

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-01405-MJD-ECW

ELIZABETH MUNGUIA RIVERA, et al.,

Petitioner,

v.

**FEDERAL RESPONDENTS'
RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

DAVID EASTERWOOD, *et al.*,

Respondents.

Petitioners filed this petition for a writ of habeas corpus to secure immediate release in connection with Petitioners' detention by the U.S. Immigration and Customs Enforcement ("ICE"). Respondents submit this response to the petition to explain why Petitioners are not entitled to habeas relief because they are 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.").

Petitioners are citizens and nationals of Mexico. Pet. ¶¶ 9-11; Fuller Decl. Ex. A. They arrived in the United States on April 21, 2024, were encountered by law enforcement, detained, issued Notices to Appear on May 17, 2024, and ultimately released into the country on their own recognizance with an immigration hearing date in Minnesota of March 30, 2026. Pet. ¶ 1; Fuller Decl. Ex. A, B. Petitioners had never been granted any

legal status in the United States as of January 30, 2026, when ICE arrested them, Pet. ¶ 3. Equally important, Petitioners' May 2024 release on recognizance was not an "admission" into the United States. *See* 8 U.S.C. §§ 1101(a)(13), (20); 1225(a)(1). Having previously been encountered at the border and placed into removal proceedings pursuant to their 2024 Notices to Appear, Petitioners were re-detained under § 1225(b) pending completion of those removal proceedings. Pet. ¶¶ 6-9; Ex. D.

ARGUMENT

Petitioners are 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(b)(2) and 1226(a). *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, Petitioners were initially processed for expedited proceedings under § 1225(b)(1) before being released into the United States and later detained for the resumption of those proceedings previously begun. Accordingly, they are subject to mandatory detention.

Petitioners admit as much—the petition squarely alleges that § 1225(b) “provides for mandatory detention of . . . noncitizens encountered ‘at the Nation’s borders and ports of entry,’” as happened to them. Pet. ¶ 42 (quoting *Jennings*, 583 U.S. at 288); Fuller Ex. A. More specifically, the petition correctly explains that noncitizens, like Petitioners, who were “apprehended upon arrival near the border” are “subject to expedited removal.” *Id.* Because Petitioners’ detention is mandatory for the resumption of expedited removal proceedings, the Court should deny their habeas petition.

I. Legal Background

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens 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. Petitioners' petition in this case challenges which of two statutes governs their detention: § 1225 or § 1226.

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). Petitioners satisfy this definition—they have not been admitted because they were simply encountered and then released into the United States subject to ongoing removal proceedings. Petitioners are therefore treated as “applicants 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”¹ 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). This latter provision applies here.

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

¹ 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.

officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *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 aliens 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)). Release into the United States on recognizance, as happened here, does not constitute admission for purposes of immigration law and does not conclude or terminate an alien’s pursuit of admission.

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.² *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested” noncitizen during the pendency of removal proceedings).

² 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

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 alien 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 (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. Petitioners’ Detention

Petitioners are 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. ¶ 46 (string-citing cases).

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).

But Petitioners misunderstand the nature of their specific status, and the case law cited in the petition does not apply here because Petitioners are 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 *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.

But these Petitioners are differently situated, and their detention arises out of Section 1225(b)(1) rather than the broader catchall 1225(b)(2). Specifically, they were apprehended at the border upon their entry into the United States less than two years ago, and determined to be inadmissible under at least Section 212(a)(7) of the Immigration and Nationality Act (INA), which corresponds to 8 U.S.C. Section 1182(a)(7). That statutory provision is expressly referenced at 8 U.S.C. Section 1225(b)(1)(A)(i), which indicates expedited removal proceedings are appropriate. This is all reflected in the Notices to Appear that were issued in May 2024 for each of the three Petitioners. *See* Fuller Decl. Ex. B. Their pre-existing hearing date in immigration court in Minnesota, set for the purpose of pursuing those expedited removal proceedings, still stands at March 30, 2026. *Id.*

Confirming that expedited removal is still applicable to Petitioners, Section 1225(b)(1)(A)(iii) makes such proceedings applicable to noncitizens who have “not affirmatively shown” that they have “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.” Petitioners in this case had not been present in the United States continuously for two years when they were first apprehended in April 2024, and they cannot make that showing to this day.

Because Petitioners are therefore subject to expedited removal proceedings under the INA, they are subject to mandatory detention. That means Petitioners do not get a bond hearing under §1226 and are not entitled to habeas relief.

CONCLUSION

Petitioners are subject to mandatory detention under § 1225(b)(1), because their pre-existing expedited removal proceedings initiated when they were apprehended at the border less than two years ago (and setting a March 30, 2026 hearing date) arose out of a determination made under the sections of the INA expressly referenced in Section 1225(b)(1)(A)(i), namely INA Sections 212(a)(7), which is the same as 8 U.S.C. Section 1182(a)(7). The Court should therefore deny this habeas petition.

Dated: February 15, 2026

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