UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

[redacted]

Petitioner,

v.

DERRICK STAMPER, Chief Patrol Agent, Houlton Sector, U.S. Customs and Border Protection, RODNEY SCOTT, Commissioner, U.S. Customs and Border Protection, DAVID WESLING, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General,

Respondents.

No. 2:25-cv-00479-SDN

RETURN AND RESPONSE TO ORDER TO SHOW CAUSE
IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

The Respondents, by and through undersigned counsel, oppose Petitioner [redacted] Petition for a Writ of Habeas Corpus. Dkt. #1, September 18, 2025 (the "Petition" or "Pet."). Petitioner's arrest and detention was initiated by U.S. Customs and Border Protection ("CBP") personnel in Maine. Petitioner was subsequently transported from Maine to the Plymouth County Correctional Facility in Massachusetts and transferred to U.S. Immigration and Customs Enforcement ("ICE") custody, where he remains. ICE submits that the true cause of Petitioner's detention is pursuant to 8 U.S.C. § 1225(b). *See* 28 U.S.C. § 2243.

I. Introduction

To warrant a grant of the writ of habeas corpus, Petitioner bears the burden of proving by a preponderance of the evidence that his custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3); *see also Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009); *Farrell v. Lanagan*, 166 F.2d 845, 847 (1st Cir. 1948). He cannot meet this burden. Petitioner is now in ICE Enforcement and Removal Operations ("ERO") custody in Massachusetts, rather than CBP custody in Maine. CBP lawfully arrested and detained Petitioner initially, before transferring him to the custody of ICE. ICE maintains mandatory detention authority to hold Petitioner without bond pursuant to 8 U.S.C. § 1225(b)(2). Even were this Court to alternatively conclude that Petitioner is instead detained pursuant to the broad civil arrest and detention authority provided under 8 U.S.C. § 1226(a), Petitioner could nonetheless avail himself of the various due process protections provided under that provision. All Petitioner's available remedies forming the basis of his application also must first be exhausted, which has not occurred here. Accordingly, Petitioner's detention does not violate the Due Process Clause of the Fifth Amendment.

II. Background

According to his Petition, Petitioner, an Ecuadoran national, illegally entered the United States in about June 2023. Dkt. 1 at 1. On January 13, 2025, CBP detained Petitioner pursuant to 8 U.S.C. § 1226(a). *See id.*, Ex.2. Petitioner was ordered to appear before an immigration judge on May 20, 2025, in Chelmsford, Massachusetts, to show why he should not be removed from the United States. *See id.*, Ex. 3. Petitioner was released on his own recognizance on January 13, 2025. *See id.*, Ex. 4. Petitioner also was directed to report, in person, to a Deportation Officer in Burlington, Massachusetts, on

January 27, 2025. *See id.*, Ex. 5. The proceedings were ultimately terminated by the immigration judge on May 20, 2025. *See id.*, Ex. 6.

On September 10, 2025, a United States Border Patrol ("BP") agent received a phone call indicating that a Waterville Police Officer was requesting record checks on an individual who had been involved in a car accident, as that individual did not possess any identification. Ex. 1 at 3. BP record checks revealed that the individual—Petitioner—did not have a legal status to be in the United States and had no pending proceedings with any immigration court or petitions that had been filed. *Id.*

Petitioner was taken to Farmington, Maine, where the BP agent conducted an immigration interview. *Id.* During this interview, Petitioner admitted that he did not have any immigration documents with him that would allow him to be in the United States legally, and also admitted that he had previously been arrested by BP. *Id.* Record checks revealed that Petitioner was arrested by BP on January 13, 2025, near Augusta, Maine, and that he was issued a notice to appear and subsequently released. On August 14, 2025, proceedings were terminated by an immigration judge and the case was closed without a determination. *Id.*

It was determined that Petitioner was an illegal alien and he was subsequently taken into custody by BP. According to BP,

> It was not feasible to obtain a warrant before the arrest. Not making an immediate arrest would have compromised public safety. Individuals who have illegally entered the United States have already shown they are not willing to follow the law, have no[] immediate ties to the community, are likely to evade law enforcement, and have a very strong incentive to avoid detection for fear of deportation and are thus[] a flight risk.

Id. Petitioner was transported to the Rangeley Border Patrol Station for further processing. *Id.*

Petitioner has been placed in removal proceedings. *Id.* at 5. Specifically, it is charged that Petitioner is subject to removal pursuant to the following provisions of law:

- 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that [Petitioner is] 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.
- 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

Id. at 8. Petitioner was ordered to appear before an immigration judge on September 22, 2025 in Chelmsford, Massachusetts, "to show why [he] should not be removed from the United States based on the charges" set forth in the Notice to Appear. *Id.* at 5. This hearing did not take place, as the Court's September 19, 2025 grant of Petitioner's Temporary Restraining Order prohibited movement of Petitioner out of Maine.

Petitioner filed the instant Petition on September 18, 2025, seeking, *inter alia*, "a Writ of Habeas Corpus directing Respondents to provide Petitioner a bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a)," or, in the alternative, "a bail hearing though the Court's inherent authority pending adjudication of this Petition, as Petitioner has a clear case on the law and facts given that Petitioner is detained under 8 U.S.C. §1226(a)." *Id.* at 7.

III. Argument

A. Legal Framework for Detention

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

1. Mandatory detention under 8 U.S.C. § 1225

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287; *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218-19 (B.I.A. 2025). It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland Security ("DHS") has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

2. Discretionary detention under 8 U.S.C. § 1226

Section 1226 more "generally governs the process of arresting and detaining . . . [noncitizens] pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section 1226(a) provides the default rule that 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). As the Supreme Court has explained, this provision "creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions . . . ." *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).

As explained by the First Circuit, "[t]he text of the INA confers broad authority"

for civil arrests. *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 19 (1st Cir. 2020). Pursuant to 8 U.S.C. § 1226(a), immigration authorities can arrest an alien with an administrative warrant and then either continue detention for removal proceedings or to release the alien on "bond . . . or conditional parole." *Id.* § 1226(a)(1)-(2).[1] Once arrested under § 1226(a), release can occur "provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If the immigration officer opts for continued detention, the alien can seek review of that decision at a bond hearing before an IJ. 8 C.F.R. § 236.1(d)(1). An IJ's decision to continue detaining an alien may be appealed to the Board of Immigration Appeals ("BIA").[2] 8 C.F.R. § 236.1(d)(3).

3. The administrative removal process

Removal proceedings are initiated with the issuance of an NTA with the Immigration Court that has jurisdiction over the location of the individual. *See* 8 U.S.C. § 1229; 8 C.F.R. §§ 239.1, 1003.14. Once an NTA is filed with the Immigration Court, the IJ "shall conduct proceedings for deciding the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1). Such proceeding "shall be the sole and exclusive

[1] Per 8 U.S.C. § 1357(a)(2), an alien may also be arrested without an administrative warrant where there is "reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest . . . ."

[2] The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

procedure for determining whether an alien may be . . . removed from the United States." *Id.* § 1229a(a)(3).

An alien can apply for any form of relief from removal for which he is eligible. *Id.* § 1229a(c)(4). If the IJ grants relief from removal and the Government does not appeal to the BIA or is unsuccessful in such appeal, then the individual obtains lawful status and is not subject to removal from the United States. If, however, the IJ orders an alien removed, such alien can appeal to the BIA and is not subject to removal until the BIA issues a decision on the appeal. *Id.* § 1229a(c)(5); 8 C.F.R. § 1241.1(a). If the BIA affirms the IJ's denial of an application for relief from removal, an alien can file a petition for review ("PFR") with the circuit court and seek a stay of removal. 8 U.S.C. § 1252(a)(5) ("[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter . . . .").

B. Petitioner's Detention Comports with the Due Process Clause of the Fifth Amendment

1. Petitioner must be detained pursuant to 8 U.S.C. § 1225 pending the outcome of his removal proceedings

ICE submits that § 1225—applicable to "applicants for admission," that is, aliens present in the United States who have not be admitted—is the specific detention authority applicable to Petitioner. Under § 1225(a), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—the provision relevant here—is the "broader" of the two. *Id.* It "serves as a catchall provision that applies to all

applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li,* 29 I & N. Dec. at 69 ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."); *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. at 218-19. Section 1225(b) therefore applies because Petitioner is present in the United States without being admitted, making detention mandatory.

2. To the extent 8 U.S.C. § 1226 is applied, Petitioner would be constitutionally subject to discretionary detention and receive adequate due process

Petitioner argues that he is detained pursuant to 8 U.S.C. § 1226, which as detailed above, also allows for the detention of aliens for the purpose of removal proceedings. Petitioner bases this argument—at least in part—on the fact that he was previously released on an order of recognizance pursuant to 8 U.S.C. § 1226.[3] The Government submits that the detention authority instead resides under 8 U.S.C. § 1225. The Government acknowledges, however, the recent caselaw from this Court and the District of Massachusetts sustaining challenges to DHS's interpretation of § 1225. *See Chogllo Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Romero v. Hyde*, 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025);

[3] Petitioner also asserts that he was "re-arrested pursuant to Respondents' authority set forth in 8 U.S.C. § 1226." Dkt. 1 at 4. In support of this position, Petitioner cites two cases in which aliens were arrested on warrants pursuant to section 1226. However, Petitioner's September 10, 2025 arrest was not made pursuant to a warrant, *see* Ex. 1 at 3, and Petitioner's prior removal proceedings had been terminated months earlier, *see* Dkt. 1, Ex. 6.

Rodrigues De Oliveira v. Joyce, 2:25-cv-00291-LEW (D. Me. July 2, 2025); *but see Pena v. Hyde*, 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (finding that section 1225 "authorizes the detention of any alien who 1) is 'an applicant for admission' to the country and 2) is 'not clearly and beyond doubt entitled to be admitted.'"). ICE nonetheless submits that Petitioner here must be detained pending the outcome of his removal proceedings, as § 1225 requires.

Even to the extent § 1226 were found to apply, instead, such authority provides that an alien may be detained "pending a decision on whether [he] is to be removed from the United States." *Id*. The provision "creates authority for anyone's arrest or release under § 1226—and it gives [immigration authorities] broad discretion as to both actions . . . ." *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (emphasis in the original).[4] Under § 1226, too, Petitioner's detention would therefore be authorized by statute and regulation, with no basis for the Court to order his release.

The Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Wong Wing v. U.S.*, 163 U.S. 288, 235 (1896) (holding deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character"). Here, Petitioner is detained for the limited purpose of removal proceedings. If found to be detained under § 1226, he could seek a bond hearing to contest such detention.[5] Under such a § 1226 scenario, per

[4] Moreover, "[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

[5] Notable, too, is that even if an IJ disagrees with DHS' position that Petitioner is detained under § 1225 at a bond hearing and finds jurisdiction under § 1226, the agency could invoke the automatic stay provision at 8 C.F.R. § 1003.19(i)(2).

Supreme Court precedent, his detention would not violate the Constitution. *See Wong Wing*, 163 U.S. at 235 ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.").

There is no dispute that Petitioner's detention is not indefinite; it will end upon the conclusion of his removal proceedings. As another district court in this circuit recently recognized, a brief period of detention for the purpose of removal proceedings or to effectuate removal does not violate the Constitution. *See Dambrosio v. McDonald, Jr.*, No. 25-CV-10782-FDS, 2025 WL 1070058, at *2 (D. Mass. Apr. 9, 2025) (recognizing that detention "for a period of less than three months' time . . . does not amount to an unconstitutional duration").

IV. Conclusion

For the foregoing reasons, Petitioner is not entitled to a writ of habeas corpus. The Government respectfully submits that the court should dispose of and dismiss the matter—without prejudice—"as law and justice require." 28 U.S.C. § 2243. To the extent this matter is not disposed of by dismissal, the Government is prepared for and available to attend any hearing scheduled not more than five days after the filing of this return. *Id.*

Dated: September 24, 2025
Portland, Maine

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2025, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

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