District Judge Marsha J. Pechman
Chief Magistrate Judge Theresa L Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

G.S.,

Petitioner,

v.

CAMMILLA WAMSLEY, *et al.*,

Respondents.

Case No. 2:25-cv-01255-MJP-TLF

RESPONDENTS' RETURN AND MOTION TO DISMISS

Noted For Consideration:
September 24, 2025

I. INTRODUCTION

To obtain habeas relief, Petitioner G.S. must demonstrate that he is in custody in violation of the Constitution or the laws of the United States. 28 U.S.C. § 2241. The Tacoma Immigration Court has found that U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner, a noncitizen without legal status, pursuant to 8 U.S.C. § 1225(b)(2)(A). Although the U.S. Department of Homeland Security ("DHS") initially released Petitioner on his own recognizance when he was first apprehended, DHS recently revoked this release pursuant to 8 C.F.R. § 1236.1(c)(9) and took him into custody. Since that time, the immigration court has twice denied Petitioner's requests for custody redeterminations. As described below, Section 1225(b) mandates detention during a noncitizen's removal proceedings.

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II. STATUTORY BACKGROUND

A. Detention Under 8 U.S.C. § 1225

Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020) ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[ ] in the United States," whether or not at a designated port of arrival. 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)," both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.").

1. Section 1225(b)(1)

Section 1225(b)(1) applies to "arriving aliens" and "certain other" noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen "described in" Section 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland Security – that is, any noncitizen not "admitted or paroled into the United States" and "physically present" fewer than two years – who is inadmissible under Section 1182(a)(7) at the time of "inspection." *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen

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for admission under § 1225(a)(3), that noncitizen lacks entry documents and so is subject to §1182(a)(7). The Attorney General's or Secretary's authority to "designate" classes of noncitizens as subject to expedited removal is subject to his or her "sole and unreviewable discretion." 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass'n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to "the fullest extent authorized by Congress." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables DHS "to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility," who were not otherwise covered by prior designations. *Id.* at 8139-40.

Expedited removal proceedings under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to apply for asylum[1] or expresses a fear of persecution, torture, or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal

[1] Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except if the noncitizen can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.* § 1558(a)(2)(D).

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proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under Section 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower, statutorily defined circumstances – typically to individuals apprehended at or near the border who lack valid entry documents or commit fraud upon entry – and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

2. Section 1225(b)(2)

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under Section 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "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) (requiring that such noncitizens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (explaining that proceedings under section 1229a are "full removal proceedings under section 240 of the INA"); *see also id.* ("[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, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for

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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).

B. Detention Under 8 U.S.C. § 1226(a)

Section 1226(a) provides for the arrest and detention of noncitizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under Section 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.[2] By regulation, immigration officers can release a noncitizen if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release a noncitizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for immigration judges to consider).

III. FACTUAL BACKGROUND

Petitioner is a native and citizen of India who entered the United States at an undesignated location without inspection. Andron Decl., ¶ 3. U.S. Border Patrol apprehended him near Mooers, New York, on June 12, 2024. *Id.*; Lambert Decl., Ex. A, Form I-213. Border Patrol issued him a Notice to Appear, charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i). Andron Decl.,

[2] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

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¶ 3; Lambert Decl., Ex. B, Notice to Appear. Petitioner was released on an Order of Release on Recognizance ("OREC") due to a lack of bed space. Andron Decl., ¶ 3; Lambert Decl., Ex. C, Notice of Custody Determination; Ex. D, OREC.

On June 24, 2025, Petitioner appeared for a scheduled check-in with ICE in Eugene, Oregon. Andron Decl., ¶ 5. At the appointment, ICE revoked Petitioner's OREC pursuant to 8 C.F.R. § 1236.1(c)(9) and took him into custody. *Id.*; Lambert Decl., Ex. E, I-213; Ex. F, Warrant for Arrest, Ex. G, Notice of Custody Determination. He was transferred to the Northwest ICE Processing Center in Tacoma, Washington. Andron Decl., ¶ 5.

Petitioner requested a custody redetermination hearing before the Tacoma Immigration Court. Andron Decl., ¶ 6. On July 8, 2025, an Immigration Judge ("IJ") issued an order stating that the court did not have jurisdiction to redetermine Petitioner's custody status, finding that Petitioner is subject to mandatory detention pursuant 8 U.S.C. § 1225(b). *Id.*; Lambert Decl., Ex. H, Order of the IJ.

On August 14, 2025, an IJ denied Petitioner's second motion for a bond determination hearing. Andron Decl., ¶ 6; Lambert Decl., Ex. I, Order of the IJ. Petitioner remains in immigration detention. Andron Decl., ¶ 7. He has an individual hearing scheduled for September 15, 2025. *Id.*, ¶ 4.

IV. ARGUMENT

A. An IJ has determined that Petitioner is detained pursuant to 8 U.S.C. § 1225(b).[3]

A noncitizen subject to Section 1225(b) must be detained pending the outcome of his removal proceedings. Here, an IJ has determined that Petitioner is subject to mandatory detention

[3] A class action is pending in this District challenging the Tacoma Immigration Court's application of Section 1225(b)(2) to include any detainee present in the United States without having been admitted rather than applying 8 U.S.C. § 1226(a), which allows for custody redeterminations. *Rodriguez Vasquez v. Bostock*, No. 3:25-cv-5240-TMC.

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citing *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), 8 U.S.C. § 1225(b)(1), and 8 U.S.C. § 1225(b)(2)(A). Lambert Decl., Ex. H. While Section 1225(b)(1) likely does not apply to Petitioner because he is not in expedited removal proceedings, Section 1225(b)(2)(A) requires noncitizens to "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Section 1229a removal proceedings are "full removal proceedings under section 240 of the INA." *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025).

Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which 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 at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

B. Petitioner has failed to exhaust his administrative remedies.

This Court should require Petitioner to administratively appeal the IJ's custody orders to the Board of Immigration Appeals ("BIA") before seeking habeas relief in federal court.

Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a "'jurisdictional' prerequisite.'" *Id.*

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Courts may require prudential exhaustion where: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

The BIA "has a special expertise in reviewing the question of whether the bond record as a whole makes it substantially unlikely that the Department w[ill] prevail on [the petitioner's] challenge to removability." *Francisco Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Also, allowing a "relaxation of the exhaustion requirement" would promote the avoidance of seeking an appeal of similar IJ orders to the BIA. Finally, the outcome of a BIA appeal may provide Petitioner with the relief sought here – an individualized bond hearing and ultimately release.

Accordingly, Petitioner has failed to exhaust his administrative remedies.

V. CONCLUSION

For the foregoing reasons, this Court should dismiss the habeas petition.

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DATED this 27th day of August, 2025.

Respectfully submitted,

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I certify that this memorandum contains 2,239 words, in compliance with the Local Civil Rules.