UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-00843-KMM-EMB

Ismanol Jose C.U.,

Petitioner,

v.

Pamela Bondi, et al.,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents submit this response to Petitioner's petition for writ of habeas corpus pursuant to the Court's briefing order.

This is ***not*** one of the now familiar cases about the government's interpretation of 8 U.S.C. § 1225(b)(2). This case is different. Petitioner is a noncitizen who presented himself at a port of entry in December 2023 and has been eligible for expedited removal proceedings under § 1225(b)(1). Petitioner was initially paroled, which has since expired, and applied for asylum, resulting in his mandatory detention "for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (summarizing § 1225(b)'s mandatory-detention authorities).

Petitioner is not, as he suggests, misclassified as a noncitizen seeking admission under 8 U.S.C. § 1225(b)(2). Pet. ¶ 29. This case is therefore materially different from others in this district and elsewhere, addressing the government's contested interpretation of § 1225(b)(2). The government's position in this case does not depend on the contested interpretation of § 1225(b)(2) but instead follows from a plain text analysis of § 1225(b)(1).

Petitioner is therefore properly subject to mandatory detention under § 1225(b), ineligible for bond; the Court should therefore dismiss his habeas petition with prejudice.

BACKGROUND[1]

Petitioner is a citizen and national of Venezuela. Ex. A,[2] at 1. On December 24, 2023, Petitioner applied for admission into the United States at the Hidalgo Port of Entry, in Hidalgo, Texas, and was not then in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the INA. *Id*. A review of Department records show that Petitioner was then paroled int the United States for a period of one year.

On December 24, 2023, the Department of Homeland Security initiated removal proceedings against Petitioner by filing a Form I-862, Notice to Appear, containing the above factual allegations, identifying Petitioner as an "Arriving Alien," and charging Petitioner as removable under INA § 232(a)(7)(A)(i)(I). *Id*., at 4. On October 16, 2024, Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal. On January 27, 2025, Petitioner, represented by counsel, filed written pleadings with the Immigration Court, admitting and conceding all factual allegations in the Notice to Appear and conceding the charge of removability. *Id*., at 6.

Petitioner was arrested by U.S. Immigration and Customs Enforcement (ICE) in

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[1] Federal Respondents note that despite filing a "verified complaint" Petitioner's counsel has unambiguously misstated the facts concerning her client's application for admission into the United States and based the Petitioner on legal arguments wholly inapplicable to Petitioner. It is most concerning here, where Petitioner also has active counsel in his removal proceedings who could have presumably explained or verified the facts.

[2] In support of these Background facts, Federal Respondents submit with its Response Exhibit A, containing Petitioner's Notice to Appear, Written Pleadings, Motion to Withdraw Application for Asylum and Related Relief, and Order Denying Motion to Withdraw from his Immigration Court Proceedings, A No. 244-322-721. Federal Respondents respectfully request the Court admit such under FRE 801(d)(2) and 803(8).

December 2025 in Minnesota during Operation Metro Surge. On January 7, 2026, Petitioner, through counsel, filed a Motion to Withdraw Application and Related Relief, stating that he intended to then seek voluntary departure under safeguards. *Id*., at 9-12. On January 20, the Immigration Judge denied Petitioner's motion, as arriving aliens are statutorily ineligible for voluntary departure. *Id*., at 15.

Petitioner remains detained in Minnesota with a pending asylum application. ICE maintains that Petitioner is properly subject to mandatory detention "for further consideration of the application for asylum," as required in 8 U.S.C. § 1225(b)(1)(B)(ii).

ARGUMENT

The Court is familiar by now with the detention provisions in §§ 1225 and 1226. But most of the recent litigation has focused specifically on § 1225(b)(2), which imposes mandatory detention on "applicants for admission . . . seeking admission" into the United States. 8 U.S.C. § 1225(b)(2)(A). But this case is different: Petitioner is an arriving alien who applied for admission, subject to § 1225(b)(1), not (b)(2).

I. Petitioner is properly subject to mandatory detention under § 1225(b)(1)(B)(ii).

This case involves § 1225(b)(1) and is different from the extensive litigation over § 1225(b)(2)'s mandatory-detention framework. *E.g.*, *Belsai D.S.*, 2025 WL 2802947, at *6 (addressing "Respondents' interpretation of § 1225(b)(2)"). The Court should begin and end its analysis with the text of that provision paragraph (b)(1).

A. Petitioner is subject to mandatory detention under § 1225(b)(1).

Section 1225(b)(1)(A) creates an expedited removal process for noncitizens "arriving" in the United States who are found inadmissible after initial inspection. 8 U.S.C.

§ 1225(b)(1)(A)(i). The only way around expedited removal under clause (i) is for asylum seekers under clause (ii). A noncitizen can invoke the asylum proceedings in clause (ii) by "indicat[ing] either an intention to apply for asylum under section 1158 of this title or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(ii). In that case, an immigration "officer shall refer the [noncitizen] for an interview by an asylum officer under subparagraph (B)." *Id.*

Subparagraph (B), in turn, directs the conduct of the asylum proceeding. *Id.* § 1225(b)(1)(B). The asylum officer first conducts a credible-fear interview. *Id.* § 1225(b)(1)(B)(i). "If the officer determines at the time of the interview that [a noncitizen] has a credible fear of persecution (within the meaning of clause (v)), the [noncitizen] *shall be detained* for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii) (emphasis added). If the officer concludes the noncitizen "does not have a credible fear of persecution, the officer shall order the [noncitizen] removed from the United States without further hearing or review." *Id.* § 1225(b)(1)(B)(iii)(I). "Any [noncitizen] subject to the procedures under this clause *shall be detained* pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV) (emphasis added). The plain import of this language is that any noncitizen subject to expedited removal who claims a fear of persecution upon arrival is subject to mandatory detention pending the outcome of their asylum application, whether their expressed fear of persecution is found credible or not. *See Jennings*, 583 U.S. at 287 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for

admission until certain proceedings have concluded. . . . And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.").

The mandatory-detention provision in § 1225(b)(1)(B)(ii) applies to Petitioner. Petitioner applied for admission at a port of entry and was granted parole by U.S. Customs and Border Protection. It is undisputed that Petitioner has a pending asylum application. The statute therefore requires that he "shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).

B. Petitioner's attempt to invoke § 1225(b)(2) and case law interpreting it misunderstands those authorities and the nature of his status.

Petitioner seeks to ride the wave of recent case law narrowly interpreting § 1225(b)(2), rejecting the government's broader interpretation, and entitling many immigration detainees to bond hearings under § 1226(a). Petitioner misunderstands those holdings and the nature of his status, and misstates the facts surrounding his entry into the United States. That case law doesn't apply because he is not subject to § 1225(b)(2) or the government's contested interpretation of it.

The cases Petitioner cites in his Petition involve the interplay between the mandatory-detention authority in § 1225(b)(2) and the discretionary-detention authority in § 1226(a). In those cases, the noncitizen petitioners were detained under the government's interpretation of 8 U.S.C. § 1225(b)(2), as adopted by the Board of Immigration Appeals in in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). The *Hurtado* interpretation holds that a person who is present in the country without admission is an "applicant for admission" under § 1225(a)(1) and is therefore subject to mandatory detention under § 1225(b)(2)(A) and not eligible for release on bond pending the outcome

of § 1229a immigration proceedings—regardless of how long the person has been present in the country. *See Hurtado*, 29 I&N Dec. at 220.

Most, though not all, of the judges in this district have rejected this interpretation, concluding that mandatory under § 1225(b) applies only to those "applicants for admission" who are also "seeking admission." Crucially, these courts often construe "seeking admission" to mean "presently attempting to gain admission into the United States." But Petitioner here is indisputably "seeking admission"—even under the majority view's narrow interpretation—through her pending asylum claim. Pet. ¶ 4. From the moment he was encountered at the border, Petitioner was subject to expedited removal and mandatory detention. 8 U.S.C. § 1225(b)(1)(A)(i). Petitioner then invoked the asylum process in § 1225(b)(1)(B).

As a arriving alien who is seeking asylum—and by continuing to pursue that status to this day—Petitioner is unambiguously "seeking admission." An asylum application, if granted, entitles the asylee to "asylum status" under 8 U.S.C. § 1158(c), including a stay of removal, work authorization, and a travel document. *Id.* § 1158(c)(1). "Asylum status" is a form of lawful status that meets the INA's definition of "admission," which means "the lawful entry . . . into the United States after inspection and authorization by an immigration officer," but which does not include parole. *Id.* § 1101(a)(13)(A), (B), 1158(d)(5).

Through that asylum process, Petitioner continues to pursue lawful status to this day. Petitioner is "presently attempting to gain admission into the United States," and is therefore "seeking admission" as most courts interpret that phrase. Although he was paroled into the country, that act did not confer admission, and has since expired. 8 U.S.C.

§§ 1101(a)(13)(B), 1158(d)(5). Petitioner has not withdrawn from the asylum process, nor his application for admission, and continues to seek legal status through the process he began over two years ago. Petitioner is therefore unlike those others who have successfully disclaimed any attempt at "seeking admission."

One district court last month considered this issue and agreed that an asylum seeker was "seeking admission" under the narrower interpretation adopted by most courts. *Chen v. Almodovar*, 1:25-cv-8350, 2025 WL 348455, at *6 (S.D.N.Y. Dec. 4, 2025). The *Chen* court agreed with the government's interpretation of § 1225(b)(2) but went on to conclude that even under the majority view's narrower interpretation: "If actively 'seeking admission' is a distinct requirement for mandatory detention pursuant to 1225, seeking asylum *is* 'seeking admission,' [through asylum] within the meaning of the statute, since 'admission' is defined in terms of 'lawful' status, 8 U.S.C. § 1101(a)(13)(A), not physical presence on U.S. soil." *Id.* at *6.

Because Petitioner *is presently* "seeking admission" as the majority approach defines that term—he is an arriving alien applying for asylum and is therefore "presently attempting to gain admission into the United States"—he would be subject to § 1225(b)(2).

II. Petitioner's claims all rely on his mistaken premise, that ICE is seeking to apply § 1225(b)(2) detention, and he has not sought relief on any other basis.

All Petitioner's claims—whether based on the Constitution, statute, or regulation—rely on the premise that ICE detained his under § 1225(b)(2). But that premise is mistaken, and his claims fail. The Court should deny relief on any other basis.

CONCLUSION

Petitioner is subject to mandatory detention under § 1225(b), as an arriving alien with a pending asylum claim under (b)(1) or through the "catchall provision" in (b)(2).

Dated: February 2, 2026

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