UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0: 26-cv-417

Mahmoud M. Mahammed Elgendy,

Petitioner,

v.

Pamela Bondi, *et al.*

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

The Court should deny Petitioner's request for habeas relief. The Board of Immigration Appeals (BIA) received a case appeal from DHS. The Appeal is currently pending. Under 8 U.S.C. § 1003.39, "the decision of an Immigration Judge is considered final once the appeal is waived or the appeal period expires." Because Mr. Elgendy's asylum application is currently under appeal, Mr. Elgendy does not currently have asylum status. As such, Mr. Elgendy's detention is mandatory under 8 U.S.C. ¶ 1225—the Petitioner is not eligible for bond or a bond hearing.

BACKGROUND

The Federal Respondents do not contest the following facts as supplied by the Petition. Petitioner is a native and citizen of Egypt. *Petition.* ¶ 11. Furthermore, Respondents draw the following facts from the Declaration of James L. Van Der Vaart, Deporatation Officer, U.S. Immigration and Customs Enforcement ("Der Vaart's Declaration"). On October 15, 2015, Petitioner entered the US at O'Hare International Airport, IL with a valid B1/B2 VISA with permission to remain in the US until April 14,

2016. Petitioner appears to have overstayed his VISA as there is no record of him boarding his outbound flight on October 29, 2015. See Der Vaart's Declaration, ¶ 5. On November 23, 2015, US Citizenship and Immigration Services (USCIS) received application form I-589 application for asylum and for withholding of removal receipt number [redacted] *Id* at ¶ 6. On May 11, 2023, an immigration judge (IJ) at Fort Snelling, MN granted Petitioner's asylum. The Department of Homeland Security (DHS) reserved appeal. *See Id.* at ¶ 20. On May 22, 2023, the Board of Immigration Appeals (BIA) received a case appeal from DHS. The appeal is currently pending. *Id.* at ¶ 21. On January 25, 2026, ICE/ERO arrested Petitioner at Minneapolis, MN. Der Vaart's Declaration at ¶ 23. On January 26, 2026, ICE/ERO transferred MAHMOUD to El Paso Camp East Montana detention facility in El Paso, TX due to a local detention bed space shortage. Der Vaart's Declaration at ¶ 24. The Agency represented to the underlined counsel it is working to return Mr. Elgendy today, January 27, 2026. However, this will not occur before the 4:00 PM deadline established by the court. The underlined counsel very respectfully request this Court allows until 9:00AM tomorrow for an update on Mr. Elgendy's location and conformation of arrival to Minnesota.

ARGUMENT

Petitioner's asylum claim is inconsistent with the law. *See Pet.* ¶ 4. Under the clear and plain meaning of 8 U.S.C. § 1003.39, "the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first." That has not happened here. In fact, Petitioner's application is pending appeal. *See Der Vaart's Declaration* ¶ 21.

Furthermore, Petitioner's detention is mandatory under § 1225(b)(2) because Petitioner is clearly "seeking admission" to the United States. The plain text under this section states, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is nor clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." Just last week, a court in this District ruled, "making distinctions based on length of an alien's presence in the United States, an alien's efforts to secure lawful status here, or where an alien was apprehended [are not] limitations [] found in the statute." *See Jose C. v. Bondi*, No. 26-135 (PAM/DTS), ECF No. 14 (D. Minn. Jan. 20, 2026). "So, of the Supreme Court's reference to 'all applicants . . . not covered by § 1225(b)(1)' in fact means what it says, then [Petitioner] necessarily falls under the 'catchall provision." *See id.* (internal quotations omitted).

I. Mandatory Detention

A. Mandatory Detention under § 1225

The Court should uphold Petitioner's mandatory detention under § 1225(b)(2). Petitioner is a noncitizen present in the United States, Petitioner is "deemed" to be an "applicant for admission" under § 1225(a)(1). Pursuant to the statute's "catchall provision"—paragraph (b)(2)—a noncitizen like 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).

First, § 1225's plain text "deem[s]" people who are already "present in the United States" without admission to be applicants for admission. *See* 8 U.S.C. § 1225(a)(1).

Although 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 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.

Based on § 1225's plain text, context, and structure, the Court should hold Petitioner is properly subject to mandatory detention under § 1225(b)(2).

II. Remedy

Under Petitioner's theory, Petitioner is not subject to expedited removal proceedings and not subject to detention under any provision of § 1225. If Petitioner is correct, then Petitioner 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 (original emphasis) (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 an order of immediate release from this Court, unmediated by the immigration court procedures ordinarily applicable to custody redetermination proceedings under § 1226(a).

III. Evidentiary Hearing

Finally, the Federal Respondents believe the Court can rule on this petition without holding an evidentiary hearing. The facts are not likely to be disputed, and the only issues before the Court are ones of legal interpretation that are capable of resolution on the parties' submissions.

CONCLUSION

For the reasons discussed above, the Federal Respondents respectfully request that the Court deny this habeas petition.

Dated: January 21, 2026

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