

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 26-cv-60562-DIMITROULEAS

Geovanny Cerda Silva,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

RESPONDENTS' RESPONSE TO WRIT OF HABEAS CORPUS

Kristi Noem, *et al.*, (“Respondents”)¹, through the undersigned counsel, submits this Response in Opposition to Petitioner Geovanny Cerda Silva’s (“Petitioner”) Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (“Petition”) (DE 1). As demonstrated below, Petitioner is properly detained pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), therefore the Court should deny the Petition.

I. BACKGROUND

Petitioner is a native and citizen of Nicaragua. *See* Petition ¶ 7.

¹ A writ of habeas corpus must “be directed to the person having custody of the person detained.” 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that “the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at Broward Transitional Center. *See* Petition at ¶ 22. The only appropriate respondent is Acting Assistant Field Office Director Carlos Nunez. All other respondents should be dismissed.

On or about August 14, 2024, Petitioner was paroled into the United States under the Nicaraguan Humanitarian Parole program. *See* Exhibit A, Notice to Appear, at 1. Petitioner's parole expired on June 12, 2025. *Id.*

On July 9, 2025, Customs and Border Protection ("CBP") encountered Petitioner during a traffic stop. *See* Exhibit C, I-213, at 3. CBP conducted a records check and determined that Petitioner had no legal status in the United States and Petitioner was taken into custody. *Id.* On the same day, CBP issued a Notice to Appear ("NTA") charging Petitioner as inadmissible under Section 237(a)(1)(C)(i), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted. *See* Exhibit A, NTA, dated July 9, 2025, at 1.

On August 13, 2025, Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), issued a superseding NTA. *See* Exhibit B, Superseding NTA, dated August 13, 2025. The superseding NTA charged petitioner as an arriving alien and as inadmissible under § 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act (INA), and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. *See* Exhibit B, at 4.

On October 6, 2025, an Immigration Judge denied relief and ordered Petitioner's removal. *See* Exhibit D, Immigration Judge Order, at 3. On October 14, 2025, Petitioner filed an appeal of the Immigration Judge's decision with the Board of Immigration Appeals ("BIA"). *See* Exhibit E, BIA Receipt. The appeal remains pending. *See* Petition at ¶ 16.

On August 22, 2025, the Immigration Judge denied Petitioner's request for custody redetermination finding that regulations preclude bond jurisdiction over arriving aliens in removal proceedings. *See* Petition at ¶¶ 18; 20. Petitioner filed an appeal of the Immigration Judge's decision and it is currently pending with the BIA. *See* Petition at ¶ 23.

To date, Petitioner is currently detained at the Broward Transitional Center ("BTC") in Pompano Beach, Florida. *See* Petition at ¶ 11. The detention authority is INA section 235(b)(2)(A), as Petitioner is an arriving alien and an applicant for admission seeking admission in the United States who remains in section 240 proceedings by virtue of his pending appeal of the order of removal entered by the Immigration Judge on October 6, 2025.

II. ARGUMENT

A. Petitioner is an Arriving Alien Subject to Detention Under 8 U.S.C. § 1225(b)(2).

"Congress has established the requirements for admission of aliens that arrive at the border without authorization to enter." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *4 (S.D.N.Y. June 12, 2018) (citing 8 U.S.C. § 1225). Under § 1225(a), "aliens who arrive at the nation's borders" without authorization to enter this country "are deemed 'applicants for admission,' and must be inspected by an immigration official before being granted admission." *Id.* (citing 8 U.S.C. § 1225(a)(1), (3)). Under 8 U.S.C. § 1225(b), "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229(a) of this title [i.e., a removal proceeding]." *Id.* (quoting 8 U.S.C. § 1225(b)(2) (A)) (brackets in original). Thus, detention is mandatory for arriving aliens subject to Section 1225(b).

If an arriving alien is subject to mandatory detention under Section 1225(b), "an immigration judge 'may not' conduct a bond hearing to determine whether [the] arriving alien

should be released into the United States during removal proceedings.” *Id.* (quoting 8 C.F.R. § 1003.19(h)(2)(i)(B)). Arriving aliens who are detained pursuant to § 1225(b)(2)(A), however, may be released from custody pursuant to DHS's discretionary parole authority. *See* 8 U.S.C. § 1182(d)(5)(A).

Under Section 1182(d)(5)(A), DHS “may ... in [its] discretion parole into the United States temporarily under such conditions as [it] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]” *Id.* Importantly, however, DHS’s discretionary parole of an alien “shall not be regarded as an admission of the alien and when the purposes of such parole shall . . . have been served the alien shall forthwith return or be returned to the custody from which he was paroled[.]” *Id.* “[T]hereafter[.]” a formerly paroled alien’s “case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.*

Here, Petitioner is an “arriving alien” subject to the removal and detention provisions in 8 U.S.C. § 1225(b)(2). Petitioner, arrived on or about August 13, 2024, and was paroled into the United States under the Nicaraguan Humanitarian Parole program. *See* Exhibit B, at 1. Petitioner does not contest the fact he is an arriving alien. Because Petitioner is an arriving alien and because DHS’s discretionary parole of an alien “shall not be regarded as an admission of the alien”, his detention is lawful under 8 U.S.C. § 1225(b)(2).²

B. Petitioner is Ineligible for Bond because he is Subject to Detention Under 8 U.S.C. § 1225(b)(2).

² Even if, *arguendo*, Petitioner was detained pursuant to 8 U.S.C. § 1226, the immigration judge is divested of jurisdiction to grant him bond pursuant to regulation. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). If an arriving alien is subject to mandatory detention under Section 1225(b), “an immigration judge ‘may not’ conduct a bond hearing to determine whether [the] arriving alien should be released into the United States during removal proceedings.” *Id.* (quoting 8 C.F.R. § 1003.19(h)(2)(i)(B)).

Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. In *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. *Jennings*, 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Under the plain language of 8 U.S.C. § 1225(b), all “applicants for admission” who are found “not clearly and beyond a doubt entitled to be admitted” are subject to detention under 8 U.S.C. § 1225(b)—regardless of how long they have been present in the United States. *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”). The conclusion that “§ 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

Given that 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a—and “[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 301–03, Immigration Judges do not have authority to redetermine the custody status of an alien present without admission.

“It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA].” *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). “In the context of custody proceedings, an Immigration Judge’s authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d)” *Id.* at 46. The regulation clearly states that “the Immigration Judge is authorized to exercise the authority in [8 U.S.C. § 1226].” 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review “[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236”); *see id.* § 1003.19(h)(2)(i)(B) (“[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5).]”). “An immigration judge is without authority to disregard the regulations, which have the force and effect of law.” *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018). Because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), he is ineligible for bond, and this Court should deny relief.

C. Petitioner’s Due Process Claim fails because he is detained pursuant to a valid statutory authority.

Petitioner’s constitutional claim fails as a matter of law. Mandatory detention under § 1225(b) has repeatedly been upheld as constitutionally permissible. *See Jennings v. Rodriguez*, 583 U.S. at 299–301. The Fifth Amendment does not require bond hearings for aliens detained pursuant to valid statutory authority, nor does Petitioner possess a protected liberty interest in release on bond where Congress has mandated detention. The Due Process Clause does not prohibit Congress from imposing categorical detention rules in the immigration context. *See Demore v. Kim*, 538 U.S. 510, 528 (2003).

III. CONCLUSION

Petitioner is an arriving alien who is properly detained under 8 U.S.C. § 1225(b)(2) and ineligible for bond. Accordingly, the Court should deny Petitioner's habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List via CM/ECF.

By: s/ Brittany Brock
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Special Assistant U.S. Attorney