

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GOPAL THAPA,

Petitioner,

v.

No.2:26-cv-202-MIS-JMR

PAMELA BONDI, et. al.,

Respondents.

RESPONSE TO PETITION

This Office represents Federal Respondents (“Respondents”) in this habeas corpus action, in which Petitioner challenges his detention by U.S. Immigration and Customs Enforcement (“ICE”). On January 29, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. Doc. 1. On January 30, 2026, the Court ordered the government to show cause why the petition should not be granted, with a response due within ten business days. Doc. 3.

Respondents have carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for ICE’s detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), whether Petitioner is entitled to a bond hearing, and whether Petitioner must first exhaust his administrative remedies before applying to this Court. While reserving all rights, including the right to appeal, Respondents respectfully submit this abbreviated response in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court’s consideration of this matter. If the Court prefers to receive a formal memorandum of law, Respondents will be happy to submit one upon request.

It is Respondents’ position that Petitioner is subject to mandatory detention under § 1225(b), because they were present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025). However, Respondents

acknowledge that this Court recently reached the opposite conclusion in *Duhan v. Noem*, Case No. 2:26-cv-00019-MIS-JFR, 2026 U.S. Dist. LEXIS 20895 (D.N.M. Feb. 2, 2026) on facts substantially similar to those currently before the Court. In a decision issued on February 2, 2026, this Court, following the rationale of other courts that have addressed the issue, including others in this District, concluded that the petitioner’s detention was not governed by § 1225, and that his detention was instead pursuant to § 1226. *See Duhan v. Noem*. Specifically, the Court stated that “8 U.S.C. §1226(a) governs Petitioner’s detention” and that habeas relief was proper because Petitioner’s “continued detention without a bond hearing violates his Fifth Amendment right to due process.” *Id.* 3.¹

On the legal issue of which statute governs Petitioner’s detention here—whether it is 8 U.S.C. § 1226(a), or 8 U.S.C. § 1225(b)—Respondents acknowledge that this Court’s decision in *Duhan v. Noem*, would control the result here if the Court adheres to that decision, as the facts are not materially distinguishable for purposes of the Court’s decision on the legal issue of which statutory provision authorizes Petitioner’s detention.

Thus, while Respondents do not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court’s consideration of this case, Respondents hereby rely upon, and incorporate by reference, the legal arguments presented in *Duhan v. Noem*,² and the Court can decide this issue without

¹ Respondents further acknowledge that this Court entered a ruling in another case involving similar legal issues on January 13, 2026. *See Lopez-Romero v. Lyons*, Case No. 2:25-cv-0113-MIS-JHR, 2026 WL 92873 (D.N.M. Jan. 13, 2026).

² Specifically, the government incorporates by reference all arguments raised in its opposition brief in *Duhan v. Noem*, Case No. 2:26-cv-00019-MIS-JFR, 2026 U.S. Dist. LEXIS 20895 (D.N.M. Feb. 2, 2026).

further briefing.

Finally, the government believes that this matter can be decided without a hearing. If, however, the Court determines that a hearing would be helpful, the government will attend and present Respondent's position.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Allison Shokes
ALLISON SHOKES
Assistant United States Attorney