UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSE ISAAC AREINAMO-COLMENARES,

Petitioner,

v. Case No. 26-CV-861

DALE SCHMIDT, *et al.*,

Respondents.

RECOMMENDATION AND ORDER

Jose Isaac Areinamo-Colmenares filed a petition for writ of habeas corpus arguing that his detention without eligibility for bond is unlawful. (ECF No. 1.) Areinamo-Colmenares is a citizen of Venezuela who is currently detained in this district at the Dodge County Jail. (*Id.*, ¶¶ 1, 5.) The court screened the petition and ordered the respondents to show cause why the writ should not be issued. (ECF No. 5.) The respondents have failed to respond by the deadline of May 27, 2026. (*See id.* at 5.)

1. Background

According to the petition, Areinamo-Colmenares has resided in the United States since March 2021 and has no criminal convictions, although he has several pending traffic matters in Wisconsin. (ECF No. 1, ¶¶ 48–49.) Areinamo-Colmenares entered the United

States without inspection but was released on his own recognizance after making contact with immigration officials near the border. (*Id.*, ¶ 48.) He filed an asylum application over four years ago, which remains pending in immigration court. (*Id.*)

2. Analysis

Areinamo-Colmenares's petition challenges his placement in mandatory detention under 8 U.S.C. § 1225(b)(2) based on the new interpretation of this statute by Immigration and Customs Enforcement ("ICE").

As of July 8, 2025, the government classifies any noncitizen who entered the United States without inspection, regardless of the length of time present in this country, as an "applicant for admission" under § 1225(b)(a)(1) and deems the phrase "applicant for admission" equivalent to "alien seeking admission" under § 1225(b)(2)(A), therefore rendering such an individual subject to § 1225(b)(2)(A)'s requirement of mandatory detention. *See Garcia Guerrero v. Schmidt*, No. 25-CV-1975-BBC, 2026 WL 45263, at *1–2 (E.D. Wis. Jan. 7, 2026) (acknowledging historical practice and new policy). ICE previously afforded bond hearings under § 1226 to noncitizens if they had resided in the United States for years prior to being apprehended and placed in removal proceedings. *See id.* The about-face is purely a new interpretation of an unchanged statute.

Although no binding precedent currently dictates the outcome, a three-judge panel of the Seventh Circuit recently split on the issue: (1) Judge Lee concluded that mandatory detention under § 1225(b)(2)(A) did not apply "to noncitizens unlawfully

living in the country's interior," (2) Judge Pryor concluded the court did not need to reach the merits of the § 1225(b)(2)(A) argument and voted to resolve the case on other grounds, and (3) Judge Kirsch concluded in his dissent that the government's interpretation of § 1225(b)(2)(A) was correct. *See Castanon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, __ F.4th __, 2026 WL 1223250, at *9–39, 2026 U.S. App. LEXIS 13044, at *23–109 (7th Cir. May 5, 2026). "The portion of the merits opinion in *Castañon-Nava* addressing the meaning and applicability of Section 1225(b)(2)(A) is, therefore, not a precedential holding of the Seventh Circuit, and both Judge Lee's and Judge Kirsch's opinions are persuasive authority on this issue." *Gonzalez-Lopez v. Swearingen, et al.*, No. 2:26-CV-00200-JRO-MG, 2026 WL 1270065, at *5, 2026 U.S. Dist. LEXIS 102232, at *13 (S.D. Ind. May 8, 2026)).

A circuit split has also arisen across the country with the Second Circuit holding that § 1225(b)(2)(A) does not authorize the mandatory detention of noncitizens unlawfully residing in the United States, while the Fifth and Eighth Circuits found to the contrary. *See Barbosa da Cunha v. Freden*, No. 25-3141-PR, __ F.4th __, 2026 WL 1146044, 2026 U.S. App. LEXIS 12201 (2d Cir. Apr. 28, 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026).

A multitude of district courts across the country have granted similar habeas petitions and ordered that the noncitizens be given bond hearings. *See, e.g., Valenciano Vela v. Schmidt*, No. 25-CV-2004, 2026 WL 161334-BBC, at *2 (E.D. Wis. Jan. 21, 2026) (granting

petition); *Alonso v. Olson*, No. 25-CV-1660-LA, 2025 WL 3240928, at *3 (E.D. Wis. Nov. 20, 2025) (same); *but see Ugarte-Arenas v. Olson*, No. 25-CV-1721-WCG, 2025 WL 3514451, at *5 (E.D. Wis. Dec. 8, 2025) (denying petition); *Hernandez v. Olson*, No. 25-CV-1670-BHL, 2026 WL 161509, at *5 (E.D. Wis. Jan. 21, 2026) (denying petition but acknowledging "that a strong majority of other courts have rejected the government's reading of these statutes").

Upon careful review of the evolving legal landscape, this court finds most persuasive those decisions granting habeas petitions for similarly situated noncitizens. This conclusion is primarily driven by the distinct terminology Congress employed in § 1225(b)(2)(A). Even if Areinamo-Colmenares is an "applicant for admission" as defined in § 1225(a)(1) because he is foreign national who has not been "admitted" into the United States, the plain language of § 1225(b)(2)(A) does not reconcile the use of "applicant for admission" elsewhere in the chapter with the use of "alien seeking admission" employed in the context of mandatory detention. *See Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700, at *3 (E.D. Wis. Oct. 29, 2025) (observing that "[o]nly an 'alien seeking admission' who is not clearly and beyond a doubt entitled to be admitted must be detained") (quotations omitted).)

As other courts have observed, "[t]he use of 'seeking' denotes an active and present effort ... [and] cannot be said to encompass a person who, despite having never been 'admitted,' has been living in the United States for years." *Ramirez Valverde v. Olson*,

No. 25-CV-1502-BBC, 2025 WL 3022700, at *3 (E.D. Wis. Oct. 29, 2025); *see also Garcia Guerrero v. Schmidt*, No. 25-CV-1975-BBC, 2026 WL 45263, at *1–2 (E.D. Wis. Jan. 7, 2026) (observing that people who have been in the United States for some time "may be regarded as more likely to have the personal and community ties that make [them] suitable for release on bond").

Moreover, the government's "interpretation of § 1225(b)(2) would make the recently enacted amendment to § 1226(c) superfluous." *Diaz v. Olson*, No. 2:25-CV-00631-JRS-MKK, 2025 WL 3765960, at *5 (S.D. Ind. Dec. 30, 2025). The amendment added new classes of noncitizens who are ineligible for bond under § 1226(a), with one such class of people being noncitizens who have not been admitted into the United States and have been charged with specific crimes. *See* Laken Riley Act, Pub. L. No. 119-1, sec. 236, § 2, 139 Stat. 3, 3 (2025). This amendment would serve no purpose if, as the government contends, all noncitizens who have not been admitted must be detained under § 1225(b)(2). Therefore, the court cannot accept the government's expansive interpretation of § 1225(b)(2). *See Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010) (following the canon of statutory interpretation "against interpreting any statutory provision in a manner that would render another provision superfluous").

Because Areinamo-Colmenares should not be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), the court will recommend that his petition be granted and that he provided with a bond hearing consistent with § 1226.

3. Conclusion

IT IS THEREFORE RECOMMENDED that Jose Isaac Areinamo-Colmenares's petition for writ of habeas corpus be granted and that the respondents be ordered to either: (1) provide Areinamo-Colmenares with a bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226; or (2) release Areinamo-Colmenares from custody under reasonable conditions of supervision.

IT IS FURTHER ORDERED that, in accordance with 28 U.S.C. § 636(b)(1)(B) and (C) and Fed. R. Civ. P. 72(b)(2), any written objections to any recommendation herein or part thereof shall be filed within fourteen days of service of this recommendation. Failure to timely object waives a party's right to review.

Dated at Milwaukee, Wisconsin this 29th day of May, 2026.

William E. Duffin

WILLIAM E. DUFFIN
U.S. Magistrate Judge