UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

NELSON FERNANDEZ AVILES, Petitioner, v. WARDEN, FOLKSTON ICE PROCESSING CENTER, Respondent.	)	Civil Action No.: 5:25-cv-73

MOTION TO DISMISS

Since May 7, 2025, Nelson Fernandez Aviles ("Petitioner" or "Aviles") has been detained by Immigration and Customs Enforcement ("ICE") pending a decision on whether he should be removed from the United States. After Petitioner was detained, he filed an application for voluntary departure. He has requested multiple continuances during his four-month term of detention. He eventually filed an application for relief. Following that, he sought a redetermination of his custody status; after conducting a bond hearing, an Immigration Judge ("IJ") denied Petitioner's request on the basis that Petitioner is subject to mandatory detention. Petitioner's final hearing on his application for relief is set for September 18, 2025.

For several independent reasons, Petitioner's habeas corpus petition is meritless and should be dismissed. First, the lower federal courts are courts of limited jurisdiction, possessing jurisdiction only over matters authorized by Congress. This is significant here, because Congress has explicitly precluded district-court review of the Executive's detention-related decisions in removal proceedings.

Second, Congress has determined that Petitioner, as an "applicant for admission" under the governing statutory framework, must be detained (subject to parole) during his removal proceedings. Third, Petitioner's recent felony conviction (among other things) subjects him to mandatory detention under a separate statutory provision. Fourth, Petitioner has been detained for approximately four months; assuming *arguendo* the Due Process Clause guarantees Petitioner additional safeguards beyond those provided by statute, his relatively short detention does not implicate any due-process concerns. Finally, Petitioner filed his habeas corpus petition prior to exhausting his administrative remedies; although not jurisdictional, the claim-processing exhaustion-of-remedies requirement provides an independent basis for dismissing Petitioner's § 2241 petition.

BACKGROUND

I. The Great Writ: Jurisdiction and Burden of Proof

"[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. The burden rests with the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treatises of the United States to warrant relief. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011) ("We hold that it was error for the District Court to effectively impose on the Government the burden of proving that Skaftouros was *not* 'in custody in violation of the Constitution or laws or treaties of the United States.'"). "[T]he petitioner must satisfy his burden of proof by a preponderance of the evidence."

Id.

II. Applicable Immigration Laws: Statutory and Regulatory Background

A. 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." *Id.*; 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 prosecution, 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. 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 Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) ("[A]liens 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.") (citing *Jennings*, 583 U.S. at 300); *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.'") (internal citation omitted; quoting *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).

B. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[1] By regulation,

[1] 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)).

immigration officers can release aliens if the alien 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). An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ 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. However, Congress has mandated the detention of aliens that meet any one of several criteria specified in INA § 236(c), 8 U.S.C. § 1226(c).

At a custody redetermination conducted pursuant to INA § 236(a), the IJ may continue detention or release the alien on bond or conditional parole. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider).

C. <u>Review at the Board of Immigration Appeals ("BIA")</u>

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); *see id.*, §§ 236.1(d)(3), 1236.1(d)(3). 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). "No court may set aside any action or decision by the Attorney General under [INA § 236, 8 U.S.C. § 1226] regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. 1226(e).

III. Factual and Procedural History

Petitioner Aviles is a native and citizen of Honduras. Government Exhibit 1 ("Labossiere Decl."), ¶ 3. He entered the United States without inspection and without presenting a valid unexpired immigrant visa or other valid entry document. Labossiere Decl., ¶ 5. Aviles is the beneficiary of an approved Form I-130 visa Petition for Alien Relative filed by his U.S. citizen wife. Labossiere Decl., ¶ 6. On July 1, 2021, Aviles filed a Form I-601A Application for Provisional Unlawful Presence Waiver. Labossiere Decl., ¶ 7. The I-601A was approved on August 8, 2024. Labossiere Decl., ¶ 7.

On or about January 23, 2025, Aviles was charged with Assault & Battery 2nd Degree in Beaufort, S.C. Labossiere Decl., ¶ 8. On May 6, 2024, he pleaded guilty to Assault & Battery of High & Aggravated Nature ("ABHAN") and was sentenced to three years' confinement, the balance of which was suspended on condition of service of 103 days with credit of 103 days' time served. Labossiere Decl., ¶ 8.

On May 7, 2025 ICE Enforcement & Removal Operations ("ERO") served Aviles with a Notice to Appear ("NTA") charging him with removability pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as 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. Labossiere Decl., ¶

9. On July 17, 2025, DHS lodged an additional charge of removability pursuant to INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), because Aviles was not in possession of valid unexpired documentation authorizing entry required by statute or documentation verifying identity and nationality required by regulation. Labossiere Decl., ¶ 9.

On May 27, 2025, Aviles appeared pro se at a master calendar hearing. Labossiere Decl., ¶ 10. The IJ sustained the NTA, and Aviles requested additional time to find a lawyer. Labossiere Decl., ¶ 10. The case was continued until June 10, 2025. Labossiere Decl., ¶ 10.

At the scheduled hearing on June 10, 2025, Aviles again appeared pro se. Labossiere Decl., ¶ 11. He requested voluntary departure. Labossiere Decl., ¶ 11. The IJ reset the case to June 24, 2025, so that Aviles could obtain conviction records to present to the court. Labossiere Decl., ¶ 11.

On June 24, 2025, Aviles once again appeared pro se. Labossiere Decl., ¶ 12. He requested additional time to present the conviction records and an application for relief. Labossiere Decl., ¶ 12. The case was continued pursuant to his request. Labossiere Decl., ¶ 12.

On July 17, 2025, Aviles appeared at a hearing pro se and filed an application for relief (an EOIR 42-B Application for Cancellation of Removal). Labossiere Decl., ¶ 13. His case was continued until August 7, 2025. Labossiere Decl., ¶ 13.

On July 28, 2025, Aviles filed a request for custody redetermination. Labossiere Decl., ¶ 14. The court scheduled a bond hearing for August 7, 2025.

Labossiere Decl., ¶ 14. Aviles appeared pro se at the August 7th hearing and requested a continuance to review evidence DHS filed. Labossiere Decl., ¶ 14. The IJ continued the bond hearing to August 14, 2025. Labossiere Decl., ¶ 14. Following the bond hearing on August 14th, the IJ denied Aviles's request on the basis that detention was mandatory pursuant to INA § 236(c), 8 U.S.C. § 1226(c). *See* Exhibit 2.[2]

Aviles's case remains pending, and the final hearing on his EOIR 42-B Application for Cancellation of Removal is scheduled for September 18, 2025. Labossiere Decl., ¶¶ 15-16. If an order of removal becomes administratively final, removal to Honduras is likely to occur in the reasonably foreseeable future, as Honduras is open for international travel and is issuing documentation to facilitate removals of Honduran nationals. Labossiere Decl., ¶ 17. ICE is currently removing non-citizens to Honduras. Labossiere Decl., ¶ 17.

On May 23, 2025, Aviles executed his 28 U.S.C. § 2241 petition. Doc. 1, p. 9. Therein, Aviles seemingly challenges his present detention. *See id.* at 7-8. The Clerk docketed Aviles's petition on June 2, 2025.

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[2] Ms. Labossiere executed her declaration on August 13, 2025. *See* Labossiere Decl., p. 3. Counsel received the Immigration Judge's August 14th Order following Ms. Labossiere's execution of her declaration.

ARGUMENT

I. Petitioner's habeas corpus claims are barred by statute, and the Court lacks jurisdiction over them.

The plain language of 8 U.S.C. § 1252(g) and the Eleventh Circuit's consistent interpretation of this provision independently foreclose Petitioner's habeas corpus claims. Congress stripped federal district courts of jurisdiction over § 2241 challenges to an alien's detention in 8 U.S.C. § 1252(g). That provision reads:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

Calling § 1252(g) "unambiguous," the Eleventh Circuit held that this statute "bars federal courts' subject-matter jurisdiction over any claim for which the 'decision or action' of the Attorney General (usually acting through subordinates) to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim." *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). The Court of Appeals interpreted the scope of "commenc[ing] proceedings" to include "[s]ecuring an alien while awaiting a removal determination." *Id.*

A subsequent panel made *Gupta*'s holding more plainly applicable to the facts of Petitioner's habeas corpus petition, finding that "ICE's decision to take [a noncitizen] into custody and to detain him during his removal proceedings . . . w[as] closely connected to the decision to commence proceedings, and thus w[as] immune from our review." *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016). The Eleventh Circuit found that § 1252(g) barred Alvarez's claim, even though he alleged his detention violated the Fourth and Fifth Amendments because government officials made knowing misrepresentations to detain him. *Id.* at 1203–04; *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 488 (1999) ("[A]n alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation."). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. United States Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1257–58 (11th Cir. 2020). Efforts to challenge the refusal of immigration officials to exercise favorable discretion also fall under § 1252(g)'s jurisdictional provision. *Alvarez*, 818 F.3d at 1205.

Here, Aviles's petition challenges a specific action—securing him during removal proceedings—that the Eleventh Circuit has ruled falls within the scope of "commenc[ing] proceedings" referenced in § 1252(g). *See Gupta*, 709 F.3d at 1065. Consequently, Petitioner's habeas corpus claims are precluded by statute. And Aviles cannot demonstrate a likelihood of succeeding on claims that this Court is barred from entertaining.

II. Petitioner is an "applicant for admission" who must be detained under 8 U.S.C. § 1225.

Petitioner's detention is governed by 8 U.S.C. § 1225, which mandates that he remain in detention during the pendency of his removal proceedings, subject to DHS's discretionary release on parole under 8 U.S.C. § 1182(d)(5)(A). Pursuant to 8 U.S.C.

§ 1225(b)(2)(A), "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 240."

In the present case, Petitioner is an "applicant for admission" to the United States because he entered the country illegally and he has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see also DHS v. Thuraissigiam*, 591 U.S. at 140 (alien "who tries to enter the country illegally is treated as an 'applicant for admission'"). Petitioner cannot demonstrate that he is "clearly and beyond a doubt entitled to be admitted" because, as he is present in the United States without being admitted or paroled, he is inadmissible under 8 U.S.C. § 1182(a)(6). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221-23. Moreover, as Petitioner was not in possession of valid unexpired documentation authorizing entry required by statute or documentation verifying identity and nationality required by regulation, he is inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Accordingly, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained.[3]

This reasoning is supported by Supreme Court precedent. As explained in *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), applicants for admission fall into

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[3] That Petitioner sought an Application for Provisional Unlawful Presence Waiver (form I-601A) in 2021 further underscores his current inadmissibility and status as an applicant for admission. *Martinez-Tovar v. U.S. Att'y Gen.*, 679 F. App'x 905, 906 (11th Cir. 2017) (citing 8 C.F.R. § 212.7(e) and 8 U.S.C. § 1182(a)(9)(B)(i) for proposition that an alien seeking an I-601A "must be inadmissible").

one of two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2), on the other hand, is "broader" and "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287 (emphasis added). Put another way, while § 1225(b)(1) applies to aliens "arriving" in the United States, § 1225(b)(2) applies to all "other" aliens who are applicants for admission—like Petitioner. Simply put, an alien does not lose his "applicant for admission" status as a matter of law simply because he failed to seek inspection and admission upon his immediate arrival in the United States. Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 ("[Section] 1225(b)(2) ... mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.").

Moreover, Respondent's position aligns with the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I. & N. 216 (BIA 2025)—a case applicable on all fours. There, the alien challenging his detention had crossed the border into the U.S. without inspection. *See Matter of Yajure Hurtado*, 29 I. & N. at 216. United States Citizenship and Immigration Services subsequently granted him temporary protected status. *See id.* at 216-17. After the expiration of that status, DHS issued him a NTA charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the Attorney General. *See id.* at 217. After the IJ denied the alien's request for bond, the alien appealed to the BIA. *See id.*

On these facts, the BIA painstakingly reviewed the statutory and regulatory framework—ultimately concluding that "the plain reading of the INA" rendered the alien an "applicant[] for admission" who "must be detained for the duration of [his] removal proceedings." *Id.* at 220 (citing *Jennings*, 583 U.S. at 300). This holding provides a sufficient basis to deny Aviles's § 2241 petition.

III. Petitioner is also subject to mandatory detention under 8 U.S.C. § 1226(c).

Regardless of § 1225, Petitioner is subject to mandatory detention under a separate statutory provision—8 U.S.C. § 1226(c). In fact, the IJ who heard Petitioner's bond request denied bond because of "[m]andatory detention per INA section 236(c)." Exhibit 2. Although the IJ had no jurisdiction to grant Aviles's request for bond, *see Matter of Yajure Hurtado*, 29 I. & N. at 217, 229, his conclusion that the INA requires Aviles's detention is nonetheless correct.

The INA provides that "[t]he Attorney General shall take into custody any alien who" is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A) or (a)(7). 8 U.S.C. § 1226(c)(1)(E)(i). Petitioner fits squarely within the scope of both subsections (a)(6)(A) and (a)(7) of § 1182 and consequently must be detained under 8 U.S.C. § 1226(c). *See* Labossiere Decl., ¶¶ 9-10.

Also of relevance, 8 U.S.C. § 1226(c)(1)(A) requires the Attorney General to detain any alien who is inadmissible by reason of having committed any offense covered in 8 U.S.C. § 1182(a)(2). Section 1182(a)(2), in turn, states that "any [such] offense" includes a "crime involving moral turpitude" for which the maximum term of imprisonment exceeds one year, provided the alien was sentenced to a term of imprisonment exceeding six months, regardless of how the sentence was ultimately executed. *See* 8 U.S.C. §§ 1182(a)(2)(A)(i)(I), (a)(2)(A)(ii). Petitioner's ABHAN conviction, for which he was sentenced to three years' imprisonment, qualifies as a crime of moral turpitude.

"The term 'moral turpitude' is not defined by statute." *Keungne v. U.S. Atty. Gen.*, 561 F.3d 1281, 1284 (11th Cir. 2009). As explained by the Eleventh Circuit, a crime of moral turpitude involves "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Id.* (cleaned up; citation omitted). "[T]he determination that a crime involves moral turpitude is made categorically based on the statutory definition or nature of the crime, not the specific conduct predicating a particular conviction." *Id.*

Petitioner's conviction for ABHAN clearly qualifies as a crime involving moral turpitude. A person commits the offense ABHAN if he unlawfully injures another person, and either great bodily injury to another results or the act is accomplished by means likely to produce death or great bodily injury. *See* S.C. Code Ann. § 16-3-600(B). Courts have routinely found analogous offenses, and even less serious crimes, qualify as crimes involving moral turpitude under the INA. *See, e.g.*, *Sosa-Martinez v. U.S. Atty. Gen.*, 420 F.3d 1338, 1341-42 (11th Cir. 2005) (holding a Florida aggravated-battery conviction constituted a crime involving moral turpitude); *Lovano v. Lynch*, 846 F.3d 815, 818-19 (6th Cir. 2017) (same as to Ohio aggravated-assault conviction); *Godinez-Arroyo v. Mukasey*, 540 F.3d 848, 851-52 (8th Cir. 2008) (same as to Missouri conviction for assault in the second degree); *see generally Keungne*, 561 F.3d at 1284-87 (explaining relevant moral-turpitude precedents). Consequently, the IJ correctly determined that Petitioner's detention was mandatory under the INA.

IV. The IJ's bond determination is not subject to judicial review under 8 U.S.C. § 1226(e).

For the reasons explained above, the IJ correctly determined that the INA required Petitioner's detention and that Petitioner, therefore, could not be given a bond. Although the IJ's ruling is unassailable on the merits, the INA bars this Court from reviewing the IJ's bond decision on the merits.

The INA provides:

> The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 1226(e). Section 1226(e) "precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release." *Jennings*, 583 U.S. at 295 (cleaned up; citation omitted). This provision "precludes judicial review of the Attorney General's decision to apply § 1226(c)(1) to" Aviles. *Parra v. Perryman*, 172

F.3d 954, 957 (7th Cir. 1999). Consequently, this Court is barred from reviewing the IJ's bond determination.

V. Petitioner has received all process he is due.

More than a century of precedent from the Supreme Court confirms that the due-process rights of applicants for admission are not as robust as the constitutional safeguards provided for other categories of detained aliens. *See, e.g., Zadvydas*, 533 U.S. at 693 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). Because applicants for admission have not been admitted to the United States, their constitutional rights are truncated: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (under the Due Process Clause, applicants for admission have "only those rights regarding admission that Congress has provided by statute"). Here, "the procedure authorized by Congress" in § 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Mezei*, 345 U.S. at 212.

In Respondent's view, Petitioner is not entitled to any due-process protections beyond those provided by statute. *See Jennings*, 583 U.S. at 298; *Demore v. Kim*, 538 U.S. 510, 523 (2003) ("[D]etention during deportation proceedings [is] a constitutionally valid aspect of the deportation process."). That said, Respondent acknowledges that courts have left open the possibility that a detainee may bring an as-applied due-process challenge to mandatory detention under § 1226(c); if successful, such challenge might entitle a petitioner to a bond hearing before an IJ. *See, e.g., Dorley v. Normand,* No. 5:22-cv-62, 2023 WL 3620760, at *3 (S.D. Ga. April 3, 2023) (Cheesbro, J.), *recommendation adopted*, 2023 WL 3174227 (May 1, 2023).

While Respondent disagrees with this line of cases, courts evaluating the adequacy of process in the § 1226(c) prolonged-detention context have referred to the Eleventh Circuit's articulation of certain factors in *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1217 (11th Cir. 2016), *vacated as moot*, 890 F.3d 952, 953 (11th Cir. 2018). *See, e.g.*, *Dorley*, 2023 WL 3620760, at *4-6. But even assuming for argument's sake *Sopo* applies here, "there is little chance that a criminal alien's detention is unreasonable until at least the six-month mark." *Sopo*, 825 F.3d at 1217. Aviles has been detained for approximately four months, at least a portion of which is due to his multiple requests for continuance. He cannot make out an as-applied due-process challenge on these facts.

VI. Petitioner has failed to fully exhaust his administrative remedies.

If this Court finds that Petitioner's claims are not precluded, the Court should nonetheless avoid interfering with Petitioner's removal proceedings by enforcing the doctrine of administrative exhaustion. In a habeas action brought under 28 U.S.C. § 2241, exhaustion is not a statutory, jurisdictional bar. *Santiago-Lugo v. Warden*, 785 F.3d 467 (11th Cir. 2015). Even in the absence of statutory exhaustion, however, exhaustion still applies in § 2241 habeas actions. *Id.* at 475.

Here, Aviles filed his § 2241 petition within days of entering ICE's custody—and months before he requested a bond hearing. *See Skinner v. Wiley*, 355 F.3d 1293, 1295 (11th Cir. 2004) (explaining that § 2241 petitioner must exhaust administrative remedies *before* filing suit), *overruled in part on other grounds, as recognized by Santiago-Lugo*, 785 F.3d at 71-75. Even now, the IJ's August 14th Order denying Aviles's request for bond remains open to challenge on appeal to the BIA. In short, Aviles has not fully exhausted his administrative remedies. This Court should therefore dismiss Aviles's § 2241 petition on failure-to-exhaust grounds.

CONCLUSION

For the reasons outlined above, Aviles's § 2241 petition should be dismissed.

Dated: September 8, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2025, I caused to be sent by United States mail the foregoing documents to the following non-CM/ECF participants:

Nelson Fernandez Aviles #A[redacted]
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P.O. Box 248
Folkston, GA 31537

/s/ Michael N. Loebl
Michael N. Loebl
Assistant United States Attorney