UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-00927-SRB-DLM

Deybi Pena Guardado,

Petitioner,

v.

Kristi Noem, *et al.*,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner's understanding of the law is wrong. 8 U.S.C § 1225 applies to her because Petitioner is an alien present in the United States who has not been admitted. Congress has spoken: Petitioner is seeking admission. See 8 U.S.C § 1225(a)(1). Petitioner's argument 8 U.S.C. § 1226 applies to her is incorrect. Petitioner cannot argue their arrest necessitates a warrant under § 1226 when Petitioner's affirmative choice has been, and continues to be up to the moment of detention, to deny the United States any knowledge of her presence within its borders.

Petitioner Deybi Pena Guardado Avelar filed this petition for a writ of habeas corpus because she wants either immediate release from detention or an immigration court to conduct a bond hearing in connection with his detention by the U.S. Immigration and Customs Enforcement ("ICE"). Respondents Pamela Bondi, Kristi Noem, Todd M. Lyons, and David Easterwood (collectively "the Federal Respondents") submit this response to the petition. The Court should deny Petitioner's request for habeas relief because his

detention is mandatory under 8 U.S.C. § 1225—he is not eligible for bond or a bond hearing.

BACKGROUND

The Federal Respondents do not dispute the following salient facts from the Petition. Petitioner is a citizen of El Salvador. *Pet.* ¶ 13. Petitioner was arrested on January 29, 2026. *Pet.* at ¶ 14.

ARGUMENT

By now, courts in this District have encountered numerous Petitions alleging similar facts and arguments as those in this case. The courts' concerns with Respondents' arguments can be generally categorized under three categories: (1) the surrounding statutory language recognizing aliens in removal proceedings are often not in custody; (2) the longstanding conclusion of immigration officials that aliens who lack legal status are entitled to bond hearing under § 1226(a); and (3) the Supreme Court's statement in *Jennings* that the bond provisions in § 1226(a) apply to "aliens already in the country pending the outcome of removal proceedings under §1226(a) and (c)." *See Antonio Vasquez Hernandez v. Pamela Bondi, et al.*, No. 26-889 (SHL/DTS) EFC No. 6 (D. Minn. Feb. 4, 2026). Respondents very respectfully submit to this Court those concerns are not applicable in this specific case.

Expanding some more on the first concern, courts in this District have ruled, "Respondents' argument that Petitioner is an applicant for admission' merely because he 'is in the country without valid legal status . . . renders substantial portions of § 1226 superfluous by making 'detention mandatory for nearly every noncitizen who has entered

the United States illegally." *See id.* at p. 3. ¶ 1. This is not of particular concern in this case. Petitioner has *affirmatively* chosen to hide their presence in the country. That is what makes this case particularized from other cases this Court has looked at. If in fact a warrant is required to arrest Petitioner under § 1226, then it is manifestable clear § 1226 does not apply to this Petitioner because the government will not be able to produce a warrant for a person it does not know is within its borders. In fact, applying § 1226 will reward Petitioner unlawful attempt to conceal their presence within the nation's borders. That is contrary to public policy and national security. Certainly, that could not have been Congress's goal when it drafted § 1226.

This takes us directly to the general second concern. Most courts in this District have ruled Petitioner who lack legal status are generally entitled to bond hearings under § 1226(a), that is also not applicable here. It is undisputed most courts in this District read § 1226 as requiring a warrant for arrest. That requirement makes it clear § 1226 applies to Petitioner of whom the government has awareness of. Again, it would be unconscionable to demand the government to produce a warrant for the arrest of a person it does not have any awareness of their presence in the country up until the moment of detention. Going even further, Petitioner's argument would equate Petitioner's situation with that of other Petitioners who made themselves known to the authorities upon entering the country. Respondents very respectfully submit to this Court that is a material difference.

The third general concern is even less applicable in this case. Court in this District have ruled the Supreme Court's statement in *Jennings* that the bond provisions in § 1226(a) apply to "aliens already in the country pending the outcome of removal proceedings under §1226(a) and (c)." Here, Petitioner did not have any "pending removal proceedings" at the time of arrest because Petitioner chose to conceal their presence within the U.S. borders. Again, extending this Petitioner the benefit of bond under § 1226 constitutes a disservice to all other Petitioners who have chosen to at least make their presence in the country known to the authorities.

As such, this Court should deny this petition on the merits. Noncitizens can be held without bond under § 1225. That is what's happening here. Petitioner is subject to mandatory detention because Congress directs that noncitizens who get into the United States without being inspected "shall be deemed for purposes of this chapter an applicant for admission" and then detained pursuant to § 1225(b)(1) or § 1225(b)(2). To the extent Petitioner thinks her detention should instead be governed by § 1226, he is wrong.[1]

I. Mandatory Detention under § 1225

Petitioner offers two arguments as to why § 1225 does not apply to him. First, Petitioner argues petitioner is not seeking admission. *See Pet.* ¶ 34. Secondly, Petitioner was not detained at the border while seeking entry. *See id.*

---

[1] The Petition makes no reference to *Bautista*, and Petitioner does not assert any entitlement to relief based on possible class membership. The Federal Respondents will therefore not address *Bautista* further except to request an opportunity to file a sur-reply if Petitioner uses his reply to argue (for the first time) that he is entitled to relief on this basis.

The argument Petitioner is not "seeking admission" does not favor Petitioner's position at all. On the contrary, it makes the plain text of § 1225(a)(1) applicable to her. The statue says, "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." *Id.* Petitioner would have this Court believe there is an ambiguous status under which he can exist by virtue of not affirmatively seeking admission. Petitioner is wrong.

Congress has unequivocally spoken on this matter to say Petitioner is seeking admission because he is present in the United States. *See id.* Again, the logical result of Petitioner's argument is he is not subject to detention under § 1225 because he is not seeking admission. On the other hand, according to Petitioner, for the United States to arrest him under § 1226, the United States must issue a warrant for his arrest. The fault in Petitioner's logic being manifestable clear: how is the United States supposed to issue a warrant for the arrest of a person who has affirmatively chosen not to make his represent known in the country. To make matters even worse, Petitioner's approach would have the government reward Petitioner for successfully remaining undetected within the country while punishing those that have chosen to make their presence known in the country. This is uncategorical against public policy, and the national security interest.

A. Mandatory Detention under § 1225

The parties' disagreement in this case comes down to whether Petitioner is detained under § 1225 or § 1226 of Title 8 of the U.S. Code. ICE says it's § 1225, which governs the detention of noncitizens who are "applicants for admission." 8 U.S.C. § 1225(a)(3). Congress says so as well, expressly directing that noncitizens like Petitioner who get into the United States without being inspected "shall be deemed for purposes of this chapter an applicant for admission" and then detained pursuant to § 1225(b)(1) or § 1225(b)(2). *Id.* § 1225(a)(1). Courts in this district have also agreed with this perspective. ***See Abdirahmaan G. v. Noem*, No. 26-34 (PAM/SGE), ECF No. 7 (D. Minn. Jan. 14, 2026).** Based on a straightforward reading of these statutes, Petitioner is subject to mandatory detention under § 1225(b)(2).

As such, the Court should uphold Petitioner's mandatory detention under § 1225(b)(2). Petitioner is a noncitizen present in the United States who entered without inspection. Thus, he 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). The Court should reject Petitioner's request to recast his detention as arising under § 1226, for reasons that are evident from the text, context, and structure of the statutes at issue.

First, Petitioner's argument is contrary to § 1225's plain text, which "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, Petitioner's approach contradicts the structure of the statute, both within § 1225 itself and between § 1225 and § 1226. Section 1225(b) divides applicants for admission between two subparagraphs: (b)(1) for those applicants for admission who are arriving, and (b)(2) for "other" applicants for admission. Section 1225(b) treats all "applicants for admission"—whether arriving or already present—as mandatory detainees under either (b)(1) or (b)(2), unlike admitted noncitizens who are subject to discretionary detention and allowed bond under § 1226.

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

B. Additional Authority

Courts across the country have agreed with the government's interpretation of § 1225 in factually similar cases. *See, e.g.*, *Calderon Lopez v. Lyons*, 2025 WL 3683918

(N.D. Tex. Dec. 19, 2025); *Urbina Zapata v. Chestnut*, 2025 WL 3687643 (E.D. Cal. Dec. 19, 2025); *E.R.J.B. v. Wofford*, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025); *Romero Rebolledo v. Chestnut*, 2025 WL 3683122 (E.D. Cal. Dec. 18, 2025); *Liang v. Almodovar*, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *Pablo Coronado v. Secretary, DHS*, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *P.B. v. Bergami*, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Yanyun Mo v. Chestnut*, 2025 WL 3539063 (E.D. Cal. Dec. 10, 2025); *Ugarte-Arenas v. Olson*, (E.D. Wis. Dec. 8, 2025); *Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, 2025 WL 7484932, (W.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Hernandez Cruz v. Noem*, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Maceda Jimenez v. Thompson*, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Alves De Andrade v. Patterson*, 2025 WL 3252707 (W.D. La. Nov. 21, 2025); *Valencia v. Chestnut*, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Ramos v. Lyons*, 2025 LX 568700 (C.D. Cal. Nov. 12, 2025); *Oliveira v. Patterson*, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025); *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pipa-Aquise v. Bondi*, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025).

Admittedly, these decisions reflect the minority position. But that minority has been growing since the BIA reached its conclusion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). *See Sandoval*, 2025 WL 3048926, at *6 (noting "many of the[]

cases" taking the majority position did so "before—or soon after—the BIA issued its opinion in" *Hurtado*). And it is worth emphasizing that courts within the Eighth Circuit agree with the government's arguments. *See, e.g., Melgar v. Bondi, et al.*, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Suarez v. Noem*, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In particular, the District of Nebraska's decision in *Melgar* comprehensively and persuasively analyzed the text of § 1225 and § 1226 before concluding that a habeas petition like the one filed in this case failed on the merits because the petitioner was properly detained under § 1225.

II. Remedy

The appropriate remedy for this case is to deny Petitioner's request. Petitioner argues he is not subject to arrest under § 1225 because he is not an applicant for admission, and he states was not apprehended near the border. Both arguments lack any support from the clear, plain meaning of the statue. Petitioner's argument he should be detained, if at all, under § 1226 it is just an attempt to argue that because he was arrested without a warrant, the government did not comply with the requirements of the statute and therefore Petitioner must be released. Respondents very respectfully submit to this Court, it does not need to engage with the § 1226's argument because Petitioner failed to explain in any factual, and statutorily founded manner why § 1225 does not apply to him.

III. Evidentiary Hearing

Finally, the Federal Respondents believe that 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: February 4, 2026.

DANIEL N. ROSEN
United States Attorney

s/ J. Cruz Rodriguez

BY: J. Cruz Rodriguez
Assistant United States Attorney
Attorney ID Number 1031018
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
jesus.cruz.rodriguez@usdoj.gov