission at the time of his unlawful entry by specifically asking to stay

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[2] While initial detention under 8 U.S.C. § 1225(b)(1)(B)(ii) does not violate due process, prolonged detention may eventually give rise to due process issues. *See, e.g.*, *Babaveisi v. LaRose*, No. 25-CV-3746, 2026 WL 76565, at *5 (S.D. Cal. Jan. 9, 2026).

in the United States on account of his fear of being returned to Peru. (Callahan Decl. at ¶ 5.) If the Court concludes that 8 U.S.C. § 1225(b)(1)(B)(ii) does not mandate detention, then detention is mandated under 8 U.S.C. § 1225(b)(2) because Petitioner is an applicant for admission.[3]

Because Petitioner is an "applicant for admission," he has only the due process rights that Congress has provided by statute. *Thuraissigiam*, 591 U.S. at 140. Accordingly, application of 8 U.S.C. 1225(b)(2) does not violate due process. The Court should deny the Petition.

III. Release is not the appropriate remedy.

The Government maintains its position that release is not the appropriate remedy, if the Court concludes that 8 U.S.C. § 1226 applies to Petitioner's detention. If Section 1226 applies, the Petitioner is entitled to the process provided in that Section. *See* Government's Response, *Ayala v. Henkey*, 25-CV-682-AKB, Dkt. No. 7. The regulations implementing Section 1226(a) provide that the Field Office Director makes the first determination about whether the alien should remain in detention, but the alien may thereafter request a bond determination by an immigration judge. *See* 8 C.F.R. § 236.1(d)(1). The Court should therefore allow the Agency to follow the process provided by the statute and regulations and allow the Agency to make a detention determination pursuant to Section 1226(a), in the first instance.

CONCLUSION

Because Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b), the Court should deny the Petition and lift the Temporary Restraining Order (Dkt. No. 5).

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[3] The Government preserves its position set forth in its briefing in *Ayala v. Henkey*, 25-CV-682-AKB, Dkt. No. 7, that 8 U.S.C. § 1225(b)(2) mandates detention for noncitizens who are present within the United States without admission (and are therefore seeking admission). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). However, as noted, the Government recognizes that the Court has rejected that argument.

Respectfully submitted this 21st day of January, 2026.

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By:

/s/ Christine G. England
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