UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-1064 (PJS/DJF)

WESBY DELIEN[1],

Petitioner,

v.

PAMELA BONDI, *et al.,*

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed this petition for a writ of habeas corpus to secure a bond hearing in connection with Petitioner's detention by the U.S. Immigration and Customs Enforcement ("ICE"). Federal Respondents[2] submit this response to explain why Petitioner is not entitled to habeas relief because he is subject to mandatory detention under 8 U.S.C. § 1225(b). The Federal Respondents respectfully emphasize that this case is ***different*** from the "typical" § 1225/§ 1226 habeas petitions being filed in this Court.

BACKGROUND

The Federal Respondents draw the following background from the petition and the exhibits attached to the Declaration of David Fuller ("Fuller Decl.").

Petitioner is a citizen of Haiti. Pet. ¶ 13; Fuller Decl. Ex. B. He arrived in the United States on January 24, 2024, and he was paroled into the country on a humanitarian basis with permission to remain until June 12, 2025. Fuller Decl. Ex. B. This parole allowed

[1] Official government records indicate this as the correct order of Petitioner's names.

[2] This response is not submitted on behalf of any state entity.

Petitioner to remain in the United States until September 27, 2025. Pet. ¶ 2; Exs. A and C. And although Petitioner alleges he has a pending parole application and has taken other steps to gain permission to remain in the United States, Pet. ¶ 14, Fuller Decl. Ex. B, he had not been granted any such status as of December 23, 2025, when ICE arrested him, Pet. ¶ 15, Fuller Decl. Ex. B. Equally important, Petitioner's parole was not an "admission" into the United States. *See* 8 U.S.C. § 1182 (d)(5)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Thus, Petitioner's status at the time of his arrest was that of an "arriving alien." Fuller Decl. Ex. A. He was issued a Notice to Appear, placed into removal proceedings, and detained under § 1225(b) pending completion of those removal proceedings. *Id.*

ARGUMENT

Petitioner is not entitled to habeas relief. Again, this is ***not*** one of the now-familiar cases about the government's interpretation of 8 U.S.C. §§ 1225 and 1226. *See, e.g.*, *Belsai D.S. v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025). Those cases involve noncitizens who enter the United States without admission or inspection and are later encountered by immigration officials inside the country. Here, in contrast, Petitioner is properly classified as an "arriving alien" for purposes of § 1225(b) because he presented at a port of entry in January 2024 and was paroled into the United States. Fuller Decl. Ex. B. As an "arriving alien" who has been placed into removal proceedings, Petitioner is subject to mandatory detention. Because Petitioner's detention is mandatory, the Court should deny his habeas petition.

I. Legal Background

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens[3] as removable from the country, arrest those subject to removal, and detain them during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232-37 (1960). "The rule has been clear for decades: '[d]etention during deportation proceedings [i]s . . . constitutionally valid.'" *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)), *rehearing by panel and en banc denied* 2025 WL 837914 (8th Cir. Mar. 18, 2025); *see also Demore*, 538 U.S. at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Indeed, removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

All of this explains why Congress enacted a multi-layered statutory framework for detaining noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. Petitioner's petition in this case challenges which of two statutes governs his detention: § 1225 or § 1226.

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[3] The statutory term "alien" means any person not a citizen or national of the United States. 8 USC § 1101(a)(3). The Federal Respondents use the term "noncitizen" instead. *See Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

A. Section 1225

Section 1225 governs the initial steps in deciding who can enter the country and who can stay after entering. The statute provides that all noncitizens "who are applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). And Congress specifically chose to deem any noncitizen "present in the United States who has not been admitted or who arrives in the United States" as an "applicant for admission" for purposes of 8 U.S.C. ch. 12. *Id.* § 1225(a)(1). Petitioner satisfies both alternative parts of the definition—he has not been admitted (because he was paroled) and he is arriving. Petitioner is therefore treated as an "applicant for admission" for purposes of § 1225(b).

Section 1225 sets out the inspection procedures applicable to applicants for admission. Individuals "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Subsection (b)(1) applies to those "arriving in the United States" and "certain other"[4] noncitizens "initially determined to be inadmissible because of fraud, misrepresentation, or lack of valid documentation." Noncitizens falling under this provision are generally subject to expedited removal proceedings "without further hearing or review." *See* 8 U.S.C. § 1225(b)(1)(A)(i). But where the applicant "indicates an

[4] The "certain other" noncitizens referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to a noncitizen who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that [he or she] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

intention to apply for asylum . . . or a fear of persecution," then immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If he or she does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," then he or she is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Subsection (b)(2) is broader, serving as a catchall provision for applicants who are not covered by § 1225(b)(1). Subject to some exceptions, "if the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained for a removal proceeding." *Id.* § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or [noncitizens] arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" (citing *Jennings*, 583 U.S. at 299)).

Despite the mandatory detention provisions, arriving aliens can be paroled into the United States. That is what happened to Petitioner in this case. Pet. ¶ 13, Fuller Decl. Ex. B. The Department of Homeland Security ("DHS") retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). But parole does not constitute admission for

purposes of immigration law and does not conclude or terminate an arriving alien's pursuit of admission. *See* 8 U.S.C. §§ 1101(a)(13)(B), 1158(d)(5).

B. Detention under § 1226

Section 1226 covers a different immigration process: arrest and detention of noncitizens pending removal. The statute provides that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). For noncitizens arrested under § 1226(a), the Attorney General and DHS have broad discretionary authority to detain a noncitizen during removal proceedings.[5] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" noncitizen during the pendency of removal proceedings).

When a noncitizen is apprehended, a DHS officer makes an initial discretionary determination concerning release, *see* 8 C.F.R. § 236.1(c)(8), after which DHS can continue detention, *see* 8 U.S.C. § 1226(a)(1). "To secure release, the [noncitizen] must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113

[5] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

(BIA 1999)). If DHS releases the noncitizen, then the agency may set a bond or condition for release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during removal proceedings, then the noncitizen can request a bond hearing. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). An immigration judge conducts a bond hearing and decides whether release is warranted, based on factors that account for ties to the United States and the possible risks of flight or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

II. Petitioner's Detention

Petitioner is trying to ride the wave of recent case law interpreting § 1225(b)(2), rejecting the government's interpretation of the statute, and concluding that many immigration detainees to bond hearings under § 1226(a). *See* Pet. ¶ 27 (string-citing cases). But Petitioner misunderstands the nature of his specific status, and the case law cited in the petition does not apply here because Petitioner is not subject to the government's contested interpretation of § 1225(b)(2).

This Court's decision in *Belsai D.S.* sets out the interplay between the mandatory-detention authority in § 1225(b) and the discretionary-detention authority in § 1226(a), as well as the government's contested interpretation of the two statutes. 2025 WL 2802947, at *1, *5-7. And *Belsai* typifies how that dispute regularly plays out: a noncitizen petitioner encountered in the United States and who entered without inspection or admission is

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). *Id.* at *2. The *Hurtado* decision announces the BIA's conclusion that a person who is present in the country without admission is an "applicant for admission" under § 1225(a)(1) and subject to mandatory detention under § 1225(b)(2)(A), regardless of how long the person has been present in the country. 29 I&N Dec. at 220. *Belsai* and decisions like it reject this interpretation, concluding that mandatory detention under § 1225(b) applies only to those "applicants for admission" who are also "seeking admission." 2025 WL 2802947 at *6–7. Crucially, those decisions construe the phrase "seeking admission" to mean "presently attempting to gain admission into the United States." *Id.* at *6. This Court holds that petitioners in these kinds of cases are not "seeking admission" because they successfully evaded apprehension and placement in expedited removal proceedings. *Id.* at *6-7. Thus, those petitioners are entitled to bond hearings under § 1226(a)'s general discretionary-detention framework. *Id.* at *6–7.

Petitioner's case is different. He was indisputably "seeking admission" when he arrived at a port of entry into the United States in January 2024. And he is continuing to seek admission to this day through a pending application for asylum. 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). Thus, Petitioner was and still is "attempting to gain admission into the United States," and therefore was and is "seeking admission" as this Court has interpreted the phrase in decisions like *Belsai D.S.*

A federal district court recently considered this issue and agreed that an asylum seeker was "seeking admission" even under the narrower interpretation of § 1225(b) adopted by most courts. *See Chen v. Almodovar*, 12025 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 petitioner's proposed interpretation, "[i]f 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.*

Because Petitioner is an "arriving alien" and "seeking admission," he is subject to mandatory detention. That means Petitioner does not get a bond hearing under §1226 and is not entitled to habeas relief.

CONCLUSION

Petitioner is subject to mandatory detention under § 1225(b), whether as an arriving alien with a pending asylum claim under (b)(1) or through the "catchall provision" in (b)(2) for noncitizens seeking admission. The Court should therefore deny this habeas petition.

Dated: February 8, 2026

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