

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

JOSE OMAR DUARTE ESCOBAR,

Petitioner,

v.

PAUL PERRY, *et al.*,

Respondents.

Civil Action No. 3:25cv758

**REPLY MEMORANDUM IN SUPPORT OF RESPONDENTS'
MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Court's October 15, 2025 Order (ECF No. 14), Respondents, by counsel, submit this reply in support of their motion for summary judgment.

ARGUMENT

I. This Court Lacks Jurisdiction Over the Petition as Petitioner's claims are barred by the jurisdiction-stripping provisions of the INA.

Petitioner Jose Omar Duarte Escobar does not address in his opening memorandum Respondents' argument that the Court lacks jurisdiction because his claims are barred by the jurisdiction-stripping provisions of the INA. *See generally* Pet'r's Mem. (ECF No. 16). As set forth in Respondents' opening memorandum, Duarte Escobar's claims fall within 8 U.S.C. § 1252(b)(9), which limits jurisdiction to "judicial review of a final order," and 8 U.S.C. § 1252(g), which bars jurisdiction over claims "arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders" *See* Resps' Mem. (ECF No. 18) at 7-8. The Court thus lacks jurisdiction over the Petition, and the Court should dismiss it.

II. Even if the Court Has Jurisdiction Over the Petition, Petitioner's Detention is Lawful

A. Petitioner is an applicant for admission seeking admission, and is not clearly and beyond a doubt entitled to be admitted; therefore, he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

Duarte Escobar is properly detained under 8 U.S.C. § 1225(b)(2)(A) because he is an applicant for admission “seeking admission [and] is not clearly and beyond a doubt entitled to be admitted,” 8 U.S.C. § 1225(b)(2)(A), as set forth in Respondents’ opening memorandum. *See* Resps’ Mem. at 8-20.

Duarte Escobar first argues that 8 U.S.C. § 1225(b)(2)(A) does not apply because he is not “seeking admission” as he “has long resided in the U.S.” *See* Pet’r’s Mem. at 8-9.¹ However, as set forth in Respondents’ opening memorandum, *see* Resps’ Mem. at 11-15, by simply being in the United States without having been admitted, Duarte Escobar is in fact actively seeking admission into the country. As the Fourth Circuit found in *Lopez-Sorto v. Garland*, 103 F.4th 242, 252 (4th Cir. 2024), an alien cannot be, under immigration law, physically present in the United States without being admitted to the United States, so Duarte Escobar necessarily must be actively seeking admission before he can, as a legal matter, be physically present and reside in the United States. Applying here the Fourth Circuit’s reasoning in *Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021), “[b]ecause [Duarte Escobar] was never lawfully admitted, he qualifies as someone ‘seeking admission.’” And because he qualifies as someone seeking admission under *Jimenez-Rodriguez*, the *Lopez Benitez v. Francis* no-ticket-to-the-movie-theater analogy, *see* Pet’r’s Mem. at 9, does not hold; in this movie theater, “[b]ecause [the person who enters without purchasing a ticket] was never lawfully admitted [to the theater], he qualifies as someone ‘seeking admission’” to the theater. *Jimenez-Rodriguez*, 996 F.3d at 194

¹ Page references to Petitioner’s memorandum are to the CM/ECF-header pagination.

n.2.

Duarte Escobar next argues that Respondents' reading of § 1225(b)(2) "conflicts with the Supreme Court's interpretation of §§ 1225 and 1226 in *Jennings v. Rodriguez* 583 U.S. 281 (2018)." *See* Pet'r's Mem. at 9-10. That is incorrect, as set forth in Respondents' opening memorandum. *See* Resps' Mem. at 15-20. In analyzing detention under § 1226, the *Jennings* Court distinguished applicants for admission who are subject to mandatory detention pursuant to § 1225 with those who are "within one or more . . . classes of *deportable* aliens" and thus fall under § 1226 detention. *Id.* at 288 (quoting 8 U.S.C. §§ 1227(a)(1), (2)) (internal quotations omitted) (emphasis added). In contrast, Duarte Escobar is not subject to the deportability grounds at 8 U.S.C. § 1227; he is charged with being *inadmissible* under 8 U.S.C. § 1182. And *Jennings* stated that the § 1226(a) default rule applied to "*certain* aliens already in the country," not *all* aliens already in the country. *Id.* at 289. Although Duarte Escobar is an "alien already in the country," *id.* at 281, he is also an "alien seeking admission into the country," *id.* at 289, bringing him within § 1225.

Nor does Respondents' reading of § 1225(b)(2)(A) render § 1226(c) superfluous, contra Duarte Escobar's argument. *See* Pet'r's Mem. at 10. Section 1226(c)(1) pertains to the mandatory detention of *criminal* aliens and is *not* limited to any subset and applies to admitted-but-inadmissible aliens, *see* Resps' Mem. at 15-16, whereas § 1225(b)(2)(A) applies only to a subset of not-yet-admitted aliens like Duarte Escobar.

B. The due process required to petitioners subject to mandatory detention under 8 U.S.C. § 1225(b)(2) is only such process afforded by the INA.

Duarte Escobar argues that because he "can only be detained pursuant to 8 U.S.C. § 1226(a), his continued detention without bond violates the INA, federal regulations, and due process." *See* Pet'r's Mem. at 11-12. But for all the reasons set forth in Respondents' opening

memorandum, Duarte Escobar is properly subject to § 1225(b)(2)(A) detention, has not been admitted to the United States, and thus is due only the process afforded by the INA. *See* Resps' Mem. at 20-22. As the Supreme Court stated in *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), "a concomitant" of the government's "plenary authority to decide which aliens to admit" is "the power to set the procedures to be followed *in determining whether an alien should be admitted.*" *Id.* at 139 (emphasis added). And as the Supreme Court stated in *Jennings*, "nothing in the [§ 1225(b)] statutory text imposes any limit on the length of detention," "[a]nd neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." 583 U.S. at 297.

C. If the Court were to find that Petitioner is owed more due process than the INA provides, Petitioner's detention still does not violate the Due Process Clause.

Even if the Court were to find that more process is due, the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), favor Respondents. *See* Resps' Mem. at 23-28.

As to the first *Mathews* factor, the private interest, an alien who has not been admitted "does not have the same status for due process purposes as an alien who has 'effected entry.'" *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021) (quoting *Thuraissigiam*, 591 U.S. at 139-40 (cleaned up)). And as the Supreme Court has found, detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

As to the second *Mathews* factor, the risk of an erroneous deprivation, Duarte Escobar has already received more process than he is due because his ability to seek parole exceeds the opportunity for release available to other aliens detained pursuant to 8 U.S.C. § 1226(c). Duarte Escobar, by contrast, may be paroled for any "urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A).

Last, as to the third *Mathews* factor, the Government's interest, a court "must weigh

heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). And “[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of [U.S.] law.” *Nken v. Holder*, 556 U.S. 418, 436 (2009).

D. If the Court is inclined to grant the Petition, the only relief the Court should offer is a bond hearing pursuant to normal procedures.

As set forth in Respondents’ opening memorandum, *see* Resps’ Mem. at 28-29, if the Court grants the Petition, the Court should order only a bond hearing pursuant to the usual procedures. Under the regulations governing bond hearings for detained aliens, the alien bears the burden to show both that his release would not pose a danger to property or persons and that he is likely to appear for future proceedings. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). The Fourth Circuit has confirmed that such bond procedures outlined in 8 U.S.C. § 1226(a) are constitutional and satisfy due process. *See Miranda, Miranda v. Garland*, 34 F.4th 338, 366 (4th Cir. 2022) (“Supreme Court precedent establishes that the current procedures used for detention under § 1226(a) satisfy due process”). Duarte Escobar does not contest Respondents’ argument that a bond hearing pursuant to normal procedures is the applicable procedure, if any. *See generally* Pet’r’s Mem.

CONCLUSION

For the foregoing reasons and those set forth in Respondents’ opening memorandum, Respondents respectfully request that the Court decline to issue a Writ of Habeas Corpus and deny the Petition.

Dated: October 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 22, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

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