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8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 CLENE COSTA DIAS,

13 Petitioner,

14 v.

15 TONYA ANDREWS, in her official capacity as
Facility Administrator of Golden State Annex
16 Detention Facility; SERGIO ALBARRAN, in
his official capacity as Acting Field Office
17 Director of the Immigration and Customs
Enforcement, Enforcement and Removal
18 Operations, San Francisco; TODD M. LYONS,
Acting Director of United States Immigration
19 and Customs Enforcement; KRISTI NOEM, in
her official capacity as Secretary of the
20 Department of Homeland Security; and
21 PAMELA BONDI, in her official capacity as
22 Attorney General of the United States

23 Respondents.
24

CASE NO. 1:25-cv-01814-DJC-AC

**RESPONSE TO MOTION FOR TEMPORARY
RESTRAINING ORDER**

25 **I. INTRODUCTION**

26 Petitioner is an applicant for admission to the United States who is subject to mandatory
27 detention under 8 U.S.C. § 1225(b)(2) during the pendency of his removal proceedings. For the reasons
28

set forth below, this Court should deny the motion for a temporary restraining order.¹ The government has no objection to converting the motion for a temporary restraining order into a motion for a preliminary injunction, and does not request a hearing.

II. BACKGROUND

Petitioner is a native and citizen of Russia who entered the United States on or around June 23, 2023. Gallenkamp Declaration ¶ 7; Exh. 1. He was apprehended by the Department of Homeland Security (DHS) and subsequently released on his own recognizance on July 2. Gallenkamp Declaration ¶ 7; Exh. 2. On June 6, 2025, the Petitioner was detained pursuant to 8 U.S.C. § 1225(b)(2). Gallenkamp Declaration ¶ 9. On October 22, 2025, the Immigration Judge ordered Petitioner removed to Russia but withheld removal. Gallenkamp Declaration ¶ 9; Exh. 4. On November 24, 2025, the DHS appealed the withholding of removal decision to the Board of Immigration Appeals (BIA), which was accepted by the BIA on December 15, 2025. Gallenkamp Declaration ¶ 15. The Petitioner remains detained under 8 U.S.C. § 1225(b)(2).

III. DISCUSSION

A. Petitioner is Subject to Mandatory Detention

8 U.S.C. § 1225(b) governs the detention of “applicants for admission” during the pendency of their removal proceedings. Applicants for admission fall into three categories. The first two categories consist of: (1) arriving aliens who are inadmissible because they lack proper entry documents or have falsified/misrepresented their entry documents; and (2) those aliens who have not established to the satisfaction of an immigration officer that they have been physically present in the United States for two years or more. Aliens that fall into either one of these two categories: (1) are subject to expedited removal; and (2) are subject to mandatory detention during the expedited removal process. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV). If an alien who is subject to an expedited removal order raises a fear of

¹ The Government moves to dismiss all respondents other than Tonya Andrews from this case. A habeas petitioner may only name the officer having custody of him as the respondent. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996). Here, the petitioner’s custodian is the facility administrator at the Golden State Annex located in McFarland, California, where Tonya Andrews serves as administrator. Respondents Pamela Bondi, Kristi Noem, Sergio Albarran, and Todd M. Lyons are not proper respondents to the § 2241 habeas petition.

1 persecution in his home country, the immigration officer refers the alien for a “credible fear interview”
2 that is conducted by an asylum officer. If the asylum officer finds that the alien has a credible fear of
3 persecution, the alien is then moved to the standard removal proceeding (a removal proceeding under 8
4 U.S.C. § 1229a), but the alien is still subject to mandatory detention during that standard removal
5 proceeding.

6 The third category of applicants for admission, which applies here, consists of those aliens who
7 are “seeking admission” and who an immigration officer has determined are “not clearly and beyond a
8 doubt entitled to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A). Aliens who fall within this third category
9 are subject to the standard removal proceeding (not to an expedited removal proceeding), but they are
10 nevertheless subject to mandatory detention until their removal proceedings have concluded. *See* 8
11 U.S.C. § 1225(b)(2)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (stating that aliens
12 subject to section 1225(b)(1) and aliens subject to section 1225(b)(2) are both subject to mandatory
13 detention for the duration of removal proceedings); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025)
14 (stating that “for aliens arriving in and seeking admission into the United States who are placed directly
15 in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
16 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).

17 Petitioner falls squarely within § 1225(b)(2). He was apprehended near the border in June 2023,
18 treated as an applicant for admission, and placed in § 1229a proceedings. Although he was later paroled
19 into the United States, parole does not alter his statutory classification as an applicant for admission.
20 His removal order is not final because DHS has appealed. Accordingly, his removal proceedings have
21 not concluded, and § 1225(b)(2) continues to mandate his detention.

22 Under this statutory scheme, detention is mandatory, and the only mechanism for release is
23 parole under 8 U.S.C. § 1182(d)(5). DHS exercised its discretion not to re-parole Petitioner following
24 his June 2025 arrest. Nothing in § 1225(b)(2) authorizes a bond hearing or any other form of custody
25 redetermination.

26 B. There is no Constitutional Right to an Immigration Court Bond Hearing and Petitioner’s Right to
27 Due Process has not been violated

28 Petitioner argues that his detention should be analyzed under 8 U.S.C. § 1231 because he has a

1 removal order. But because DHS appealed that order, it is not final, and § 1231 does not apply. His
2 detention is governed by § 1225(b)(2), not § 1231. *See Jennings*, 583 U.S. at 287–99.

3 As an applicant for admission, Petitioner is treated as if he were stopped at the border, regardless
4 of his physical presence in the United States. *See Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th
5 Cir. 1995) (en banc); *United States v. Thuraissigiam*, 591 U.S. 103, 139 (2020). “[A]pplicants for
6 admission have virtually no constitutional rights regarding their applications.” *Valencia v. Mukasey*,
7 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33–34 (1982)).
8 “Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is
9 concerned.” *Shaughnessy*, 338 U.S. at 544.

10 “Applicants for admission” “fall into one of two categories, those covered by § 1225(b)(1) and
11 those covered by § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at
12 287 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission
13 until certain proceedings have concluded.”). They are not entitled to custody redetermination hearings,
14 whether pre- or post-detention. *Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2)
15 says anything whatsoever about bond hearings.”). The fact that petitioner is an applicant for admission
16 resolves the dispute in this case because applicants for admission must be detained and they are not
17 entitled to bond hearings.

18 Nor does *Zadvydas v. Davis*, 533 U.S. 678 (2001) assist Petitioner. *Zadvydas* interpreted § 1231,
19 which governs detention after a removal order becomes final. Because Petitioner’s removal order is on
20 appeal, § 1231 has not yet been triggered. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir.
21 2008).

22 Congress has long authorized immigration officials to charge aliens as removable from the
23 country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *Demore v.*
24 *Kim*, 538 U.S. 510, 523–26 (2003); *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing
25 longstanding administrative arrest procedures in deportation cases). In the Immigration and Nationality
26 Act, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a
27 decision on removal, during the administrative and judicial review of removal orders, and in preparation
28 for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. “Detention during removal proceedings is a

1 constitutionally valid aspect of the deportation process.” *Velasco Lopez v. Decker*, 978 F.3d 842, 848
2 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523 n.7) (“prior to 1907 there was no provision permitting
3 bail for any aliens during the pendency of their deportation proceedings”); *Carlson v. Landon*, 342 U.S.
4 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure.”); *Reno v. Flores*, 507
5 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation,
6 committing that determination to the discretion of the Attorney General.”).

7 The government’s interest in protecting the public and preventing deportable non-citizens from
8 fleeing are strong and compelling. *See e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir.
9 2022) (government’s interests in “protecting the public from dangerous criminal aliens” and
10 “increas[ing] the chance that, if ordered removed, the aliens will be successfully removed” are “interests
11 of the highest order that only increase with the passage of time”).

12 The courts have recognized that “there is little question that the civil detention of aliens during
13 removal proceedings can serve a legitimate government purpose, which is ‘preventing deportable ...
14 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that,
15 if ordered removed, the aliens will be successfully removed.’” *Prieto–Romero v. Clark*, 534 F.3d 1053,
16 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

17 The mandatory detention statute does not provide for bond hearings as demanded in the petition.
18 Congress in the INA did provide for the possibility of parole in the discretion of the agency. 8 U.S.C.
19 § 1182(d)(5). Due process requires no further relief than that already provided in the parole process
20 authorized by Congress.

21 C. The Petitioner cannot challenge his conditions of detention in a habeas proceeding.

22 A habeas petition is not the proper mechanism for challenging conditions of detention. *Pinson v.*
23 *Carvajal*, 69 F.4th 1059, 1065, 1073-75 (9th Cir. 2023); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.
24 1991). Conditions of detention/confinement challenges, rather, are properly brought in a civil rights
25 action. *Pinson*, 69 F.4th at 1075-76; *Badea*, 931 F.2d at 574; *Brown v. Blanckensee*, 857 F. App’x 289,
26 290 (9th Cir. 2021); *Alcala v. Rios*, 434 F. App’x 668, 669-70 (9th Cir. 2011). Because the Petitioner
27 has improperly brought his conditions of confinement claim as a habeas rather than a civil rights action,
28 he cannot succeed on the merits.

IV. CONCLUSION

For the reasons set forth above, the Court should deny the motion for a temporary restraining order.

Dated: December 16, 2025

ERIC GRANT
United States Attorney

By: /s/ Antonio J. Pataca
ANTONIO J. PATACA
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Attorneys for Respondent