

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

YUDELKA MEJIA,
next friend of YASHAEL A. ALMONTE MEJIA,

Petitioner,

v.

No. 26-cv-0084-JB-JMR

DORA CASTRO, *Warden of the Otero County Processing Center*,
MARY DE ANDA-YBARRA, *Field Officer Director of*
Enforcement and Removal Operations, El Paso
Field Office, Immigration and Customs
Enforcement; TODD LYONS, *Acting Director*
Immigration and Customs Enforcement;
KRISTI NOEM, *Secretary, U.S. Department*
of Homeland Security; and PAMELA BONDI,
U.S. Attorney General,

Respondents,

**MOTION TO DISMISS AND RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Respondents, the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), and the United States Attorney General (“USAG”) (collectively “Respondents”), hereby submit this Motion to Dismiss and Response to Petitioner’s Writ of Habeas Corpus (Doc. 1), Emergency Motion for Release or Conditional Parole (Doc. 3) and Emergency Motion to Stay Credible Fear Interview and Expedited Removal Actions (Doc. 4), pursuant to Court order¹ (Doc. 11).

¹ Respondents acknowledge that this Response is not timely pursuant to the Court’s original order (Doc. 6). The Court may take judicial notice that the service process has recently changed on habeas matters in the District of New Mexico. On a number of recent cases, that transition has caused an unintentional delay in assignment and response. Respondents did not willfully disregard the Court’s order for a response and respectfully request that this unintentional delay be excused.

Petitioner is a noncitizen of the United States, who entered the country unlawfully without admission or parole, and is currently detained pending removal proceedings before the U.S. Immigration Court. Petitioner brings several filings and requests before the Court; however, the central question presented is whether Petitioner should be subject to mandatory detention under 8 U.S.C. § 1225 or discretionary detention under 8 U.S.C. § 1226(a). Petitioner asks the court to order release or a custody review. *See* Doc. 1 at 16. Respondents request the Court to deny or dismiss the Petition (Doc. 1) and subsequent Motions (Docs. 3, 4). Petitioner is appropriately detained pursuant to § 1225(b) per guidance from the BIA in *Matter of M-S-*, 27 I. & N. Dec. 509, 509 (2019) and thus there has been no Immigration and Nationality Act (“INA”) or due process violation. Alternatively, Petitioner would also be subject to mandatory detention under § 1225(b) pursuant to *Matter of Yajure Hurtado*, *See* 29 I. & N. Dec. 216 (BIA 2025). Even should this Court determine that Petitioner is entitled to discretionary detention under 8 U.S.C. § 1226(a), the appropriate relief would be entitlement to a bond review to determine custody status pending ongoing removal proceedings, rather than immediate release.

FACTUAL BACKGROUND

Petitioner is a native and citizen of the Dominican Republic, who entered the United States without admission or parole on or about June 2, 2024, near Tecate, CA. *See* Exhibit A, I-213. Petitioner was apprehended by Border Patrol and charged with removability pursuant to INA § 212(a)(6)(A)(i). *Id.* Although subject to expedited removal, Petitioner was served a Notice to Appear and released onto the non-detained docket. *Id.*

On May 30, 2025, Petitioner was encountered by ICE ERO (“Enforcement and Removal Operations”) at the Miami Immigration Court. *Id.* On that date, DHS filed a Motion to Dismiss regular “240” removal proceedings against Petitioner in order to pursue expedited removal. *See*

Exhibit B, Order on Motion to Dismiss. The Immigration Judge (“IJ”) granted this request as Petitioner remained eligible for expedited removal proceedings. *Id.* Petitioner was then taken into custody for processing as an expedited removal. *See, e.g.*, 8 U.S.C. § 1225(b). Petitioner appealed the IJ’s dismissal to the Board of Immigration Appeals (“BIA”). *See* Exhibit C, BIA Opinion. On December 19, 2025, the BIA dismissed Petitioner’s appeal. *Id.*

Upon information and belief, on January 9, 2026, Petitioner claimed a fear of returning to the Dominican Republic and on January 16, 2026, Petitioner received a positive credible fear determination from an asylum officer. Petitioner’s removal proceedings, now requiring full adjudication of an asylum claim, was removed from expedited removal and returned to regular “240” removal proceedings.

Petitioner presently is detained pursuant to § 1225(b) pending those removal proceedings before the U.S. Immigration Court.

LEGAL BACKGROUND

A. Detention of “Arriving Aliens” Under § 1225 vs. § 1226

Generally, when a noncitizen² arrives in the United States they are “an applicant for admission,” who must “be inspected by immigration officers” to ensure that they may be admitted into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as “arriving aliens” and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; *see also* 8 U.S.C. § 1225(b)(1)(A)(i). Aliens who enter illegally, but are detained shortly after unlawful entry, cannot be said to have “effected an entry” and remain, similar to an alien detained at a port of entry, “on the threshold” and subject to § 1225. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,

² The applicable statutes and regulations often refer to these individuals as “aliens”. For purposes of clarity, the use of the alternative term “noncitizen” in this brief is not intended to imply a legal distinction.

140 (2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). These arriving aliens can be subject to an expeditious process to remove them from the United States. 8 U.S.C. § 1225(b)(1). Under this process, known as expedited removal, arriving aliens who entered illegally, lack valid entry documentation or make material misrepresentations shall be “order[ed]...removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i). Even if an arriving alien is not determined to be inadmissible pursuant to § 1225(b)(1), they may still be subject to mandatory detention. *See e.g.*, 8 U.S.C. § 1225(b)(2)(A). An applicant who is not determined to be inadmissible nonetheless “shall be detained for a [removal] proceeding” unless the examining immigration officer determines that the noncitizen is “clearly and beyond a doubt entitled to be admitted.” *Id.* In comparison, when a noncitizen is charged as removable *from within the United States*, traditionally § 1226 “generally govern[ed] the process of arresting and detaining...aliens pending their removal.” 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under § 1226(a), “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a).

The difference between these noncitizens is significant for due process purposes. *Thuraissigiam*, 591 U.S. at 106–07, 138–40; *See also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the “unique constitutional status of arriving aliens with no ties to the United States”). For example, the Supreme Court considered whether § 1225(b) imposes a time limit on the length of detention and whether such noncitizens detained under this authority have a statutory right to a bond hearing. *Jennings*, at 296–303 (The Supreme Court held that “nothing in the statutory text [of § 1225(b)] imposes any limit on the length of detention” nor “says anything

whatsoever about bond hearings.”) The sole means of release for noncitizens detained pursuant to § 1225(b) is temporary parole *at the discretion of DHS* under 8 U.S.C. § 1182(d)(5). *Id.* at 300.

For “more than a century” the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Thuraissigiam*, 591 U.S. at 131; *See also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (“the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that 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”); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (an alien on the threshold of initial entry stands on a different footing: “Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned”). The Supreme Court has consistently reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other than those expressly provided by statute. *See, e.g., Thuraissigiam*, 591 U.S. at 107 (a noncitizen seeking initial entry “has no entitlement to procedural rights other than those afforded by statute”). Accordingly, Congress may authorize detention, even for prolonged periods of time, and such detention does not deprive § 1225(b) aliens “of any statutory or constitutional right.” *Id.* An alien who enters the country illegally is treated as an “applicant for admission” and has only those rights that Congress has provided by statute. *Thuraissigiam*, 591 U.S. at 140. The due process clause requires nothing more. *Id.*

B. Statutory Framework and History

I. The Pre-IIRIRA Framework Gave Preferential Treatment to Noncitizens Unlawfully Present in the United States

Prior to 1996, the INA treated noncitizens differently based on whether they had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see also Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Noncitizens who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, noncitizens who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)). Thus, the INA’s prior framework distinguishing based on physical “entry” had:

the ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had ‘actually presented themselves to authorities for inspection ... were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without

inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”).

II. IIRIRA Eliminated the Preferential Treatment of Noncitizens Unlawfully Present in the United States and Mandated Detention of “Applicants for Admission”

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of a noncitizen into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added).

In other words, the immigration laws would no longer distinguish based on whether the noncitizen had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been *lawfully* admitted.” *See* House Rep., at 226 (emphasis added); *see also Hing Sum v. Holder*, 602 F.3d at 1100. IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in § 1225 and § 1226:

Section 1225(a): Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. That provision states that noncitizens “present in the United States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant for admission:”

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added).

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited “240” proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for “expedited removal” proceedings, which can potentially be applied to a subset of noncitizens—those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii); see also *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020). Noncitizens in this category remain subject to mandatory detention even if later transferred to “240” proceedings for adjudication of an asylum claim. See, e.g., *Matter of M-S-*, 27 I. & N. Dec. 509, 509 (2019); see also INA § 235(b)(1)(B)(iii)(IV) (“shall be detained pending a final determination of credible fear”).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

While § 1225(b)(2) does not allow for release on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole ... been served,” the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of noncitizens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of noncitizens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General “may” either “continue to detain the arrested alien” or release the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2). That “default rule,” however, does not apply to certain criminal noncitizens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c).

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of” certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

III. *Matter of Yajure Hurtado*

For many years after IIRIRA, DHS treated noncitizens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. On July 8, 2025, DHS revisited its legal position on detention and release authorities and issued interim guidance that brought practices in line with the statute’s plain text. Specifically, DHS concluded that all noncitizens who enter the country without being admitted (or who otherwise arrive in the United States without proper documentation) are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.

On September 5, 2025, the Board of Immigration Appeals (“BIA”) adopted this interpretation through a precedential³ opinion, *Matter of Yajure Hurtado*, clarifying that aliens apprehended in the interior of the United States, even after prolonged presence in the United States, are also considered to be “arriving aliens” and are properly detained under 8 U.S.C. § 1225(b)(2).

³ “Precedential” is a specific term in immigration law, which identifies decisions from the BIA which are binding authorities on the U.S. Immigration Court. The use of this term is not intended to imply that it is binding authority over this Court.

29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure Hurtado*, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.* at 220.

The BIA concluded that noncitizens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the argument that “because [petitioner] has been residing in the interior of the United States for almost 3 years...he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* Specifically, if the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA further rejected arguments that: (1) the immigration judge’s interpretation of § 1225(b)(2)(A) would render superfluous § 1226(c)(1)(A); (2) the relevant legislative history of the INA supports an interpretation that would permit bond hearings for individuals present in the United States without admission; (3) DHS’s “longstanding practice” indicates that aliens present without admission are entitled to bond hearings; and (4) *Matter of Q. Li*, 29 I. & N. 66 (BIA 2025), supports a conclusion that aliens detained with a warrant of arrest are detained under § 1226(a). *Id.* at 221–27.

ARGUMENT

A. Petitioner is Lawfully Detained Pursuant to § 1225(b)

Petitioner’s procedural history, although a winding road, ends in a clear place. Petitioner was initially subject to expedited removal upon his unlawful entry into the United States and then returned to expedited removal proceedings by the U.S. Immigration Court, a decision that was subsequently affirmed by the Board of Immigration Appeals. *See* Exhibits B, C. Under expedited removal, petitioners are entitled to a credible fear interview to screen potential asylum cases. *See* 8 U.S.C. § 1225(B)(1)(A)(ii). Here, Petitioner was referred for a screening interview, at his request, and found to have a credible fear, entitling him to full adjudication of an asylum claim in “240” proceedings. However, Petitioner remains subject to mandatory detention under 8 U.S.C. § 1225 while that asylum claim is pending. *See Matter of M-S-*; *see also* INA § 235 (b)(1)(B)(iii)(IV) (“shall be detained pending a final determination of credible fear”).

For this reason, Petitioner’s detention during the pendency of his asylum proceedings is lawful and the Court should dismiss all claims challenging his detention. *See generally* Docs. 1, 3, 4. Respondents contend that this authority resolves the case, however, in an abundance of caution and due to the breadth of claims and filings, make further alternative argument regarding additional authorities for detention.

B. Alternatively, § 1225(b) Mandates Detention of Noncitizens Who Are Present in the United States Without Having Been Lawfully Admitted.

If the Court found the reasoning articulated in *Matter of M-S-* inapplicable or unpersuasive, additional detention authority would nonetheless exist. Under the plain language of § 1225(b)(2), DHS is required to detain all noncitizens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen has been in the United States or how far from the border they ventured. Section 1225(a) defines

“applicant for admission” to encompass a noncitizen who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde*, 2025 WL 3131942, at *3. Thus, a noncitizen who enters the country without permission is and remains an applicant for admission, regardless of the duration of the noncitizen’s presence in the United States or distance from the border.⁴ As the geographic and temporal limits in the neighboring provision, § 1225(b)(1), demonstrate, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Id.* at *4.

It is understood that Respondents previously operated under a different understanding of § 1225(b)(2)(A), such that noncitizens present in the interior of the United States who had entered without admission have historically been detained under Section 1226(a). However, past practice does not justify disregard of clear statutory language. *See, e.g., Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 329 (2015). For example, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that were later deemed incompatible with statutory text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). A “nontextual” practice, even longstanding ones, cannot upend plain statutory meaning upon review. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the

⁴ This reading is consistent with the everyday meaning of the statutory terms. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (to someone for something)”), *with id.* at 1299 (“seek” means “to request, ask for”). For example, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, a noncitizen who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking admission” to the United States.

Government’s prior understanding as “nontextual” and unsupported by any “thorough, reasoned analysis”).

A contrary view would make mandatory detention turn on the happenstance of when a noncitizen attempts to prove admissibility (or how successfully/unsuccessfully a noncitizen illegally enters the United States). *See, e.g., United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not “presume lightly” that statute’s application will turn on “arbitrary” issue of timing). There is no reason why Congress would desire mandatory detention to depend on the timing of when a noncitizen attempts to show admissibility (or how successful/unsuccessful an illegal entry attempt was), particularly given how susceptible that rule is to manipulation by the noncitizen’s own actions.

Some district courts have rejected Respondents’ argument based on language in *Jennings* where the Supreme Court described the detention authorities in § 1225(b) and § 1226, and in that context summarized § 1226 as applying to aliens “already in the country”:

In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings, 583 U.S. at 289; *see also id.* at 288 (characterizing § 1226 as applying to aliens “once inside the United States”). However, Respondents’ do not view this argument as inconsistent with that language: it allows that § 1226 is the exclusive source of detention authority for the substantial category of noncitizens who are were admitted into the United States (and so are “in the country”) but are now removable. *Jennings* refers to noncitizens who are “in and admitted to the United States.” 8 U.S.C. § 1227(a). The opinion’s reference to noncitizens “present in the country” specifically cites § 1227(a), which covers only *admitted* noncitizens. *See Jennings*, 583 U.S. at

288. Moreover, nothing in the quoted language from *Jennings* suggests that § 1226 is the *sole* detention authority that applies to “aliens already in the country.”

C. Petitioner Would Also Be Appropriately Classified under § 1225 per *Hurtado*

Petitioner, under the *Hurtado* decision, would fall squarely within the ambit of § 1225(b)(2)(A)’s mandatory detention requirement. Petitioner would be “applicant[s] for admission” to the United States, i.e., noncitizens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress’s broad language here is intentional, an undocumented noncitizen is to be “deemed for purposes of this chapter an applicant for admission.” *Id.* Petitioner is “deemed” applicants for admission based upon 1) the undocumented status and 2) that Petitioner has not demonstrated to an examining immigration officer he is “clearly and beyond a doubt entitled to be admitted,” making detention mandatory under § 1225. *See* 8 U.S.C. § 1225(b)(2)(A).

Other courts, including in the District of New Mexico and the Fifth Circuit Court of Appeals, have applied a plain text reading of § 1225 in Respondent’s favor – particularly in cases where a petitioner has taken affirmative steps to “apply for admission” – and the Court should do the same here. *See, e.g., Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026); *Singh v. Noem*, Case 2:25-cv-01110-JB-KK at *72 (D.N.M. Jan. 20, 2026) (finding that § 1225(b)(2) mandatory detention was lawfully applied and sustaining objections to classification under § 1226); *Lucero v. Field Off. Dir.*, No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025) (finding that noncitizen, who acknowledged that he was never admitted, remained an applicant for admission); *Coronado v. Secretary, Dep’t of Homeland Security*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (finding that § 1225(b)(2) applied to petitioner, a noncitizen who entered the country without inspection and resided in the country for

several years); *Suarez v. Noem*, No. 1:25-cv-00202, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (finding that noncitizen, who had been in the country for approximately 20 years, was never lawfully admitted and was properly detained without bond under § 1225); *Valencia v. Chestnut*, No. 1:25-CV-01550-WBS-JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (denying motion for temporary restraining order because petitioner, a noncitizen living in the country for 29 years, was unlikely to succeed on the merits of his statutory arguments that he was not an “applicant for admission” under § 1225); *Mejia Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (finding that noncitizen, who had been in the country continuously for approximately 40 years but never lawfully “admitted,” was an “applicant for admission” based on the plain meaning of § 1225); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding that § 1225(b) applied despite noncitizen’s presence in the country for over ten years and noting “overlap” between § 1225 and § 1226); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding *Matter of Yajure Hurtado* supported by the plain language of § 1225, and that such an interpretation does not render § 1226 nor amendments to the Laken Riley Act superfluous); *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that noncitizen, who had been in the country for approximately twenty years, remained an “applicant for admission” upon straightforward application of the statute). Respondents acknowledge that a number of courts, including in the District of New Mexico and the Seventh Circuit Court of Appeals, have made contrary findings on this emergent issue. *See, e.g., Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025); *Vega Uribe v. Noem*, 2026 WL 127621 (D.N.M. Jan. 16, 2026); *Cortez-Gonzales v. Noem*, 2025 WL 3485771 (D.N.M. Dec. 4, 2025).

As Petitioner is also properly classified under § 1225 per the BIA guidance in *Hurtado*, there has been no violation of the INA. Further, there could be no Fifth Amendment due process violation as Petitioner would have only those rights that Congress has specifically provided by statute, which have been provided. *See generally United States v. Verdugo-Urquidez*, 494 U.S. 259, 270–71 (1990); *Thuraissigiam*, 591 U.S. at 131, 140; *Jennings*, at 296–303; *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *see also* 8 U.S.C. § 1182(d)(5).

The Court should therefore deny or dismiss Petitioner’s Fifth Amendment and INA related claims. *See* Doc. 1 at 15 (Counts I, III, VI).

D. Length of Petitioner’s Detention Not Unconstitutional

Petitioner argues that the length of his detention, now approaching eight months, is presumptively unconstitutional. Petitioner provides no statutory, regulatory, case law or other authority for this assertion. In fact, the law is well-established to the contrary. *See, e.g., Jennings*, at 296–303. Even were this Court to find that 8 U.S.C. § 1226 should govern Petitioner’s detention, rather than 8 U.S.C. § 1225(b) the *eligibility for bond review* would be the constitutional issue, not the *length of detention* pending removal proceedings. If, for example, Petitioner remained detained pursuant to 8 U.S.C. § 1226(a) due to findings of dangerousness and flight risk, detention would still be permissible as the immigration case proceeds.

The Court should therefore deny or dismiss Petitioner’s claims related to unlawfully prolonged detention. *See* Doc. 1 at 15 (Count II).

E. Should the Court Find § 1226 Governs, Bond Review is Only Appropriate Remedy

Should the Court agree with Petitioner’s contention that classification under § 1226, rather than § 1225, is appropriate, the subsequent relief, if any, would be to provide Petitioner that status: classification under § 1226 with eligibility for a bond review in the normal course.

For example, in the context of noncitizens detained under §1226(c), courts have repeatedly held that they lack authority to order a mandatory detainee’s release pending conclusion of his immigration proceedings. *See generally Nyamekye v. Oddo*, 2023 WL 9271844, at *5 (W.D. Pa. Mar. 28, 2023) (denying request for immediate release and noting lack of authority to support such a request); *Davis v. Warden of Pike Cnty. Corr. Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022) (“The only remedy for an alien challenging their mandatory detention is a bond hearing”) (citing *Hernandez T. v. Wolf*, 2020 WL 634235, at *3 (D.N.J. Feb. 11, 2020)). Thus, even if a bond hearing was an available remedy for Petitioner, granting immediate release is not warranted. The Court should not circumvent the U.S. Immigration Court nor infringe upon its discretionary authority. The appropriate relief would be an order granting classification under § 1226, from which the U.S. Immigration Court would then adjudicate as any other § 1226 case (starting with an evidentiary bond review proceeding).

This position is further supported by the jurisdictional bar of 8 U.S.C. § 1226(e), which strips the Court of jurisdiction to review “discretionary judgment[s] regarding the application of [§1226]. *See* 8 U.S.C. § 1226(e). Section 1226(e) further directs that “[n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the revocation or denial of bond or parole.” *Id.* Had Respondents initially classified Petitioner as eligible for bond review under § 1226, the result of that bond review would not be subject to judicial review. It would therefore make little sense for the Court to impose its own judgement on bond (or release) upon the U.S. Immigration Court at this stage.

F. Petitioner’s Remaining Claims and Requests

Petitioner makes several additional claims and requests that are either moot or fail to state a claim upon which this Court may grant relief:

Failure to Conduct a Credible Fear Screening (Doc. 1 at 15, Count IV)

Petitioner has been provided a credible fear screening, which resulted in a positive finding. Petitioner is therefore no longer under expedited removal proceedings and is pursuing an asylum claim. This claim is moot.

Denial of Access to Counsel (Doc. 1 at 15, Count V)

Petitioner provides no evidence that Respondents have denied him access to counsel in violation of 8 U.S.C. § 1362. Petitioner has also provided no authority to support an assertion that proceedings without counsel per se render the process fundamentally unfair. Further, Petitioner has provided no authority to support an argument that proceeding without counsel entitles him to the relief sought. For these reasons, Petitioner has failed to state a claim upon which this Court may grant relief, and there has been no statutory or constitutional violation, nor denial of access to counsel, as a matter of law.

Emergency Motion for Release or Conditional Parole (Doc. 3)

Petitioner restates the primary arguments raised in his original Petition (Doc. 1) while requesting expedited action due to an upcoming credible fear interview. As the credible fear interview has been completed, Respondents argue this request is either moot or duplicative of the Petition (Doc. 1) and does not raise additional claims.

Request to Stay Credible Fear Interview and Expedited Removal Actions (Doc. 4)

Petitioner has been provided a credible fear interview which resulted in a positive determination. As Petitioner is now afforded full adjudication of an asylum claim his removal is precluded pending that adjudication. This claim is moot.

CONCLUSION

The Court should deny or dismiss the Petition for Writ of Habeas Corpus (Doc. 1) as

Petitioner is appropriately classified under § 1225 pursuant to BIA guidance in *Matter of M-S-*, or in the alternative, *Hurtado*, and there has been no statutory or constitutional violation as a matter of law. For these reasons the Court should deny or dismiss the Petition (Doc. 1) and subsequent Motions (Docs. 3, 4).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey 2/12/26
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