UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Wesby D.,, Petitioner, v. Pamela Bondi, Attorney General, Kristi Noem, Secretary, U.S. Department of Homeland Security, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement, David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement, and Joel Brott, Sherburne County Sheriff. Respondents.	Civ. No. 26-cv-1064 (PJS/EMB) **REPLY TO FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, Wesby Delien, ("Mr. Delien"), by and through the undersigned attorney, respectfully submits this Reply in support of the Petition for a Writ of Habeas Corpus. Respondents filed a response alleging that Mr. Delien is subject to mandatory detention under 8 U.S.C. § 1225(b) as an 'arriving alien,' which legal argument has been resoundingly rejected by this Court.

INAPPLICABILITY OF 8 U.S.C. § 1225(b)

Federal Respondents contend that 8 U.S.C. § 1225(b)(2) applies to Mr. Delien as an "arriving alien" subject to mandatory detention, because Mr. Delien was encountered

at the border upon his arrival into the United States and was paroled into the United States. ECF 4, 2. This argument is based on Respondent U.S. Department of Homeland Security ("DHS") reinterpreting 8 U.S.C. § 1225(b) in a manner that this Court has unequivocally ruled is "contrary to law" for "evad[ing] the judicial review that both Congress and the Constitution require." *Elisio v. Olson*, No. 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (d. Minn. Oct. 8, 2025).

The distinction between whether someone presented at a port of entry or not when they initially entered the United States is irrelevant to the application of § 1225(b), which does not apply to noncitizens detained internally: "Respondents' broad reading of § 1225(b)(2) has been often rejected in this District, regardless of whether the petitioner entered without inspection, or was initially detained at the border and released." *Ivan R. v. Bondi*, Case No. 26-CV-485 (JWB/EMB) Doc. No. 8, 1-2 (D. Minn. Jan. 24, 2026) (gathering cases)

This Court regularly rejects this interpretation of § 1225(b)(2): "Section 1225(b)(2) applies to persons who presently are applicants for admission and who presently are seeking admission at the time of their detention. To be seeking admission means to be seeking entry, which 'by its own force implies a coming from outside.'" *Richard A. v. Bondi*, No. 26-CV-902 (SRB/JFD), p. 2 (D. Minn. Feb. 4, 2026) (quoting *Kelvin N. v. Bondi*, No. 26-CV-32 (JMB/JFD), p. 5 (D. Minn. Jan. 8, 2026) (citation omitted)).

In a similar Operation Metro Surge proceeding with a petitioner who was detained internally under an argument that he was an "arriving alien," this Court noted its repeated

rulings that petitioner was misclassified under § 1225(b)(2) rather than § 1226, and that "the former statute applies to applicants 'seeking admission,' and the latter to 'aliens already in the country.'" *Misael T. v. Bondi*, No. 26-CV-263 (ECT/EMB), 2026 WL 146510, at *1 (D. Minn. Jan. 20, 2026) (gathering cases).

This holding applies regardless of whether petitioners with pending forms of relief like asylum enter without inspection and only at a much later date applied for status, or are initially detained at or near the border then released into the U.S. with a Notice to Appear or into the custody of a guardian. *See*, e.g., *Belsai v. Bondi*, No. 25-cv-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025) (granting a habeas petition for a DACA recipient who initially entered without inspection and subsequently applied for relief); *Mayamu K. v. Bondi*, No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *1 (D. Minn. Oct. 20, 2025) (granting a habeas petition for an asylum applicant who was detained by U.S. Customs and Border Protection while entering the U.S. outside a port of entry near Nogales, Arizona, and released the next day on an 8 U.S.C. § 1226 Order of Recognizance and with a Notice to Appear) and *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026) (similar).

The latter situation, where someone is initially detained at or near the border upon entering the U.S., only serves to compound the due process violations for unlawfully detaining someone who has in that situation already been subject to a custodial determination by Respondents and is now taken back into custody without any showing of a change in circumstances as would necessitate redetention. *See*, e.g., *Jorge B.C. v. Bondi*, 26-CV-260 (KMM/DLM) p. 3 (D. Minn. Jan. 18, 2026) (referencing other

similarly situated petitioners to find that release is an appropriate remedy where a petitioner was rearrested without a warrant or allegations that prior release conditions were violated).

Here, Petitioner was initially detained and released into the United States with a Notice to Appear in removal proceedings, which have not resulted in a final order of removal–Petitioner is in the process of properly following the rules and procedures for noncitizens to obtain status in this country. No facts indicate that, in the intervening time between his initial release and this redetention, he has somehow become a flight risk or a danger to society.

Considering the weight of authority, there is no reason for the Court to reconsider its prior, well-reasoned decisions. The Court should reject Respondents' argument in the instant case.

CONCLUSION

Accordingly, Mr. Delien reiterates that the appropriate form of relief in this case is Petitioner's immediate release, and further requests that Respondents be enjoined from re-detaining Mr. Delien upon or after his release under the same or statutory theory.

Respectfully submitted,

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