UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Mehdi Esmaeili Golloo,

Petitioner,

v.

FREDERICK J. AKSHAR II, in his official capacity as Sheriff of Broome County, New York; PHILIP L. RHONEY, in his official capacity as Acting Field Office Director, Buffalo ICE Field Office; MARKWAYNE MULLIN, in his official capacity as Secretary of Homeland Security;[1] TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

Civil Action No.: 9:26-cv-00401-MAD

FEDERAL RESPONDENTS' RESPONSE TO PETITION[2]

TODD BLANCHE
Deputy Attorney General

JOHN A. SARCONE III
First Assistant United States Attorney

By: David M. Katz
Assistant United States Attorney
Bar Roll No. 700065

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[1] Markwayne Mullin succeeded Kristi Noem as Secretary of the Department of Homeland Security. Federal Rule of Civil Procedure 25(d) automatically substitutes him for Kristi Noem.

[2] The Federal Respondents are Philip L. Rhoney, Markwayne Mullin (substituted for Kristi Noem), Todd M. Lyons, and Pamela Bondi, all named in their official capacities.

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PRELIMINARY STATEMENT

Petitioner, who was arrested within 25 minutes of his unlawful entry and is currently detained pending removal proceedings, bring this habeas petition seeking release or a bond hearing. Neither is warranted here. Initially Petitioner was subject to mandatory detention pending expedited removal pursuant to 8 U.S.C. § 1225(b)(1)(A), because he was apprehended shortly after unlawful entry. After an asylum officer found Petitioner had demonstrated a credible fear of persecution or torture, Petitioner was issued a Notice to Appear, which terminated the expedited removal proceeding and commenced a removal proceeding. At that point, continued detention was mandatory pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which applies pending the outcome of an ensuing asylum claim.

The Federal Respondents acknowledge the Court's decision in *Martins v. Akshar*, Case No. 9:26-cv-00095-MAD, Dkt. # 16 (Feb. 3, 2026)—in which the government also argued that Petitioner was detained pursuant to 8 U.S.C. § 1225(b)(1)—and incorporate the arguments made there as if fully set forth here. Katz Decl., Exh. **"A"** at 5–13. There, the Court concluded that it need not decide the statutory issue because it found that Martin's re-detention following release on parole without a change in circumstances violated due process, although it noted case law questioning whether § 1225(b)(1) continued to apply in such circumstances.

This case is factually distinguishable from *Martins* because Petitioner here has never been paroled or released from custody. This case is also distinguishable from *Olivares v. Broome County Correctional Facility*, Case No. 9:26-cv-00203-AMN, at Dkt. # 18 (Mar. 11, 2026), because Olivares also had been paroled and then subsequently re-detained. Here, by contrast, the statutory issue directly bears on the due process claim. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). The Federal Respondents acknowledge the cases in this district that have involved disputes regarding whether 8 U.S.C. § 1225(b)(2) or 8 U.S.C. § 1226(a) applies, which

have found § 1226(a) applies. The Federal Respondents submit this case differs because § 1225(b)(1), not § 1225(b)(2), applies, but acknowledge *Olivares* rejected that distinction.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Iran. Dkt. # 1 ¶ 1. "Petitioner has been detained continuously since his initial apprehension shortly after his unlawful entry." Trumble Decl. ¶ 5. Petitioner entered the United States on September 4, 2024. Dkt. # 1 ¶ 2; Trumble Decl. ¶ 5. He entered the United States without inspection and admission or parole. Trumble Decl. ¶ 5. A Customs and Border Patrol agent encountered Petitioner within 25 minutes of his unlawful entry. Trumble Decl., Exh. **"A"**, at 3 ("[Petitioner] admitted to illegally crossing the international boundary without being inspected by an immigration officer . . . on 09/04/2024 at approximately 8:10 PM . . . .") *id.* at 2 ("Border Patrol Agent . . . encountered [Petitioner] . . . on 9/4/2024 at approximately 8:35 PM."). The Border Patrol Agent concluded Petitioner had illegally entered the United States. *Id.* Petitioner was then taken into custody. *Id.* at 3. Initially, on September 6, 2024, Petitioner received a Notice and Order of Expedited Removal, which commenced expedited removal proceedings under 8 U.S.C. § 1225(b)(1). Dkt. # 1 ¶ 21.

After a credible fear interview, Petitioner's Notice and Order of Expedited Removal was vacated. Dkt. # 1 ¶¶ 3, 22–24. Removal proceedings were commenced by a Notice to Appear dated October 25, 2024. *Id.* Petitioner "admit[ted] all" factual allegations in the Notice to Appear: he is "not a citizen or national of the United States"; he is "a native of Iran and a citizen of IRAN"; he "entered the United States at an unknown location on or about 2024-09-04"; he "did not then possess or present" any valid entry document; and he was "not then admitted or paroled after inspection by an Immigration Officer." Trumble Decl., Exh. **"A"**, at 6. Petitioner "concede[d]" he was present in the United States without being inspected and admitted or paroled and he did not arrive at a designated port of entry in violation of 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* An Immigration

Judge issued an Order of Removal on May 13, 2025. Dkt. # 1 ¶ 25. Petitioner appealed to the Board of Immigration Appeals on June 9, 2025. *Id.* ¶ 26. The appeal remains pending. *Id.* ¶ 4.

LEGAL BACKGROUND

Congress exercises "plenary power to make rules for the admission of foreign nationals and to exclude those who possess those characteristics which Congress has forbidden." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). As a constitutional matter, "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); *Ofosu v. McElroy*, 98 F.3d 694, 700 (2d Cir. 1996) ("An alien has no constitutional right to initial admission to the United States."); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950).[3]

STANDARD OF REVIEW

The writ of habeas corpus extends to a prisoner who is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). District courts may grant a writ "within their respective jurisdictions." *Id.* § 2241(a). Generally, "'[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he must file the petition in the district of confinement and name his immediate custodian as the respondent." *Ozturk v. Hyde*, 136 F.4th 382, 390 (2d Cir. 2025) (citation omitted).

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[3] The term "admission" is statutorily defined to mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. § 1235.1 (setting forth inspection procedures).

ARGUMENT

The Petition argues Petitioner has due process rights that extend beyond the statutory procedures Congress enacted. The Federal Respondents respectfully submit Petitioner's due process rights are coterminous with Petitioner's statutory rights because Petitioner was apprehended shortly after unlawfully entering the United States, as was the case in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), although the Federal Respondents acknowledge many courts have limited its reach and distinguished it in various ways. Therefore, the due process inquiry and the statutory inquiry are the same: if there is no dispute that the statute applies and the statutory procedure was followed, then Petitioner received the process due to him.

Here, Petitioner does not dispute 8 U.S.C. § 1225(b)(1) provides detention authority, and indeed constitutes a congressionally-imposed duty to detain on the Executive Branch. While the Petition describes the statutory process under § 1225(b)(1) , Petitioner does not allege that the process was not followed here. Dkt. # 1 ¶¶ 29–32. And the Petition acknowledges, "those detained under 8 U.S.C. § 1225(b)(1) are mandatorily detained pursuant to statute." *Id.* ¶ 7. Further, the Petition explains, "DHS typically takes the position that detainees like Petitioner (i.e., those being held pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) awaiting a final decision on their asylum applications) are not entitled to a bond hearing because neither the statute nor its implementing regulations provide for it." *Id.* ¶ 32 (citing *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019)). Petitioner offers no basis to depart from the established law.

I. 8 U.S.C. § 1225(b)(1) Authorizes Petitioner's Detention.

For the reasons stated in Point I of the Government's *Martins* brief, and as seemingly conceded in the Petition, 8 U.S.C. § 1225(b)(1) applies here. Katz Decl., Exh. **"A"** at 5–10. To the discussion, the Federal Respondents add that they acknowledge the Court's prior decision in *Martins*, where the Government argued detention occurred pursuant to 8 U.S.C.

§ 1225(b)(1)(B)(ii). *Martins*, Dkt. # 16. Given the factual distinction between *Martins* and this case—here, unlike there, Petitioner has never been released and therefore never re-detained—the Federal Respondents submit that the statutory question should be decided here. In this case, the statutory issue directly relates to and disposes of the due process claim under *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), as explained below.

The Federal Respondents also acknowledge there are many cases in this district holding § 1226(a), not § 1225(b)(2), applies to aliens present in the United States. *Morales Mendez v. Field Office Director*, Case No. 9:26-cv-00337-ECC, Dkt. # 11, at 5 (Mar. 16, 2026); *Perdomo Perez v. Akshar*, Case No. 9:26-cv-00120-ECC, Dkt. # 19, at 5 (Mar. 5, 2026); *Alvarez v. Philips*, Case No. 9:26-cv-00058-AJB, Dkt. # 11, at 6 (Feb. 17, 2026); *Gaspar v. Akshar*, Case No. 9:26-cv-00118-BKS, Dkt. # 13, at 15 (Feb. 17, 2026); *Noguez v. Brophy*, Case No. 9:26-cv-00030-MAD, Dkt. # 14, at 6 (Feb. 13, 2016); *Bravo Perez v. Bondi*, Case No. 9:26-cv-00205-ECC, Dkt. # 10, at 2 (Feb. 20, 2026) (Order; Memorandum-Decision and Order forthcoming). The Federal Respondents believe those cases are legally distinguishable because of the separate provision invoked there, although the Federal Respondents acknowledge *Olivares* rejected that distinction. Further, the Federal Respondents respectfully submit that this case is also factually distinguishable, because Petitioner here was initially encountered shortly after unlawful entry and detained without any intervening release. Thus, even *Olivares* is distinguishable insofar as that case involved an alien arriving at a port of entry who had been paroled and then subsequently re-detained.

Turning back to *Martins*, the Court performed an extensive analysis of 8 U.S.C. § 1225(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(2), and 8 U.S.C. § 1226(a). *Martins*, Dkt. # 16, at 6–10. But the Court did not ultimately decide the issue. *Id.* at 10. Instead, because of the facts presented—particularly, a prior decision to parole the Petitioner there—the Court decided the case

on due process grounds. *Id.*; *see also id.* at 11–16. Petitioner in *Martins* entered the United States in April 2021, was initially detained and placed in expedited removal proceedings, and then was placed in non-expedited removal proceedings after demonstrating a credible fear of torture or persecution. *Id.* at 3. As a part of the transition in proceedings, he was paroled. *Id.* After the immigration judge denied the asylum application, Petitioner filed an appeal, which was still pending at the time of this Court's decision. *Id.* Petitioner was then re-detained. *Id.*

And, as the Court explained, "[t]his title implies that the provision applies to people newly arriving in the United States who are apprehended at the border" or "to individuals who have not been admitted or paroled into the United States." *Id.* The statute explains, "if the asylum officer determines at the time of the interview that the person has a credible fear of persecution, and states that the person shall be detained *for further consideration of the application for asylum*." *Id.* at 8 (cleaned up) (quoting, at times, 8 U.S.C. § 1225(b)(1)(B)(ii)). And, as the Court noted, "[c]ourts from several circuits have considered whether a pending asylum appeal means the proceedings have not ended for purposes of § 1225(b), and concluded that detention remains mandatory throughout the appeal process." *Id.* at 9 (cleaned up) (citations omitted) . There is no statutory right to a bond hearing under § 1225(b)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of M-S-*, 27 I&N Dec. 509.

Here, Petitioner acknowledges he has been detained under § 1225(b)(1). The Petition does not allege any failure to comply with § 1225(b)(1) procedures. Therefore, § 1225(b)(1) authorizes and mandates detention here.[4]

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[4] The Petition alleges Petitioner has been continuously detained since arrival, but does not allege whether Petitioner has ever sought and been denied parole. While Petitioner is subject to mandatory detention, Petitioner could apply for discretionary parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5.

II. Petitioner's Detention Does Not Violate Due Process.

For the reasons stated in the brief in Point II of the Government's *Martins* brief, Petitioner's detention does not violate due process. Katz Decl., Exh. **"A"** at 10–13. To that discussion, the Federal Respondents add that because of the nature of this case, *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), controls. The Federal Respondents acknowledge the decisions in this district have recognized due process rights independent of the statutory analysis. *Martins*, Dkt. # 16, at 11 ("While the Court acknowledges Respondents' argument that Petitioner's limited due process rights do not *require* a bond hearing, the Court is satisfied that it may still choose to order one."); *Olivares*, Dkt. # 16; *Morales Mendez*, Dkt. # 11, at 9; *Perdomo Perez*, Dkt. # 19, at 7; *Alvarez*, Dkt. # 11, at 7; *Gaspar*, Dkt. # 13, at 18; *Noguez*, Dkt. # 14, at 9; *Bravo Perez*, Dkt. # 10, at 2.

The Federal Respondents also recognize that many courts in the circuit have analyzed procedural due process claims arising out of various civil immigration statutes under the framework set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), following *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), and *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024). Neither *Velasco Lopez* nor *Black* arose out of detention under § 1225(b)(1), and neither case dealt with an alien like Petitioner, who was apprehended shortly after unlawfully entering the United States and has been in custody since. The Federal Respondents respectfully submit that this Petitioner's statutory and due process rights are coterminous under *Thuraissigiam* and distinguishable from *Velasco Lopez*, *Black*, and their progeny. Although this argument was rejected in *Olivares*, this case is distinguishable because it arises out of an initial detention without any intervening parole and re-detention.

Factually, this case is like *Thuraissigiam*—where the alien "crossed the southern border without inspection or an entry document at around 11 p.m. one night in January 2017" and "[a]

Border Patrol agent stopped him within 25 yards of the border," 591 U.S. at 114—because Petitioner was detained within 25 minutes of his unlawful entry. The Supreme Court, reviewing a 100-year line of precedent, explained, for "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 139. While the Petitioner there "argue[d] that this rule [did] not apply to him because he was not taken into custody the instant he attempted to enter the country," the Supreme Court "reject[ed] it." *Id.* The Court reasoned, "[t]his rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil." *Id.*

Thus, the Court explained, "an alien who is detained shortly after unlawful entry cannot be said to have effected an entry" into the United States and, instead, "[l]ike an alien detained after arriving at a port of entry, an alien like respondent is on the threshold" of entering for due process purposes. *Id.* at 140. Therefore, the Supreme Court concluded, "an alien in [this] position has only those rights regarding admission that Congress has provided by statute." *Id.* ; *cf. Landon*, 459 U.S. 21, 32 ("[O]nce an alien gains admission to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change.").

For the reasons stated in Point II of the Government's *Martins* brief, the length of Petitioner's detention does not violate due process. Katz Decl., Exh. **"A"**. To that discussion, the Federal Respondents add that while Petitioner has been detained for 18 months, Petitioner's removal proceedings were completed—resulting in an order of removal— in May 2025, about eight months after his detention began. Petitioner then filed an appeal to the Board of Immigration Appeals, which remains pending. The Supreme Court "has firmly and repeatedly endorsed the

proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003).

While Petitioner has a legal right to challenge his removability on appeal, his detention during that period should not be the basis for a due process claim. *See Demore*, 538 U.S. at 530 n. 14 ("As we have explained before, however, 'the legal system . . . is replete with situations requiring the making of difficult judgments as to which course to follow, and, even in the criminal context, there is no constitutional prohibition against requiring parties to make such choices." (citations omitted)).

Moreover, detention here is not potentially indefinite or potentially permanent, as was the concern in the post-final order of removal context presented in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Instead, detention during removal proceedings "ha[s] a definite termination point." *Demore*, 538 U.S. at 530.

Petitioner seeks release[5] or "a bond hearing, with the burden on the government to show by clear and convincing evidence that he is a danger to persons or property or a flight danger and that no alternatives to detention exist to mitigate that danger and the Petitioner's ability to pay." Dkt. # 1 ¶ 43. But these facts are not germane to the statutory scheme under § 1225(b)(1), which is solely concerned with whether "an alien . . . is arriving in the United States or is described in clause (iii) is inadmissible under [8 U.S.C. §] 1182(a)(6)(C) or [8 U.S.C. §] 1182(a)(7) of this title," and therefore cannot serve as the basis for granting a bond hearing as a remedy. *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 9 (2003) ("Plaintiffs who assert a right to a hearing under the

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[5] Should the Court order Petitioner's immediate release, the Federal Respondents respectfully request that the Court afford at least 24 hours to comply so that any release may be effectuated in a safe and humane manner that also accounts for operational concerns.

Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme."); *id.* at 7 ("[D]ue process does not require the opportunity to prove a fact that is not material to the State's statutory scheme.").

A claim that a Petitioner is entitled to a hearing to adjudicate facts a legislature has not made relevant "must ultimately be analyzed in terms of substantive, not procedural, due process," and Plaintiff has not brought any such claim here. *Id.* at 7–8. But Petitioner would not have a viable substantive due process claim even if he had pled it. A substantive due process claim challenges the substance of a determination, arguing that they are inadequate to justify the deprivation "at all, no matter what process is provided." *Reno v. Flores*, 507 U.S. 292, 302 (1993). To establish a substantive due process claim, Petitioner would have to show the right to be free during removal proceedings was "objectively, deeply rooted in this Nation's history and tradition." *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (citation omitted). But Plaintiff cannot meet that standard here: "prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings." *Demore*, 538 U.S. at 523 n.7. And "detention during deportation proceedings" is "a constitutionally valid aspect of the deportation process." *Id.* at 523, 526 ("[T]he Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings").

CONCLUSION

For these reasons, the Federal Respondents respectfully request that this Court enter an Order along with such further relief as this Court deems fair, just, and equitable.

Dated: March 30, 2026

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