

ERIC GRANT
United States Attorney
MATTHEW THUESEN
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2700
Facsimile: (916) 554-2900

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARCELINO CERRO HUERTA,
Petitioner,
v.
PAMELA BONDI, et al.,
Respondents.

CASE NO. 1:25-cv-941 JLT-HBK

RESPONDENTS' MOTION TO DISMISS AND
RESPONSE TO PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner is detained at the Mesa Verde Immigration and Customs Enforcement ("ICE") Processing Center in Bakersfield. Based on his status as an applicant for admission, he is ineligible for release. *See* 8 U.S.C. § 1225(b)(2)(A). He challenges his detention claiming that, instead of § 1225, his detention is subject to 8 U.S.C. § 1226, which would entitle him to an individualized bond hearing. This Court should dismiss the Petition because Petitioner has failed to exhaust his administrative remedies. If this Court determines that waiver of exhaustion is appropriate, it should deny the Petition because Petitioner's detention is proper under § 1225(b).

I. BACKGROUND

Petitioner is a native and citizen of Mexico. *See* Declaration of Orestes Cruz ("Cruz Decl.") ¶ 6. He entered the United States at an unknown date and location. *Id.* On June 6, 2025, officers with the Bulloch Sheriff's Office (Georgia) performed a vehicle stop for local violations and notified

Immigration and Customs Enforcement (“ICE”) that they believed the driver and occupants of the vehicle were present illegally in the United States. *Id.*, ¶ 7. It was determined that Petitioner was not legally present in the United States. *Id.* He was arrested and transferred to the Folkston ICE Processing Center. *Id.*, ¶ 8. He subsequently was transferred, on June 13, 2025, to the Mesa Verde ICE Processing Center in Bakersfield. *Id.*, ¶ 10.

On June 24, 2025, Petitioner was issued a Notice to Appear under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) (8 U.S.C. § 1182). ¶ 10. He submitted a bond redetermination request to an Immigration Judge (“IJ”) two days later. *Id.*, ¶ 11. On July 14, 2025, an IJ denied bond for lack of jurisdiction because Petitioner is an applicant for admission under INA § 235(a)(1) (8 U.S.C. § 1225) and, consequently, ineligible for bond. *Id.*, ¶ 15; *Id.*, Ex. 8. Because Petitioner is an “applicant for admission” under 8 U.S.C. § 1225, he is subject to mandatory custody. *Id.*, ¶ 17 (citing 8 U.S.C. § 1225(b)(2)(A)).

II. RELEVANT STATUTES

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 generally are 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. 8 U.S.C. § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” 8 U.S.C. § 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. 8 U.S.C. §§ 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.

1 It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien
 2 “who is an applicant for admission” shall be detained for a removal proceeding “if the examining
 3 immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt
 4 entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *see Pena v. Hyde*, 2025 WL 2108913, at *1 (D.
 5 Mass. July 28, 2025) (“[§ 1225] authorizes the detention of any alien who 1) is ‘an applicant for
 6 admission’ to the country and 2) is ‘not clearly and beyond doubt entitled to be admitted.’” (citing 8
 7 U.S.C. § 1225(b)(2)(A)); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“[F]or aliens arriving in
 8 and seeking admission into the United States who are placed directly in full removal proceedings,
 9 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal
 10 proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland
 11 Security (“DHS”) has the sole discretionary authority to temporarily release on parole “any alien
 12 applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or
 13 significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

14 **B. Detention under 8 U.S.C. § 1226**

15 Section 1226 provides for arrest and detention of an alien “pending a decision on whether the
 16 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the government
 17 may detain an alien during his removal proceedings, release him on bond, or release him on conditional
 18 parole. By regulation, immigration officers can release aliens if the alien demonstrates that he “would
 19 not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R.
 20 § 236.1(c)(8). An alien also can request a custody redetermination (i.e., a bond hearing) by an
 21 immigration judge (“IJ”) at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8
 22 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

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

27 **C. Review at the Board of Immigration Appeals (“BIA”)**

28 The BIA is an appellate body within the Executive Office for Immigration Review (“EOIR”).

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

9 **III. PETITION**

10 As an initial matter, Petitioner argues that he need not exhaust administrative remedies because
 11 his bond motion already was denied by an IJ. Pet. at 4. He claims that seeking additional administrative
 12 remedies, such as a successive bond motion, would be “futile, inadequate, and inefficacious.” Pet. at 4.
 13 He claims that, because the IJ ruled that he was mandatorily detained under § 1225(b)(2)(A), EOIR will
 14 not provide him with a bond hearing. Pet. at 5. Additionally, he argues that raising his due process claim
 15 with EOIR would be “futile as immigration agencies do not have authority to rule on constitutional
 16 questions.” Pet. at 5. Finally, he argues that he should not be required to exhaust by appealing to the BIA
 17 because he will suffer irreparable harm “in the form of additional detention and continued separation
 18 from his spouse, children, and community.” Pet. at 5.

19 Petitioner also argues that his detention violates the INA. He asserts that § 1225(b)(2)(A) does
 20 not apply to him because it is inapplicable to individuals residing in the United States. Pet. at 3. Rather,
 21 he argues that such individuals are subject to § 1226 because “it expressly applies to people who—like
 22 [him]—are charged as inadmissible for having entered the United States without inspection.” Pet. at 3.

23 Finally, Petitioner contends that his detention without a bond redetermination hearing that
 24 involves a determination whether he is a flight risk or danger to others violates his due process rights.
 25 Pet. at 16.

26 **IV. ARGUMENT**

27 **A. This Court should dismiss the Petition based on Petitioner’s failure to exhaust administrative remedies.**

28 Petitioner has not appealed his underlying bond denial to the BIA. To excuse this, he argues that

1 requiring exhaustion at the BIA would cause him “irreparable harm in the form of additional detention
 2 and continued separation from his spouse, children and community.” Pet. at 5. But when an alien fails to
 3 exhaust appellate review at the BIA, courts should “ordinarily” dismiss the habeas petition without
 4 prejudice or stay proceedings until he exhausts his appeals. *See Leonardo v. Crawford*, 646 F.3d 1157,
 5 1160 (9th Cir. 2011). Bypassing review at the BIA is an “improper” “short cut.” *Id.* The Ninth Circuit
 6 identifies three reasons to require exhaustion before entertaining a habeas petition. *See Puga v. Chertoff*,
 7 488 F.3d 812, 815 (9th Cir. 2007). First, the agency’s “expertise” makes its “consideration necessary to
 8 generate a proper record and reach a proper decision.” *Id.* (quoting *Noriega-Lopez v. Ashcroft*, 335 F.3d
 9 874, 881 (9th Cir. 2003)). Second, excusing exhaustion encourages “the deliberate bypass of the
 10 administrative scheme.” *Id.* (quoting *Noriega-Lopez*, 335 F.3d at 881). And, third, “administrative
 11 review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial
 12 review.” *Id.* (quoting *Noriega-Lopez*, 335 F.3d at 881). Each reason applies here.

13 **1. Exhaustion is warranted in this case.**

14 In asserting that detention under § 1226 applies to him, Petitioner relies on “decades of prior
 15 practice” and a “well-established understanding of the statutory framework.” Pet. at 8. Yet at the same
 16 time, he seeks to bypass administrative review. Before addressing how an agency’s “decades of prior
 17 practice” affects the statutory analysis, Pet. at 8, this Court likely would benefit from the BIA’s
 18 expertise. *See Puga*, 488 F.3d at 815. After all, “the BIA is the subject-matter expert in immigration
 19 bond decisions.” *Aden v. Nielsen*, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). And the BIA is
 20 well-positioned to assess how agency practice affects the interplay between § 1225 and § 1226.

21 Moreover, the BIA exists to, among other things, resolve disputes such as that here. *See* 8 C.F.R.
 22 § 1003.1(d)(1). By regulation:

23 [T]he [BIA], through precedent decisions, shall provide clear and uniform guidance to DHS, the
 24 immigration judges, and the general public on the proper interpretation and administration of the
 [INA] and its implementing regulations.

25 *Id.*

26 Waiving exhaustion also would “encourage other detainees to bypass the BIA and directly
 27 appeal their no-bond determinations from the IJ to federal district court.” *Aden*, 2019 WL 5802013, at
 28 *2. Individuals, like Petitioner, would have little incentive to seek relief before the BIA if this Court

permits review here. Allowing petitioners to employ the strategy of skipping the BIA and going straight to federal court would needlessly increase the burden on district courts. *See Bd. of Tr. of Constr. Laborers' Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an important purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting “exhaustion promotes efficiency”). If the IJ erred as alleged, this Court should allow the administrative process to correct itself.

2. Petitioner’s reason to waive exhaustion would swallow the rule.

Federal courts are “not free to address the underlying merits [of a habeas petition] without first determining the exhaustion requirement has been satisfied or properly waived.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Discretion to waive exhaustion “is not unfettered.” *Id.* A petitioner bears the burden to show that an exception to the exhaustion requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3. Petitioner has not done so here.

Detention alone is insufficient to excuse exhaustion through a BIA appeal. *See, e.g., Delgado*, 2017 WL 4776340, at *2. Adopting such a rationale “would essentially mandate the release of all detainees while their appeals were pending and, thereby, stand the exhaustion requirement on its head.” *Meneses v. Jennings*, No. 21-CV-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024); *see also Bogle v. DuBois*, 236 F. Supp. 3d 820, 823 n.6 (S.D.N.Y. 2017) (noting that “continued detention . . . is insufficient to qualify as irreparable injury justifying non-exhaustion”) (quotation marks omitted).

If Petitioner’s proffered standard for irreparable harm—i.e., appeal to the BIA would cause irreparable harm in the form of additional detention and continued separation from his family and community (which would flow from detention)—then every single individual who alleges unlawful detention would meet the irreparable-harm standard. *See, e.g., Delgado*, 2017 WL 4776340, at *2. The exception would swallow the rule. *See id.* (“Because all immigration habeas petitions could raise the same argument [that detention is irreparable injury], if it were decisive, the prudential exhaustion requirement would always be waived—but it is not.”).

B. This Court should deny the Petition because, under the plain text of § 1225, Petitioner is subject to mandatory detention pending the outcome of his removal proceeding.

If this Court determines that exhaustion waiver is appropriate, it should reject Petitioner's argument that § 1226(a) governs his detention, instead of § 1225(b), and deny the Petition. When there is "an irreconcilable conflict in two legal provisions," then "the specific governs over the general." *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C. § 1225. It applies only to "applicants for admission"; that is, as relevant here, aliens present in the United States who have not been admitted. *See id.*; *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioner falls within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

As noted above, under 8 U.S.C. § 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*, 583 U.S. at 287. 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)."). Section 1225(b), therefore, applies because Petitioner is present in the United States without being admitted.

Petitioners' argument that the phrase "alien seeking admission" limits the scope of § 1225(b)(2)(A) is not persuasive. *See* Pet. at 11. The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (emphasis in original). Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*,

579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under § 1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743.

Petitioner’s interpretation also reads “applicant for admission” out of § 1225(b)(2)(A). One of the most basic interpretative canons instructs that a “statute should be construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). Petitioner’s interpretation fails that test. It renders the phrase “applicant for admission” in § 1225(b)(2)(A) “inoperative or superfluous, void or insignificant.” *See id.* If Congress did not want § 1225(b)(2)(A) to apply to “applicants for admission,” including aliens present in the United States who have not been admitted, who are “not clearly and beyond doubt entitled to be admitted,” then it would not have included that phrase in the subsection. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Corley*, 556 U.S. at 314.

In sum, Petitioner’s detention is proper under § 1225(b)(2)(A), because he is an applicant for admission who is not “clearly and beyond doubt” entitled to admission. *See Pena*, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (“[§ 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.’” (citing 8 U.S.C. § 1225(b)(2)(A)).¹

C. Due process

Petitioner argues his detention without a bond hearing violates his right to due process. Pet. at 16. If this Court determines that waiver of exhaustion is appropriate in this case and that Petitioner’s detention ultimately is governed by § 1226, Respondents request that, as a remedy, this Court order Respondents to provide Petitioner with a bond hearing to consider the merits of release under § 1226, as he still would be subject to that statute’s discretionary review procedures.

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¹ Respondents acknowledge that multiple district courts have disagreed with their interpretation of § 1225 as relevant here. *See Romero v. Hyde*, 2025 WL 2403827 (D. Mass. August 19, 2025) (collecting cases).

V. **CONCLUSION**

This Court should dismiss the Petition because Petitioner has failed to exhaust administrative remedies. Alternatively, this Court should deny the petition because Petitioner's detention is proper under § 1225(b)(2)(A).

Dated: August 22, 2025

Respectfully submitted,

ERIC GRANT
United States Attorney

/s/ MATTHEW THUESEN
MATTHEW THUESEN
Assistant United States Attorney