

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

TARAS MAKARENKO,

Petitioner,

v.

Case No. 1:26-cv-00225-MIS-GBW

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; TODD M. LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity; DAVID EASTERWOOD, Field Office Director of Enforcement and Removal Operations, Minneapolis – St. Paul Field Office, Immigration and Customs Enforcement, in his official capacity; MARY DE ANDA-YBARRA, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement, in her official capacity; and FNU LNU, Warden of Cibola County Correctional Center, custodian of detainees at the Cibola County Correctional Center, in their official capacity,

Respondents.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court on Petitioner Taras Makarenko's Petition for Writ of Habeas Corpus ("Petition"), ECF No. 2, filed January 30, 2026 in the District of Minnesota and transferred to this District on February 2, 2026, Order of Transfer, ECF No. 4. Petitioner is a citizen of Ukraine who came to the United States on August 21, 2014 on an M-1 student visa that was set to expire on August 20, 2015. Pet. ¶ 1. On August 10, 2015, Petitioner filed a Form I-589 Application for Asylum and for Withholding of Removal. *Id.* ¶ 4. On September 24, 2023, Petitioner applied for Form I-821, Temporary Protected Status pursuant to Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a, which was approved on October 30, 2023. *Id.*

¶ 31. He has a valid work permit based on his pending asylum application, id. ¶ 5, has lived peaceably in the United States for the past twelve years, id. ¶ 6, has strong ties to his community, id., and is married to a United States citizen, id. Other than minor civil parking violations and misdemeanor traffic infractions, Petitioner has no criminal history. Id. ¶ 5.

On January 6, 2026, U.S. Immigration and Customs Enforcement detained Petitioner in Minnesota “for no apparent lawful reason[.]” id. ¶ 33, and ultimately transferred him to the Cibola County Correctional Center in Milan, New Mexico, where he is currently detained, id. ¶ 35. Respondents are purporting to detain him pursuant to 8 U.S.C. § 1225(b)(2), see id. ¶ 55, a statute that requires mandatory detention for “arriving aliens” who are “seeking admission” before an “examining immigration officer” at the border or port of entry.

On January 30, 2026, Petitioner filed the instant Petition requesting a writ of habeas corpus requiring that Respondents release him from custody or “hold a prompt bond hearing to determine whether he should remain in custody[.]” Id. at 16.


The record reflects that the Clerk’s Office served Respondents with the Petition on February 2, 2026, pursuant to this District’s Standing Order Regarding Service of Process in Immigration Habeas Petitions filed Pursuant to 28 U.S.C. § 2241, Case 1:26-mc-00004, ECF No. 3 (D.N.M. Jan. 28, 2026). ECF No. 6.

IT IS HEREBY ORDERED that within **ten (10) business days**, the United States Attorney’s Office for the District of New Mexico shall respond to the Petition and **SHOW CAUSE** why the requested relief should not be granted. Respondents are reminded that this Court has already decided the issues presented by the Petition and granted the relief Petitioner requests here. See Lopez-Romero v. Lyons, 2:25-cv-01113-MIS-JHR, 2026 WL 92873 (D.N.M. Jan. 13, 2026) (ordering a bond hearing); Singh v. Noem, Case No. 1:25-cv-01266-MIS-KRS, 2026 WL 242249

(D.N.M. Jan. 29, 2026) (ordering immediate release); Intriago-Sedgwick v. Noem, No. 1:25-cv-01065-MIS-LF, 2025 WL 3688155 (D.N.M. Dec. 19, 2025), report and recommendation adopted No. 1:25-cv-01065-MIS-LF, ECF No. 27 (D.N.M. Jan. 6, 2026) (same); see also Order Granting Petition for Writ of Habeas Corpus, Duhan v. Noem, Case No. 2:26-cv-00019-MIS-JFR (D.N.M. Feb. 2, 2026) (same); Order Granting Petition for Writ of Habeas Corpus, Zhao v. Castro, Case No. 2:26-cv-00079-MIS-JMR (D.N.M. Jan. 20, 2026) (ordering a bond hearing). In making these rulings, the Court has joined the overwhelming majority of courts that have considered this issue and concluded that 8 U.S.C. § 1226(a) governs the detention of noncitizens who have been residing in the United States after their entry, rather than the mandatory detention provisions of § 1225(b)(2). See, e.g., Castañon-Nava v. U.S. Dep’t of Homeland Sec., 161 F.4th 1048, 1061 (7th Cir. 2025) (concluding that § 1226(a) applied to noncitizens already present in the country who were not admitted); Barco Mercado v. Francis, ___ F. Supp. 3d ___, 2025 WL 3295903, at *4 n.22 (S.D.N.Y. Nov. 26, 2025) (noting the interpretation that § 1225 requires mandatory detention of all noncitizens living in the United States was rejected in over 350 cases “decided by over 160 different judges sitting in about fifty different courts spread across the United States” and collecting cases in an Appendix A); Ochoa Ochoa v. Noem, No. 25-cv-10865, 2025 WL 2938779, at *5 & n.8 (N.D. Ill. Oct. 16, 2025) (collecting cases). Any response filed by Respondents must therefore demonstrate that the facts of this case warrant a departure from the Court’s prior rulings.

If the federal Respondents fail to timely comply with this Order, the Court may grant the relief requested in the Petition without further notice.

If Petitioner wishes to file a reply brief, he may do so within **ten (10) days** after Respondents' response is filed.



MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE