

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Joan Alberto Monsalve Rojas,

Petitioner,

v.

J.L. Jamison, et al.,

Respondents.

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Civil Action No. 2:26-cv-1313

**RESPONSE IN OPPOSITION TO PETITION
FOR WRIT OF HABEAS CORPUS**

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Dated: March 4, 2026

I. INTRODUCTION

Petitioner seeks a writ of habeas corpus, challenging the authority of the Secretary of the U.S. Department of Homeland Security (DHS) to detain him under the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1).

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1) [not 8 U.S.C. § 1225(b)(2)(A)] because he was initially processed for **expedited removal** when he attempted to enter the United States without authorization. That Petitioner is no longer in expedited removal under § 1225 and is now in standard removal proceedings under § 1229a does not change the statutory basis for detention.¹ Petitioner is returned to his “detention status” when his parole ends.

DHS processed Petitioner for expedited removal pursuant to 8 U.S.C. § 1225(b)(1) after he entered the United States without inspection in 2023. Exhibit A, Notice to Appear, October 10, 2023. However, after Petitioner claimed a fear of return to his home country, DHS placed him into standard removal proceedings under 8 U.S.C. § 1229a and paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5) to facilitate this process. Ex. B, I-213, Record of Deportable Alien, May 4, 2023. This parole has since terminated. Petitioner has now returned to his detention status at the time of his parole—*i.e.*, mandatory detention under § 1225(b)(1)—during the remainder of his removal proceedings under § 1229a. Thus, Petitioner’s detention comports with the

¹ Multiple district courts in this jurisdiction (including this Court) have rejected this argument. *See e.g. Talabadze v. Rose, et al.*, No. 26-cv-360 (E.D. Pa Jan. 30, 2026) (Perez, J.); *Seminario-Marcos v. Jamison, et al.*, No. 26-cv-421 (E.D. Pa Feb. 6, 2026) (Kearney, J.); *Vazquez-Diaz v. Rose, et al*, No. 26-cv-342 (E.D. Pa Feb. 10, 2026) (Gallagher, J.); *Vargas- Quajada v. Jamison, et al*, 26-cv-914 (E.D. Pa. Feb. 17, 2026) (McHugh, J.); *Nawab Ali v. Jamison, et al.*, No. 26-cv-729 (E.D. Pa. Feb. 19, 2026) (Quinones-Alejandro, J.); *Zavala Ulloa v. Jamison, et al*, No. 26-cv-823 (E.D. Pa. Feb. 20, 2026) (Marston, J.); *Green v. Jamison, et al.*, No. 26-0773 (E.D. Pa. Feb. 26 2026) (Scott, J.).

INA, the bond regulations, and the Constitution, and the Court should accordingly deny the petition for a writ of habeas corpus.

II. DETENTION FRAMEWORK UNDER THE INA

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings, as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

a. Applicants for Admission and Expedited Removal

An applicant for admission to the United States is defined as “[a]n alien present in the United States who has not been admitted or who arrives in the United States [] whether or not at a designated port of arrival. . . .” 8 U.S.C. § 1225(a)(1). As explained by the Supreme Court, “an alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ and an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry’ into the United States.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Put differently, an “alien who arrives at a ‘port of entry,’ i.e. a place where the alien may lawfully enter, must apply for admission. An alien [] who is caught trying to enter at some other spot is treated the same way.” *Id.* at 108. Such applicants for admission, “even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Id.* at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). Pursuant to 8 U.S.C. § 1225, immigration officials have discretion to place aliens arriving in the United States in either expedited removal proceedings under § 1225(b)(1) or standard removal proceedings under 8 U.S.C. § 1229a. Under either

approach, § 1225 authorizes detention of such individuals “throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”

Jennings v. Rodriguez, 583 U.S. 281, 302 (2018).

In 1996, Congress amended § 1225(b) to add “expedited removal” procedures for certain applicants for admission. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104208, Tit. III, § 302(a), 110 Stat. 3009-579 (1996); *see also Thuraissigiam*, 591 U.S. at 109–11 (describing the expedited removal process). Section 1225(b)(1) now provides that an applicant for admission is subject to expedited removal if the applicant is: (i) inadmissible because he or she lacks valid documents or is inadmissible due to fraud; (ii) has not “been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility”; or (iii) is among those whom the Secretary of DHS has designated for expedited removal. For these individuals, once an immigration officer determines that they are inadmissible, the officer must “order the alien removed from the United States without further hearing.” 8 U.S.C. § 1225(b)(1)(A)(i); *Thuraissigiam*, 591 U.S. at 109.

b. Credible Fear Determinations

If, however, the alien expresses a fear of persecution or torture in their home country, an asylum officer must determine whether the alien has a credible fear. *See* 8 U.S.C. §§ 1225(b)(1)(A)(ii) & (B); 8 C.F.R. §§ 208.30, 235.3(b)(4). If an asylum officer makes a positive finding of credible fear, the individual is placed into removal proceedings to pursue asylum under 8 U.S.C. § 1229a. *Id.*

As explained by the Supreme Court, “[a]n alien subject to expedited removal thus has an opportunity at three levels to obtain an asylum hearing, and the applicant will

obtain one unless the asylum officer, a supervisor, and an immigration judge all find that the applicant has not asserted a credible fear.” *Thuraissigiam*, 591 U.S. at 110-11 (“As a practical matter, then, the great majority of asylum seekers who fall within the category subject to expedited removal do not receive expedited removal and are instead afforded the same procedural rights as other aliens.”). An individual subject to expedited removal under § 1225(b)(1), however, including an individual undergoing further review of their asylum claim, “is not entitled to immediate release” regardless of whether their asylum claim is reviewed fully or in an expedited manner. *Id.* at 111. *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Rather, § 1225(b)(1)(B)(iii)(IV) provides for mandatory detention of individuals during the credible fear review process and until removal from the United States. (“Any alien subject to the procedures under this clause *shall be detained* pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”) (emphasis added).

c. Parole for Applications for Admission

While an applicant for admission is not entitled to release or a bond hearing by statute or regulation, the Secretary, acting through Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), has discretion to release applicants for admission from custody on humanitarian parole. *See* 8 U.S.C. § 1182(d)(5). Such a parole is done “temporarily under such conditions as [the Secretary] may prescribe [and] only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. §1182(d)(5)(A).

Parole is not an “admission” to the United States. 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A). As noted above, “aliens who arrive at ports of entry—even those *paroled elsewhere in the country for years pending removal*—are ‘treated’ for due process

purposes ‘as if stopped at the border.’” *Thuraissigiam*, 591 U.S. at 139 (quoting *Mezei*, 345 U.S. at 215) (emphasis added); *see also Leng May Ma v. Barber*, 357 U.S. 185, 188–90 (1958). In other words, an applicant for admission paroled into the United States “remain[s] constructively detained at the border, *i.e.* legally unadmitted, while their status is being resolved by immigration officials.” *Ibragimov v. Gonzales*, 476 F.3d 125, 134 (2d Cir. 2007); *see also Duarte v. Mayorkas*, 27 F.4th 1044, 1059 (5th Cir. 2022) (“[A] paroled alien is legally equivalent to an alien that is held in custody at the border while their application for admission is processed.”).

ICE may terminate a parole under §1182(d)(5)(A) when, “in the opinion of the Secretary of Homeland Security, “the purposes of such parole . . . have been served.” 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i). When a Notice to Appear (NTA)—the charging document that initiates proceedings—is served on the parolee, this serves as written notice of termination of parole. *See Matter of Arambula-Bravo*, 28 I & N Dec. 388, 395 (BIA 2021) (“A charging document presumptively terminates parole because an intent to remove a noncitizen necessarily reflects a determination that the continued presence of that individual is no longer warranted.”). No pre-termination hearing is required. *See Ofosu v. McElroy*, 98 F.3d 694, 700 (2d Cir. 1996) (explaining that parole “may be ended without hearings or special forms.”); *Ahrens v. Rojas*, 292 F.2d 406, 410 (5th Cir. 1961) (“Neither the statute nor the regulation provides for a hearing on revocation of parole.”). Further, at the expiration of the time for which parole was authorized, “[p]arole shall be automatically terminated without written notice.” 8 C.F.R. § 212.5(e)(1)(ii).

d. Return to Custody After Parole Expiration or Termination

After parole expires or is terminated, “the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall *continue to be dealt with in the same manner as that of any other applicant for admission to the United States.*” 8 U.S.C. § 1182(d)(5)(A) (emphasis added); 8 C.F.R. § 212.5(e)(2)(i) (explaining that after automatic termination, the alien “shall be restored to the status that he or she had at the time of parole”). Once parole is terminated, “[a]ny further inspection or hearing shall be conducted under section 235 [8 U.S.C. § 1225] or 240 [8 U.S.C. § 1229a] of the Act.” 8 C.F.R. § 212.5(e)(2)(i); *see Ahrens*, 292 F.2d at 410 (noting that after parole termination, “the plaintiff’s status was the same as if he had been stopped at the border.”). The grant of parole and its termination is committed to the broad discretion of the Secretary. *See Samirah v. O’Connell*, 335 F.3d 545, 549 (7th Cir. 2003) (holding DHS’s authority to “grant or revoke” parole under § 1182(d)(5)(A) is a matter of agency discretion barred from review by § 1252(a)(2)(B)(ii)); *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010) (same).

III. LEGAL STANDARD

A writ of habeas corpus is an “extraordinary remedy.” *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022). The petitioner bears the burden of showing his confinement is unlawful. *Hawk v. Olson*, 326 U.S. 271, 279 (1945); *accord Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (habeas petitioner “carries the burden of proof”); *see also* 28 U.S.C. § 2241.

Judicial review of immigration matters, including detention issues, is limited. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 489–92 (1999); *Miller v. Albright*, 523

U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“[T]he power over aliens is of a political character and therefore subject only to narrow judicial review.”). The Supreme Court has “underscore[d] the limited scope of inquiry into immigration legislation,” and “has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Mathews v. Diaz*, 426 U.S. 67, 79–82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien’s status without running the risk of the alien’s either absconding or engaging in criminal activity before a final decision can be made.”).

Petitioner must make a strong showing to demonstrate that his continued detention violates the Constitution or laws of the United States. *See U.S. v. Five*

Gambling Devices, 346 U.S. 441, 449 (1953) (“This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power”).

IV. ARGUMENT

As discussed below, Petitioner’s detention is authorized by statute, regulation, and comports with the Constitution. As such, this Court should deny the petition for a writ of habeas corpus.

a. Petitioner’s Detention is Authorized by 8 U.S.C. § 1225(b)(1)

Petitioner’s argument that his detention violates the INA and accompanying regulations is without merit because ICE’s current detention of Petitioner is authorized and, indeed, mandated by statute. Petitioner attempted to enter the United States without inspection in 2023 and was intercepted but not inspected, admitted, or paroled by an immigration officer at the time of that entry. *See* ECF 1, Petition ¶ 27, ECF 1-1, Ex A. Petitioner was therefore an “applicant for admission” and was accordingly processed for expedited removal under § 1225(b)(1)(A)(i). *Id.*

i. Petitioner was properly processed for expedited removal

The regulations at 8 C.F.R. § 235.3(b)(2)(i) set forth a procedure that must be followed before removing an alien under the expedited removal process. Petitioner was not removed under expedited removal processing, however, because he expressed a fear of return to Columbia during his interview. *See* ECF 1, Petition ¶ 1. The fact that Petitioner is no longer in expedited removal proceedings does not preclude continued detention under § 1225(b)(1). To the contrary, when Petitioner claimed a fear of

returning to Colombia, he triggered the § 1225(b)(1)(B) process, which includes a referral to the United States Citizenship and Immigration Services (USCIS) for a credible fear interview and further (full removal) proceedings to consider Petitioner’s application for asylum. 8 U.S.C. § 1225(b)(1)(B); Ex A – Notice to Appear. Until his removal proceedings under § 1229a are complete, which includes adjudication of his application for asylum application, or until he withdraws his application for admission pursuant to 8 U.S.C. § 1225(a)(4), Petitioner remains in this process.

ii. Petitioner’s release on parole does not preclude detention under 8 U.S.C. § 1225(b)(1)

Importantly, ICE’s release of Petitioner on parole pursuant to 8 U.S.C. § 1182(d)(5) does not preclude detention under § 1225(b)(1)(B)(ii). Petitioner may try to argue that he is not subject to mandatory detention under § 1225(b)(1) because he has been paroled into the United States. *See* § 1225(b)(1)(A)(iii)(II) (applying the expedited removal provisions to certain other aliens “who have not been admitted or paroled into the United States”). However, the Court should reject this argument because the DHS Secretary’s 2004 Expedited Removal Designation makes clear that this language applies only to certain categories of aliens who were admitted or paroled into the United States *following inspection by an immigration officer at a designated port-of-entry*. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004) (emphasis added); *see also* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (allowing the DHS Secretary to designate certain aliens for expedited removal and clarifying that this designation “shall be in the sole and unreviewable discretion” of the DHS Secretary).

Importantly, ICE’s release of Petitioner on parole pursuant to 8 U.S.C. § 1182(d)(5) does not convert DHS’s detention authority from § 1225(b)(1) to § 1226

because, as noted above, parole “shall not be regarded as an admission of the alien.” *Id.* § 1182(d)(5)(A). Rather, Congress was very explicit: “when the purposes of such parole have been served[,] the alien shall forthwith return or *be returned to the custody from which he was paroled* and thereafter his case shall continue to be dealt with *in the same manner as that of any other applicant for admission* to the United States.” *Id.* (emphasis added). Regardless of the length of his parole, Petitioner remains “‘treated’ for due process purposes ‘as if stopped at the border.’” *Thuraissigiam*, 591 U.S. at 139–40 (noting that “even those paroled elsewhere in the country for years” “cannot be said to have ‘effected an entry’ and remain “on the threshold.”). Petitioner therefore remains subject to the same detention authority (§ 1225(b)(1)) until his claim for asylum is fully adjudicated and he is either granted asylum or removed. *See Jennings*, 583 U.S. at 302; *Thuraissigiam*, 591 U.S. at 111; 8 U.S.C. § 1225(b)(1)(B)(ii).

That Petitioner is properly detained under § 1225(b)(1) receives further support from the Attorney General’s decision in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). In *M-S-*, the Attorney General overruled as wrongly decided an earlier Board of Immigration Appeals’ (BIA) case, *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005), in which the BIA held that aliens transferred to full proceedings after establishing a credible fear were eligible for bond. 27 I&N Dec. at 513–14. The Attorney General explained that, by its plain language, applicants for admission transferred to full removal proceedings after establishing a credible fear remain ineligible for bond. *Id.* at 515. Instead, an individual in this category of applicants for admission “must be detained until his removal proceedings conclude, unless he is granted parole.” *Id.* at 509.

iii. No written notice is required prior to revoking parole

If Petitioner argues that ICE improperly revoked his parole without first

providing notice of such revocation, the Court should reject that argument. The regulations make clear that no written notice is required prior to terminating a prior discretionary parole decision under § 1182(d)(5)(A). *See* 8 C.F.R. § 212.5(e)(1)(ii) (explaining that parole *shall be automatically terminated without written notice . . . at the expiration of the time for which parole was authorized . . . in accordance with* 8 C.F.R. § 212.5(e)(2), *except that no written notice shall be required*) (emphasis added). Only when termination of parole is not automatic under § 212.5(e)(1)—in other words, when an alien has not departed the United States or the period of parole has not expired—is notice required under § 212.5(e)(2). *But see Talabadze v. Rose*, No. 26-cv-360 (E.D. Pa. Jan. 30, 2026) (Perez, J.) (finding notice required prior to terminating parole); *Vasquez Diaz v. Rose*, No. 26-cv-342 (E.D. Pa. Feb. 10, 2026) (Gallagher, J.) (same).

Furthermore, the Court lacks jurisdiction to review a parole revocation decision under 8 U.S.C. § 1252(a)(2)(B), since it is plainly a discretionary “decision or action.” *Samirah* 335 F.3d at 549 (holding DHS’s authority to “grant or revoke” parole under § 1182(d)(5)(A) is a matter of agency discretion barred from review by § 1252(a)(2)(B)(ii)); *Hassan*, 593 F.3d at 789 (same). Moreover, to the extent Petitioner is alleging that revocation of parole requires a case-by-case analysis, the Court should reject this argument. While 8 U.S.C. § 1182(d)(5)(A) requires that *grants* of parole be made on a case-by-case basis, it contains no parallel language with respect to terminations, and the language of § 1182(d)(5)(A) makes clear that such a determination is left entirely to the “opinion” of the DHS Secretary.

iv. Petitioner is not detained under 8 U.S.C. § 1225(b)(2)

Petitioner claims that DHS is detaining him under § 1225(b)(2) pursuant to the

BIA's decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and the DHS's new policy. See ECF 1, Petition ¶ 41-44. This is incorrect and misapplies the facts and procedural history of Petitioner's case. As discussed above, Petitioner was processed for expedited removal upon entry into the United States and was subsequently found to have a credible fear of return to Colombia, thus bringing him within the mandatory detention authority of § 1225(b)(1). Therefore, Petitioner is detained under § 1225(b)(1), not § 1225(b)(2). Because Petitioner is properly detained under § 1225(b)(1) and not eligible for a bond hearing, this Court should deny the petition for a writ of habeas corpus.

b. Petitioner's Detention is Constitutional

Petitioner's argument that his detention violates procedural due process also lacks merit. The Supreme Court has long recognized that "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Further, applicants for admission like Petitioner lack any constitutional due process rights with respect to admission aside from the rights provided by statute. See *Thuraissigiam* 591 U.S. at 140 ("[T]he Due Process Clause provides nothing more."). The *Thuraissigiam* Court explained that "an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause." *Id.* at 107.

"When an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country." *Id.* at 139. The same "threshold" rule applies to individuals who are apprehended after trying "to enter the country illegally," because by statute, such individuals are also

defined as applicants for admission. *Id.* at 139–40. And the only procedural protections the statute provides allow an applicant for admission to seek relief from removal if he fears return to his home country, and to seek parole from the agency. *Id.*

Therefore, the Court should find that Petitioner’s detention is constitutional and deny the petition for writ of habeas corpus.

C. EAJA Fees Are Not Appropriate

Petitioner is not eligible for fees because the government’s position is “substantially justified.” The Third Circuit recently explained the “substantially justified” standard under EAJA in an immigration detention case:

Under the EAJA, the Government’s position was substantially justified only if its conduct was “justified to a degree that could satisfy a reasonable person.” *Johnson v. Gonzales*, 416 F.3d 205, 210 (3d Cir. 2005) (quoting *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)). The Government bears the burden of proving its position was justified. *Hanover Potato Prods., Inc. v. Shalala*, 989 F.2d 123, 128 (3d Cir. 1993). “To satisfy this burden and defeat a prevailing party’s application for fees, the government must . . . demonstrat[e] ‘(1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory it propounded; and (3) a reasonable connection between the facts alleged and the legal theory advanced.’” *Cruz*, 630 F.3d at 324 (quoting *Morgan v. Perry*, 142 F.3d 670, 684 (3d Cir. 1998)). “[I]n immigration cases, the Government must meet the substantially justified test twice”: once for its underlying conduct and once for its decisions in the ensuing litigation about that conduct. *Johnson*, 416 F.3d at 210. We do not assume the position of the Government was not substantially justified simply because it lost. *William v. Astrue*, 600 F.3d 299, 302 (3d Cir. 2009).

Michelin v. Warden Moshannon Valley Corr. Ctr., No.’s. 24-2990/24-3198, 2026 U.S. App. LEXIS 3264, at *28-29 (3d Cir. Feb. 2, 2026).

While the government’s position has been rejected by several courts in this district, because Petitioner has been processed under the expedited removal provision, Supreme Court precedent supports mandatory detention. *See Jennings v. Rodriguez*,

583 U.S. 281, 282, 138 S. Ct. 830, 834, 200 L. Ed. 2d 122 (2018) (“Read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded.”)

Thus, this Court should not rule that a “reasonable person” could not be satisfied by the statutory interpretation advanced by the government here.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the petition for writ of habeas corpus be denied.

Respectfully submitted,

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Dated: March 4, 2026

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Response in Opposition to Petition for Writ of Habeas Corpus via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: March 4, 2026

/s/ Anthony St. Joseph
ANTHONY ST. JOSEPH
Assistant United States Attorney

Exhibit A

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [REDACTED]/1999

Event No: [REDACTED]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED]

FINS: [REDACTED]

File No: [REDACTED]

In the Matter of:

Respondent: JOAN ALBERTO MONSALVE ROJAS

currently residing at:

[REDACTED], NEW YORK, 11358

(Number, street, city, state and ZIP code)

(Area code and phone number)

- ☐ You are an arriving alien.
- ☒ You are an alien present in the United States who has not been admitted or paroled.
- ☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are an immigrant 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.
2. You are not a citizen or national of the United States.
3. You are a native of Colombia, and citizen of Colombia.
4. On May 3, 2023 you illegally entered the United States at/near Tecate, California, and you were not inspected by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

- ☒ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☒ Section 235(b)(1) order was vacated pursuant to: ☒ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

26 FEDERAL PLZ 12TH FL RM 1237 NEW YORK NY 10278.

(Complete Address of Immigration Court, including Room Number, if any)

on October 25, 2023 at 8:30 AM to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

JOSEPH P HARRINGTON - SDDO

(Signature and Title of Issuing Officer)

JOSEPH P
HARRINGTON

Digitally signed by JOSEPH P HARRINGTON
Date: 2023.10.10 11:31:18
+04'00'

Date: October 10, 2023

new york
(City and State)

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on October 10, 2023, in the following manner and in compliance with section 239(a)(1) of the Act.

- ☐ in person ☐ by certified mail, returned receipt # _____ requested ☒ by regular mail
☐ Attached is a credible fear worksheet.
☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.
Digitally signed by THOMAS J LENTINO
Date: 2023.10.10 10:25:44 -04'00'

(Signature of Respondent if Personally Served)

DO10236 LENTINO - Deportation Officer

(Signature and Title of officer)

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

U.S. Department of Homeland Security

Continuation Page for Form I-862

Alien's Name MONSALVE ROJAS, JOAN ALBERTO		File Number 	Date 10/10/2023
Event No: 			
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW: ----- 212(a) (7) (A) (i) (I) of the Immigration and Nationality Act (Act), as amended, 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 Act, 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.			
Signature JOSEPH P HARRINGTON JOSEPH P HARRINGTON		Digitally signed by JOSEPH P HARRINGTON Date: 2023.10.10 11:33:58 -04'00' Title SDDO	

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Exhibit B

U.S. Department of Homeland Security

Subject ID :

Record of Deportable/Inadmissible Alien

Family Name (CAPS) MONSALVE ROJAS, JOAN ALBERTO		First	Middle	Sex M	Hair BLK	Eyes BRO	Cmpbkn MED
Country of Citizenship COLOMBIA	Passport Number and Country of Issue [REDACTED] COLOMBIA	File Number [REDACTED]		Height 67	Weight 182	Occupation	
U.S. Address				Scars and Marks See Narrative			
Date, Place, Time, and Manner of Last Entry 05/03/2023 06:50, TEC, PWA (Afoot)				Passenger Boarded at			
Number, Street, City, Province (State) and Country of Permanent Residence				F.B.I. Number [REDACTED] ☐ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated			
Date of Birth [REDACTED] /1999 Age: 23				Date of Action 05/11/2023		Location Code CAO	
City, Province (State) and Country of Birth COLOMBIA				Form : (Type and No.) ☒ AR ☐ Form : (Type and No.) ☐ Lifted ☐ Not Lifted ☐			
NIV Issuing Post and NIV Number				Social Security Account Name			
Date Visa Issued				Social Security Number			
Immigration Record NEGATIVE				Criminal Record			
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)						Number and Nationality of Minor Children None	
Father's Name, Nationality, and Address, if Known [REDACTED], [REDACTED] NATIONALITY: COLOMBIA				Mother's Present and Maiden Names, Nationality, and Address, if Known [REDACTED] NATIONALITY: COLOMBIA			
Monies Due/Property in U.S. Not in Immediate Possession None Claimed				Fingerprinted? ☒ Yes ☐ No		Systems Checks See Narrative	
Name and Address of (Last)(Current) U.S. Employer				Type of Employment		Charge Code Words(s) See Narrative	
				Salary		Employed from/to Hr	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)							
FIN: [REDACTED]		Left Index fingerprint			Right Index fingerprint		
							
FAMILY INFORMATION ----- Father: MONSALVE, CARLOS is a citizen of COLOMBIA. Mother: ROJAS, LINA is a citizen of COLOMBIA. Spouse: Subject is not married. Child: Subject does not have children or dependents.							
SCARS MARKS AND TATTOOS ----- SCAR KNEE, NONSPECIFIC - SCAR KNEE, NONSPECIFIC ... (CONTINUED ON I-831)							
Alien has been advised of communication privileges _____ (Date/Initials)				RYAN COURTNEY BORDER PATROL AGENT _____ (Signature and Title of Immigration Officer)			
Distribution: FILE SDC				Received: (Subject and Documents) (Report of Interview) Officer: RYAN COURTNEY on: May 11, 2023 (time) Disposition: Notice to Appear Released (I-862) Examining Officer: LANE, COLIN			

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name MONSALVE ROJAS, JOAN ALBERTO	File Number [REDACTED] Event No: [REDACTED]	Date 05/04/2023
CURRENT CRIMINAL CHARGES ----- 05/03/2023 - 8 USC 1182 - ALIEN INADMISSIBILITY UNDER SECTION 212 CURRENT ADMINISTRATIVE CHARGES ----- 05/03/2023 - 212a7AiI - IMMIGRANT WITHOUT AN IMMIGRANT VISA RECORDS CHECKED ----- CIS checked on 05/06/2023 with Negative result. ABIS checked on 05/03/2023 with Negative result. EARM checked on 05/06/2023 with Negative result. NCIC checked on 05/06/2023 with Negative result. TECS checked on 05/06/2023 with Negative result. NGI checked on 05/06/2023 with Negative result. RECORD OF DEPORTABLE/EXCLUDABLE ALIEN: ----- On May 3, 2023, Joan Alberto MONSALVE ROJAS was encountered by Border Patrol Agent Kevin Wilson. During this encounter, MONSALVE ROJAS was questioned about his citizenship and nationality, and whether he was in possession of any legal documents allowing him to remain in the United States legally. MONSALVE ROJAS stated that he is a citizen and national of Colombia, without proper immigration documents allowing him to enter or remain in the United States legally. Border Patrol Agent Kevin Wilson at approximately 7:47 AM, arrested MONSALVE ROJAS approximately 23.50 miles east of the Tecate Port of Entry and approximately 100 yards north of the United States/Mexico International Boundary. MONSALVE ROJAS was transported to the Campo Station for initial processing. Due to the volume of people in the processing facility, MONSALVE ROJAS was later transported to the San Diego Sector for further processing and disposition. At the station, as a routine step in processing, MONSALVE ROJAS' biographical and biometric information were entered into the Department of Homeland Security processing systems. The following numbers are associated with MONSALVE ROJAS: A#: [REDACTED] FINS#: [REDACTED] FBI#: [REDACTED] MONSALVE ROJAS was received at the processing station, protocols were observed in compliance with the CBP National Standards on Transport, Escort, Detention, and Search policy. A risk assessment was conducted prior to placing MONSALVE ROJAS in a holding room. MONSALVE ROJAS expressed no concerns about being held in the facility. MONSALVE ROJAS was informed that it is a crime to lie to federal agents, and that he is subject to criminal prosecution under 18 USC 1001 if it is determined that he gave false statements. No wants or warrants were found. On May 6, 2023, Border Patrol Agent Joseph Russo advised MONSALVE ROJAS of his consulate communication rights. MONSALVE ROJAS stated that he understood his rights and did not want to exercise them. MONSALVE ROJAS admitted to being a citizen and national of Colombia without proper immigration documents allowing him to enter or remain in the United States legally. MONSALVE ROJAS further stated that he was not inspected by an Immigration Officer at a designated		
Signature RYAN COURTNEY	Title BORDER PATROL AGENT	

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U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name MONSALVE ROJAS, JOAN ALBERTO	File Number [REDACTED] Event No: [REDACTED]	Date 05/04/2023
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Port of Entry when he entered the United States illegally afoot on May 3, 2023.

MONSALVE ROJAS stated that he has fear of returning to Colombia, and that he has no immigration petition pending on his behalf.

While in custody, MONSALVE ROJAS identified the following person as a point of contact (POC) in the United States:

Name: [REDACTED]
Address: [REDACTED]

MONSALVE ROJAS was served with DHS forms I-867 A, I-867 B, I-296, M-444, and a list of free legal services.

MONSALVE ROJAS is being held in the custody of the Department of Homeland Security pending a "credible fear" determination / expedited removal, per Section 212(a)(7)(A)(i)(I) of the INA.

MONSALVE ROJAS is being held in the custody of the Department of Homeland Security pending asylum officer review.

*****Addendum*****

Created by: Border Patrol Agent Ryan Courtney

On 05/11/2023, MONSALVE ROJAS was telephonically interviewed by an asylum officer.

The asylum officer determined that MONSALVE ROJAS established a credible fear of persecution or torture in his country of nationality, country of last habitual residence, or country to which he has been ordered removed.

MONSALVE ROJAS was reprocessed as an NTA and paroled into the United States under INA 212(d)(5).

MONSALVE ROJAS was provided a copy of form I-862 and a list of free legal services.

OTHER IDENTIFYING NUMBERS

ALIEN-[REDACTED]

Signature RYAN COURTNEY	Title BORDER PATROL AGENT
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