

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOSE DUARTE ESCOBAR,	)	
	)	Case No: 3:25-cv-758
Petitioner,	)	
v.	)	
	)	
PAUL PERRY, <i>et al.</i> ,	)	
	)	
Respondents.	)	
	)	

**PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

Petitioner opposes Respondents' motion for summary judgment. This Court and many others nationwide have rejected the government's argument that noncitizens like Petitioner can lawfully be detained pursuant to 8 U.S.C. § 1225(b)(2). *See, e.g., Quispe Ardiles v. Noem*, No. 1:25-cv-01382 (E.D. Va. Sept. 30, 2025) (explaining "at least thirty federal district courts around the country, including two in this Circuit" have concluded the government's application of § 1225(b)(2) to similarly situated petitioners is unlawful); *Hasan v. Crawford*, No. 1:25-CV-1408 (E.D. Va. Sept. 19, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Teyim v. Perry*, No. 1:25-cv-01615 (E.D. Va. October 15, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720 (D. Colo. Oct. 17, 2025).¹ Respondents' arguments

¹ In comparison, Respondents cite only three cases in support of their argument, one of which is not applicable here. In *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025), the district court did not analyze or interpret sections 1225(b)(2)(A) or 1226(a); rather, the issue in *Pena* was whether the petitioner could remain detained after approval of an I-130 petition. No. 25-11983 at *3-4.

disregard the plain meaning of the statutes, conflict with the statutory structure, and distort and ignore precedent.

PETITIONER'S RESPONSES TO RESPONDENTS' STATEMENT OF UNDISPUTED FACTS

1. Duarte Escobar is a 39-year-old native and citizen of Honduras. *See* Ex. 1, Declaration of James A. Mullan ("Mullan Decl."), ¶ 5; Am. Pet. (ECF No. 9) ¶ 2.

Response:

Petitioner admits this statement.

2. On September 9, 2025, ICE Enforcement and Removal Operations officers encountered Duarte Escobar in or about Washington D.C. *See* Ex. 1, ¶ 6; Am. Pet. ¶ 2.

Response:

Petitioner admits this statement.

3. After establishing Duarte Escobar's identification, it was determined that he had previously entered the United States without being admitted or paroled by an immigration officer. *See* Ex. 1, ¶ 6; Am Pet. ¶ 39 ("Petitioner entered the U.S. without inspection in 2008.").

Response:

Petitioner admits this statement.

4. Duarte Escobar was placed in immigration custody pursuant to 8 U.S.C. § 1225(b)(2)(A) as an alien who is an applicant for admission because he is present in the United States without admission or parole. *See* Ex. 1, ¶ 6; Am. Pet. ¶¶ 2, 3, 7.

Response:

Petitioner admits this statement.

5. Duarte Escobar is seeking admission to the United States and not clearly and beyond a doubt entitled to be admitted to the United States. *See* Ex. 1, ¶ 6. 6.

Response:

Petitioner objects to and disputes this statement. This is a legal conclusion, not a statement of fact. To the extent the Court considers this statement, Petitioner disputes it because he is not actively seeking entry to the U.S. and as such is not “seeking admission” under the plain meaning and definitions of those terms (see Section II(a) below). The facts show Petitioner was apprehended in Washington, D.C., years after entering and, as such, he is not seeking admission. *See* ECF No. 18-1 ¶ 6.

6. On September 23, 2025, Duarte Escobar was issued a Notice to Appear, which charged him with being inadmissible to the United States (and thus removable from the United States) under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General and under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who, at the time of application for admission to the United States was not in possession of any valid entry document. *See* Ex. 1, ¶ 7; Am. Pet. Ex. A (ECF No. 9-1) (Notice to Appear).

Response:

Petitioner admits this statement.

7. Duarte Escobar was scheduled for an initial Master Calendar Hearing before the Annandale Immigration Court for October 6, 2025. *See* Ex. 1, ¶ 7.

Response:

Petitioner admits this statement.

8. On or about September 27, 2025, Duarte Escobar was transferred from Virginia to the Port Isabel Service Processing Center for detention. *See* Ex. 1, ¶ 8; Am. Pet. ¶¶ 2, 3, 7; Am. Pet.

Ex. B (ECF No. 9-2).

Response:

Petitioner admits this statement.

9. As a result of this transfer, the Immigration Court transferred venue to the Port Isabel Immigration Court. *See* Ex. 1, ¶ 8.

Response:

Petitioner admits this statement.

10. Duarte Escobar is currently scheduled for an initial Master Calendar Hearing for October 28, 2025, with the Port Isabel Immigration Court. *See* Ex. 1, ¶ 9.

Response:

Petitioner admits this statement.

11. As of October 16, 2025, Duarte Escobar has not filed a motion for custody redetermination with the Immigration Court. *See* Ex. 1, ¶ 10.

Response:

Petitioner admits this statement.

ARGUMENT

I. This Court has jurisdiction and Petitioner's claims are not barred.

a. Section 1252(g)

The Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("IIRIRA") provides:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). The Supreme Court has explained that § 1252(g) relates to “three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘*commence* proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. Am.- Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In that case, the Supreme Court explained that § 1252(g) does not preclude review of “the universe of deportation claims” and explained “[t]here are of course many other decisions or actions that may be a part of the deportation process” that may be reviewed. *Id.* In *Jennings v. Rodriguez*, the Supreme Court again explained that § 1252(g) does not “sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General” and solely “refer[s] to just those three specific actions themselves.” 83 U.S. 281, 294 (2018). The Eastern District of Virginia has previously rejected Respondents’ argument that § 1252(g) strips the court of jurisdiction over a habeas petition. *Hasan v. Crawford*, No. 1:25-cv-1408 at *8–9 (E.D. Va. Sept. 19, 2025).

Here, Petitioner does not challenge the commencement of his removal proceedings or whether Respondents can adjudicate his case. Rather, he challenges whether he can be detained pursuant to 8 U.S.C. § 1225(b)(2)(A) while his removal proceedings are pending. As such, this Court has jurisdiction.

b. 1252(b)(9)

Similarly, 8 U.S.C. § 1252(b)(9) also does not deprive this Court of jurisdiction. The statute provides:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in juridical review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2242 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision

of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

As the Supreme Court has explained, where a petitioner is “not asking for review of an order of removal” or “challenging any part of the process by which their removability will be determined, § 1252(b)(9) does not present a jurisdictional bar.” *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). The Fourth Circuit case relied on by Respondents, *Afanwi v. Mukasey*, 526 F.3d 788 (4th Cir. 2008), states only that § 1252(b)(9) strips courts of jurisdiction to review matters arising from removal proceedings, which does not include detention orders. This Court previously rejected Respondents’ argument in *Hasan*, explaining “Section 1252(b)(9) does not insulate detention orders from judicial review because they separate and apart from orders of removal.” No. 1:25-Cv-1408 at *7–8 (internal quotations omitted).

Again, this statute does not apply to Petitioner, who does not contest the removal process, a removal order, or Respondents’ initial decision to detain him. Rather, he challenges whether it is constitutional and lawful for Respondents to subject him to mandatory detention without bond pursuant to 8 U.S.C. § 1225(b)(2)(A), a claim that is not precluded by § 1252(b)(9).

II. Petitioner’s Detention under § 1225(b)(2) is unlawful.

a. Respondents’ argument disregards the meaning of the terms “seeking” and “admission.”

Respondents’ argument disregards the plain meanings of the terms “seeking” and “admission.” Section 1225(b)(2)(A) authorizes mandatory detention only if three conditions are met: the individual must be (1) an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt entitled to be admitted.” Although Petitioner may satisfy the first requirement as an “applicant for admission,” he does not satisfy the second, and Respondents’ argument that he is “seeking admission” ignores the meaning of both of those terms.

Congress defined “admission” as “the lawful *entry* of the alien *into* the United States after inspection and authorization by an immigration officer.” § 1101(a)(13)(A) (emphasis added). Additionally, “the use of a present participle, ‘seeking,’ necessarily implies some sort of present-tense action.” *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, at *8 (E.D. Cal. Sept. 23, 2025). Therefore, as this Court and others have recognized, the combination of these two terms means “actively seeking lawful entry.” See *Luna Quispe*, No. 1:25-cv-1471 at *9; see also *Lopez Benitez v. Francis*, No. 25 Civ. 5937, 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025); *Martinez v. Hyde*, No. CV 25-11613, 2025 WL 2084238, at *3-4 (D. Mass. 2025).

Respondents argue that, “[b]y simply being in the United States without having been admitted, Duarte Escobar is in fact actively seeking admission into the country.” ECF No. 18, at *7. However, Respondents’ understanding of the term “seeking admission” appears to be identical to the definition of “applicant for admission,” and this interpretation is at odds with basic canons of construction as it would render one of the terms superfluous. See *United States v. Menasche*, 348 U.S. 528, 538 (1955) (“It is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section, as the Government’s interpretation requires.”) (internal citations and quotations omitted); see also *Mendoza Gutierrez v. Baltasar*, No. 25-Cv-2720, at *16 (D. Colo. Oct. 17, 2025) (“being an applicant for admission is not synonymous with seeking admission under § 1225(b)(2) because such a reading of the statute would render the phrase seeking admission in § 1225(b) superfluous.”) (internal quotations omitted).

Additionally, Respondents’ contention that a noncitizen “must be actively seeking admission before he can, as a legal matter, be physically present and reside in the U.S.” is not true, see ECF No. 18, at *13, as it is possible to receive legal status without being admitted, see *Sanchez v. Mayorkas* 593 U.S. 409, 415 (2021) (explaining that an individual with Temporary Protected

Status was “in lawful status but not admitted”); *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013) (holding that a grant of asylum does not qualify as an “admission” to the United States). Therefore, Petitioner’s pursuit of legal status in the U.S. does not mean that he is “seeking admission” for purposes of § 1225(b)(2)(A).

Respondents also incorrectly rely on the Fourth Circuit’s decisions in *Lopez-Sorto v. Garland*, 103 F.4th 242 (4th Cir. 2024), and *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021), to support their argument that being present without admission is synonymous with seeking admission. See ECF No. 18, at *12–13. *Lopez-Sorto* addressed an entirely separate issue about whether parolees are considered to have “entered” the country, ultimately holding that noncitizens who have been paroled into the U.S. are not deemed to have entered. 103 F.4th at 252. The government further relies on dicta in a footnote from *Jimenez-Rodriguez*, see ECF No. 18, at *13, even though the Fourth Circuit explained that this issue related to a “statutory question beyond the scope of this appeal.” 996 F.3d at 194. Neither of these cases therefore lend support to Respondents’ argument.

Although Respondents argue that Petitioner’s case is different from this Court’s decision in *Hasan*, see ECF 18, at *14, Respondents neglect to mention that the facts in *Luna Quispe* are nearly identical to those here, No. 1:25-cv-1471. In *Luna Quispe*, this Court found that the petitioner, who had entered without inspection in March 2006 and was subsequently apprehended by ICE on August 25, 2025, was subject to detention under § 1226(a), not – as the government alleged – to § 1225(b)(2). *Id.* at *1, 11–12.

b. Respondents’ argument renders parts of § 1226(c) superfluous.

Respondents’ argument does, in fact, render parts of § 1226(c) superfluous, contrary to Respondents’ claim that it does not. ECF No. 18, at *10. “[O]ne of the most basic . . . canons” of

statutory interpretation is that “a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (internal brackets omitted). There are multiple provisions in § 1226(c) that mandate detention for certain inadmissible noncitizens, including § 1226(c)(1)(A), which applies to noncitizens who have not been admitted and have committed or been convicted of certain criminal offenses; § 1226(c)(1)(D), which applies to noncitizens who have not been admitted and are inadmissible for having engaged in specified terrorist activity; and § 1226(c)(1)(E), which was enacted earlier this year as part of the Laken Riley Act and applies to noncitizens who entered the U.S. without admission and were thereafter charged with, arrested for, convicted of, or admitted committing various offenses. As this Court noted in *Quispe-Ardiles*, “If § 1225(b) already required mandatory detention of all noncitizens who have not been admitted, these provisions would be meaningless.” 2025 WL 2783800 at *16; *Luna Quispe*, No. 1:25-cv-1471 at *10; *see also Hasan*, No. 1:25-cv-01408 at *17.

Respondents incorrectly claim that § 1226(c)(1) could apply to “lawful permanent residents who are inadmissible at the time of their initial entry to the United States or time of adjustment,” *see* ECF No. 18, at *15, yet permanent residents charged in such a manner can only be charged with deportability under § 1227(a)(1)(A), not with inadmissibility. These individuals would therefore not be subject to mandatory detention as inadmissible noncitizens under § 1226(c) but rather as deportable noncitizens. Respondents’ argument therefore does render superfluous the parts of § 1226(c) that apply to inadmissible aliens.

III. Petitioner is entitled to due process under the Fifth Amendment.

Respondents’ contention that noncitizens are not entitled to due process under the Fifth

Amendment is incorrect and contrary to over a century of precedent. The Fifth Amendment guarantees that “[n]o *person* shall be ... deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V (emphasis added). Courts have repeatedly explained that this guarantee applies to noncitizens, including those who have entered the U.S. illegally. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.”); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.”); *Yamataya v. Fisher*, 189 U.S. 86, 100–01 (1903) (noncitizen who entered country in violation of law cannot be “deprived of [her] liberty” without receiving “due process of law”); *United States v. Lopez-Collazo*, 824 F.3d 453, 461 (4th Cir. 2016) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.”); *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“[T]he government’s discretion to incarcerate non-citizens has always been constrained by the requirements of due process.”); *Abrego Garcia v. Noem*, No. 25-1404 at *5 (4th Cir. 2025) (“If today the Executive claims the right to deport without due process and in disregard of court orders, what assurance will there be tomorrow that it will not deport American citizens and then disclaim responsibility to bring them home?”).

Respondents' argument that noncitizens do not enjoy Fifth Amendment due process rights mistakenly relies heavily on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020) and *Nishimura Ekiu v. U.S.*, 142 U.S. 651 (1892). Both of these cases involved noncitizens *arriving* at the border, rather than noncitizens like Petitioner who are already in the U.S. *See Thuraissigiam*, 591 U.S. at 140 (holding that noncitizens seeking entry "ha[ve] only those rights regarding admission that Congress has provided by statute."); *Ekiu*, 142 U.S. at 160 (explaining that "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law" as applied to "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") (emphasis added). These cases only reiterate that noncitizens who have not yet entered the U.S. "stand[] on a different footing" than those who have "passed through our gates," even illegally. *See Mezei*, 345 U.S. at 212.

IV. Petitioner's Ongoing Detention Without a Bond Hearing Violates Petitioner's Due Process Rights.

Because Petitioner should be detained under § 1226(a), and because he is entitled to due process under the Fifth Amendment, his ongoing detention without a bond hearing violates not only the INA and federal regulations but also his right to due process. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors that this Court order Petitioner's release or that he be given a bond hearing before a neutral adjudicator. 424 U.S. 319 (1976).

First, Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). Petitioner does not argue, as

Respondents allege, that he has a “constitutional right to be released from custody during the pendency of removal proceedings.” ECF No. 28, at *25. Rather, as he has repeatedly claimed, the government has violated his due process rights by subjecting him to mandatory detention during the course of his removal proceedings. Respondents further claim that Petitioner’s “private interest is even more diminished when release into the United States would be an assistance to an ongoing violation of United States law,” ECF No. 28, at *25, yet, as this Court has explained, “Respondents fail to recognize that releasing Petitioner on bond...does not preclude the government from moving forward with its removal proceedings against Petitioner at the appropriate time,” *Luna Quispe*, No. 1:25-cv-01471 at *15.

Second, the risk of erroneous deprivation is high under the current procedures, and additional procedures would mitigate this risk. Civil detention is only valid when it is necessary to prevent danger to the community or a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In this case, Respondents have failed to demonstrate that Petitioner poses a danger or a flight risk. “At its foundation, due process prohibits detaining an individual without justification.” *Mohammed H. v. Trump*, No. CV 25- 1576 (JWB/DTS), 2025 WL 1692739, at *5 (D. Minn. June 17, 2025). The imposition of additional safeguards in the form of Petitioner’s release or a bond hearing would ensure that the government is only detaining those who actually pose a flight risk or a danger to the community. There is therefore a high risk of the erroneous deprivation of Petitioner’s liberty, and there are procedures that could alleviate this risk; as such, the second factor also weighs in favor of Petitioner.

Third, Respondents do not explain why the government’s interests in immigration enforcement would be harmed by Petitioner’s immediate release or release on bond, as he would remain subject to removal proceedings and Respondents have not shown that he is a flight risk.

See Luna Quispe, No. 1:25-cv-01471 (“Respondents do not explain why these interests would not be adequately protected by the individualized determination of an immigration judge as to whether an individual should be released on bond under section 1226(a) ... there is currently no order of removal pending against Petitioner, and he otherwise does not pose a flight risk or a risk to the public and has thus far fully cooperated with Respondents.”). The third factor therefore also weighs in Petitioner’s favor.

V. Petitioner requests this Court order his immediate release or release on bond.

Petitioner requests this Court order his immediate release or that he be given a bond hearing to determine his release. Although Respondents contest whether Petitioner can be immediately released, this Court has done so in *Teyim v. Perry*, in which it ordered the petitioner’s immediate release from custody and that he be given a bond hearing within fourteen days of the order. No. 1:25-cv-01615 at *5. Alternatively, Petitioner requests that this Court order that he be given a bond hearing at which he bears the burden of proof showing he is not a flight risk or danger to the community.

CONCLUSION

For the foregoing reasons, Petitioner opposes Respondents’ motion for summary judgment.

Dated: October 22, 2025

Respectfully Submitted,

/s/ Katherine Soltis
KATHERINE SOLTIS
VA Bar No. 89590
Taylor Diaz & Soltis, PLLC
200 Little Falls St # 207
Falls Church, VA 22046
571-351-2227 (phone)
571-620-2221 (fax)

katie@tdsimmigrationlaw.com

Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, as well as all attachments thereto, to this Court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to counsel of record for the respondents. Additionally, pursuant to Fed. R. Civ. Pro. 5, on October 22, 2025, I mailed the foregoing by certified mail to the attorney for all respondents at:

Jonathan H. Hambrick
Attorney for the Respondents
Office of the United States Attorney
919 East Main Street, Suite 1900
Richmond, Virginia 23219

Date: October 22, 2025

Respectfully Submitted,

/s/ Katherine Soltis
KATHERINE SOLTIS
VA Bar No. 89590
Taylor Diaz & Soltis, PLLC
200 Little Falls St # 207
Falls Church, VA 22046
571-351-2227 (phone)
571-620-2221 (fax)
katie@tdsimmigrationlaw.com