TODD BLANCHE
U.S. Deputy Attorney General
ALINA HABBA
Acting United States Attorney
Special Attorney
ANDREW BOCCIO
Assistant United States Attorney
970 Broad Street, Suite 700
Newark, New Jersey 07102
(201) 306-5172
Attorneys for Respondents

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GURPREET SINGH SANDHU, *Petitioner*, v. JOHN TSOUKARIS, *et al.*, *Respondents*.	HON. BRIAN R. MARTINOTTI, U.S.D.J. Civil Action No. 25-14607 (BRM)

ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Regulations

Other

PRELIMINARY STATEMENT

In May 2025, the Department of Homeland Security ("DHS") resumed removal proceedings against Petitioner for his presence in the United States without admission or parole, and U.S. Immigration and Customs Enforcement ("ICE") detained him. Petitioner now brings a habeas action under 28 U.S.C. § 2241, alleging that the Immigration and Nationality Act ("INA") and Due Process Clause require ICE to release him. The Court should dismiss or deny the petition.

First, Petitioner's detention is lawful under 8 U.S.C. § 1225(b), and his mandatory detention under that statute complies with Due Process. Alternatively, Petitioner is lawfully detained under 8 U.S.C. § 1226(a) and received a constitutionally sufficient bond hearing.

BACKGROUND

I. Relevant Legal Background

A. Detention of "Applicants for Admission" (8 U.S.C. § 1225(b))

"The power to admit or exclude [non-citizens] is a sovereign prerogative." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And "the Constitution gives 'the political department of the government' plenary authority to decide which [non-citizens] to admit." *Id.* (emphasis added) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). "[A] concomitant of that power is the power to set the procedures to be followed in determining whether a[] [non-citizen] should be admitted." *Id.*; see *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("To implement

its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

Section 1225 governs the detention of "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, unless they indicate an intention to apply for asylum or other forms of relief. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (ii). If the alien does not indicate an intent to apply for asylum, does not express a fear of prosecution, or does not "have such a fear" after inquiry by an officer, he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2)—which ICE argues applies to Petitioner here—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); *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216, 220 (BIA 2025). 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." 8 U.S.C. § 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 on a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), immigration officials may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[1] By regulation, immigration officers can release an alien 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 immigration judge ("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.

At a custody redetermination, the IJ may continue detention, release the alien on bond, or release the alien on conditional parole. 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

[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)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

II. Petitioner's Immigration History

Petitioner is a native and citizen of India. Pet. ¶ 7, ECF No. 1. In approximately June 2000, he claims to have unlawfully entered the United States without inspection. *Id.* ¶ 11; *see* Ex. B (2012 NTA), at 1.[2] Petitioner has remained in the United States since his June 2000 entry. Pet. ¶ 11. In April 2001, Petitioner's stepmother filed a Form I-130, Petition for Alien Relative, on Petitioner's behalf.[3] Pet. ¶ 12. U.S. Citizenship and Immigration Services ("USCIS") approved that petition in September 2006 but later revoked it. *Id.*

In September 2012, immigration officials arrested Petitioner, detained him, and issued him a Notice to Appear ("NTA"), the initiating document for removal proceedings. *See* Ex. A. (2012 Form I-213), at 2–3; Ex. B (2012 NTA). The NTA alleges that Petitioner is removable under 8 U.S.C. § 1182(a)(6)(A)(i) (aliens present

[2] Respondents are attaching Petitioner's relevant immigration records as exhibits to this Answer under Federal Rule of Civil Procedure 10(c), which is incorporated by Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts (which is applicable to this § 2241 petition through Rule 1(b)).

[3] A Form I-130 "is the first step to help an eligible relative apply to immigrate to the United States and apply for a Green Card. The approval of an I-130 does not confer "any immigration status or benefit." USCIS, I-130, Petition for Alien Relative, https://www.uscis.gov/i-130 (last visited Oct. 15, 2025).

without admission or parole).[4] In October 2012, an IJ released Petitioner on $6,000 bond under 8 C.F.R. § 236.1(c). Ex. C (Oct. 2012 IJ Order). The NTA was filed with the Immigration Court in November 2012, formally commencing removal proceedings. Ex. B (NTA), at 1.

An IJ found Petitioner removable in absentia in January 2015, but in April 2015, he granted Petitioner's motion to reopen the removal case. Ex. D (Jan. 2015 IJ Order); Ex. E (Apr. 2015 IJ Order). In May 2016, USCIS granted Petitioner deferred action for a period of one year. Ex. F (May 2016 Deferred Action Letter).[5] The IJ administratively closed Petitioner's removal proceedings in June 2016 but explained: "Proceedings may be recalendared at any time upon either party's motion, and this order does not constitute a final judgment rendered on the merits of these proceedings." Ex. G (June 2016 IJ Order). ICE cancelled and refunded Petitioner's $6,000 bond in March 2017. Ex. H (Mar. 2017 Bond Cancellation).

On May 20, 2025, ICE filed a motion to recalendar Petitioner's removal proceedings. Ex. I (May 2025 Recalendar Motion). The next day, DHS issued a warrant for Petitioner's arrest, arrested Petitioner, and detained him. Ex. J (May 2025 Arrest Warrant); Ex. K (May 2025 Custody Determination). Petitioner received

---

[4] Immigration officials also charged Petitioner as removable under 8 U.S.C. § 1182(a)(2)(A)(i)(II) (aliens convicted of controlled substance violations), but an immigration judge found that charge to be "not sustained." Ex. B (NTA), at 1, 3; *cf.* Pet. ¶ 14 (alleging that this charge was "based on an alleged 2004 criminal conviction that has since been vacated").

[5] As indicated in the notice, deferred action confers no lawful immigration status and does not affect removability. *See* Ex. F. Rather, it is an "act of administrative convenience to the government that gives some cases lower priority." 8 C.F.R. § 274a.12(c)(14).

a Notice of Custody Determination stating, "ICE has determined that you are subject to discretionary detention under [8 U.S.C. § 1226(a)]." Ex. K, at 3.

Petitioner initially requested a custody redetermination on June 4, 2025, but withdrew the request on June 24, 2025. Petitioner then requested a custody determination on June 27, 2025. At a bond hearing on July 14, 2025, ICE argued that Petitioner is an "applicant for admission" and, therefore, subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Ex. L (Bond Memorandum) at 1. The IJ disagreed and held that Petitioner is detained under 8 U.S.C. § 1226(a). *Id.* at 1–2. Nonetheless, the IJ denied Petitioner's request for release after concluding that Petitioner did not carry his burden of showing he is neither a flight risk nor a danger to the community. *Id.* at 2–3. Petitioner is appealing the IJ's decision to the Board of Immigration Appeals ("BIA"). *Id.* at 1.

Petitioner is currently detained at Delaney Hall Detention Facility, and his removal proceedings remain ongoing. At present, hearing is scheduled for October 21, 2025. Ex. M (Hearing Notice).

III. Procedural History

Petitioner filed the present habeas petition on August 13, 2025. ECF No. 1. He brings two claims. First, Petitioner claims that his detention violates the INA because an IJ released him on bond in 2012, and, according to Petitioner, ICE had no authority to re-detain him under 8 U.S.C. § 1226 without authorization from an IJ or delegate of the Attorney General. Pet. ¶¶ 27–34. Second, Petitioner claims that his detention violated the Due Process Clause of the Fifth Amendment. Pet. ¶¶ 35–44.

Respondents now move to dismiss the Petition in full.

STANDARD OF REVIEW

28 U.S.C. § 2241(c)(3) authorizes a court to grant a writ of habeas corpus where a prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, which is applicable to § 2241 petitions through Rule 1(b), provides this Court with the authority to dismiss a habeas petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief." *See also Moncrieffe v. Yost*, 367 F. App'x 286, 288 n.2 (3d Cir. 2010) (noting summary dismissal of a § 2241 habeas petition is appropriate pursuant to Rule 4 of the Rules Governing Section 2254 Cases). "Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face." *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing 28 U.S.C. § 2254, Rule 4).

LEGAL ARGUMENT
THE COURT SHOULD DISMISS THE HABEAS PETITION

I. Petitioner's Detention is Lawful 8 U.S.C. § 1225(b)

Petitioner argues that his detention is unlawful under the INA and Due Process Clause. But ICE has lawfully detained Petitioner under 8 U.S.C. § 1225(b) and has provided him all available process.

A. Petitioner is an "Applicant for Admission" Subject to Mandatory Detention Under § 1225(b)(2).

Section 1225(b)(2) provides that "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." Petitioner's detention is lawful under the plain text of § 1225(b)(2).

ICE issued a Notice to Appear charging Petitioner with being "an alien present in the United States who has not been admitted or paroled" in violation of INA § 1182(a)(6)(A)(i). *See* Ex. B (NTA). Accordingly, Petitioner is an "applicant for admission" as defined by 8 U.S.C. § 1225(a), and his detention is mandatory. *See, e.g.*, *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an "applicant for admission" subject to mandatory detention under § 1225(b)); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission"). The BIA, the highest-level administrative body for interpreting immigration law, recently adopted this understanding of § 1225(b)(2) in a decision that binds all immigration judges and is persuasive authority here. *See Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025).[6]

By its plain text, § 1225(b) requires ICE to detain two types of "applicants for admission"—those who have "arrived in the United States" and those "who ha[ve] not been admitted." 8 U.S.C. § 1225(a)(1). "[A]rrive[d] in the United States" means the noncitizen has just entered the country—such as at the airport or at the U.S. border—or did so very recently. *See Thuraissigiam*, 591 U.S. at 139. Noncitizens "have not

[6] The BIA decided *Matter or Hurtado* after the IJ's July 14, 2025, holding that Petitioner was eligible for a bond hearing under 8 U.S.C. § 1226(a). The IJ's decision is on appeal to the BIA.

been admitted" if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). That latter category is broader and includes Petitioner because he is present in the United States without admission or parole. Accordingly, he is subject to § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (noting § 1225(b)(2) is a "broader," "catchall provision" that "applies to all applicants for admission not covered by § 1225(b)(1)").[7]

Petitioner may argue that § 1225(b)(2) applies to only aliens "seeking admission," and that an alien is "seeking admission" only when they are taking an affirmative step to gain admission. *See, e.g.*, *Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496, at *7–9 (D.N.J. Sept. 26, 2025). But the BIA does not interpret the phrase "seeking admission" that way:

> Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this

[7] Even though § 1225(b) requires the detention of both types of applicants for admission, immigration officials did not always interpret it that way. Specifically, DHS's predecessor agency, the U.S. Immigration and Naturalization Service ("INS"), read § 1225(b) to apply only to those who have arrived in the United States. That is, while INS detained arriving aliens, INS chose whether to detain aliens who have not been admitted. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131, (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."). Noncitizens who were present without admission were detained under the discretionary rules of 8 U.S.C. § 1226(a). *See id.*

As of July 8, 2025, however, ICE has taken the position all applicants for admission, including those who are present without admission, are subject to mandatory detention under § 1225(b)(2). ICE takes this position because it accords with the plain language of the statute and is consistent with recent caselaw from the BIA, the highest-level administrative body for interpreting immigration law. *See Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025).

> country without having formally requested or received such permission . . . In other words, 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, 25 I. & N. 734, 743 (BIA 2012). As such, the phrase "seeking admission" in § 1225(b)(2)(A) should be read to include an "applicant for admission." Therefore, aliens who are "applicants for admission" are also aliens who are "seeking admission."

Put differently, all "applicants for admission" are, by definition, "seeking admission." That is why, in § 1225(a)(3), Congress stated that immigration officers must inspect all aliens "who are applicants for admission *or otherwise* seeking admission." 8 U.S.C. § 1225(a)(3) (emphasis added).[8]

Those phrases play out in a commonsense way in § 1225(b)(2). The statute begins with a limiting or qualifying clause (i.e., it says the subsection applies only to "any applicant for admission," which means only to those who are physically present). This limiting clause avoids the conclusion that the subsection would apply to those abroad; say, in an embassy. Having made clear § 1225(b)(2) applies only to those present here, it continues with the second clause, which says that detention is

[8] That is not to say the words "seeking admission" and "applicant for admission" are identical. The former is broader than the latter. For example, the INA contemplates that "stowaways" may seek admission by requesting asylum, yet stowaways are excluded from the definition of "applicant of admission." 8 U.S.C. § 1225(a)(2). In addition, an applicant for admission must be physically in the United States; a noncitizen can "seek admission" in the United States or outside of it, such as in an embassy before a consular officer. *See Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (although ruling against ICE, noting that the terms have slightly different breadth).

mandatory if the immigration officer determines the "alien seeking admission" is not entitled to it. *See Adamowicz v. I.R.S.*, 552 F. Supp. 2d 355, 367–68 (S.D.N.Y. 2008) ("'[A] limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.' This approach is successful not merely as a matter of grammar, but also as a matter of internal logic: the set of information defined in the first clause is specific and in no need of further restriction, whereas the set of information defined in the second clause more appropriately lends itself to such restriction."). Accordingly, because Petitioner is an applicant for admission in that he is present without being admitted, he is subject to § 1225(b)(2).

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed Illegal Immigration Reform and Immigrant Responsibility Act 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). 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). Respondents' reading of § 1225(b)(2) makes

sense because it would not put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Otherwise, aliens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a). *See generally Matter of Hurtado*, 29 I&N Dec. at 222–25 (discussing legislative history in detail).

Respondents' reading of § 1225(b)(2) also works hand in hand with § 1226(a)'s discretionary detention authority. The two sections are not duplicative; instead, § 1226(a) applies to any noncitizen who is present in the country but not an applicant for admission. In other words, it applies to any noncitizen who was admitted, but then something happened that made them deportable under 8 U.S.C. § 1227(a) (listing classes of deportable aliens as "any alien . . . in and admitted to the United States" who fall under any of several classes of deportable alien). Some examples include noncitizens who violate their nonimmigrant status—e.g., a tourist, student visa holder, H-1B specialty occupations, and so on. *Id.* § 1227(a)(1)(c). These are noncitizens who were admitted into the country (so they are not applicants for admission) but then engage in a deportable act such as overstaying their tourist visa, failing to comply with their student visa requirements, or losing their job that granted them H-1B status. Without § 1226(a), there would be no statutory authority for ICE to detain such noncitizens.[9]

[9] Several district courts have addressed ICE's interpretation of § 1225(b)(2) since early July 2025, and while some courts have adopted it, the majority have not. *Compare Rivera Zumba*, 2025 WL 2753496, at *9 (holding that a noncitizen residing

Accordingly, Petitioner's detention is lawful under § 1225(b)(2).[10]

B. Due Process Permits Mandatory Detention Pending Removal Proceedings

The Court should also reject Petitioner's argument that he has not been afforded sufficient process. As a general matter, "applicants for admission are entitled only to those rights and protections Congress set forth by statute," and "the due process clause requires 'nothing more.'" *Pena*, 2025 WL 2108913, at *2 (citing *Thuraissigiam*, 591 U.S. at 140). That is because "the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Thuraissigiam*, 591 U.S. at 139

---

in the United States for 20 years was not affirmatively "seeking admission" and therefore not subject to § 1225(b)(2)) *and Romero v. Hyde,* No. 25-11631, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (collecting cases holding that ICE's interpretation is "contrary to the plain text of the statute and the overall statutory scheme"), *with Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an "applicant for admission" subject to mandatory detention under § 1225(b)); *Pena v. Hyde,* No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission"); *Chavez v. Noem*, No. 25-2325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (similar); *and Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025 (similar).

[10] Even if the court holds that 8 U.S.C.§ 1226(a) applies to Petitioner, ICE has lawfully detained him. *See infra* pp. 16–19. *Cf. Valeriano v. Bondi*, No. 25-cv-16100 (MAS), ECF No. 4 (D.N.J. Oct. 1, 2025), at 2. ("As Petitioner acknowledges, even under his reading of the relevant immigration statutes, he is still subject to detention under 8 U.S.C. § 1226(a), albeit with an entitlement to seek bond from an immigration judge. Should Petitioner prevail in this matter, the proper relief would constitute an order directing the Government to provide Petitioner with the bond hearing to which he contends he is entitled under § 1226(a).").

(citation omitted) (cleaned up); *see also id.* ("[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border."). Here, once ICE determined that Petitioner entered the United States without inspection or parole (a fact that Petitioner does not dispute), it follows that Petitioner is an "applicant for admission" and subject to mandatory detention.

Petitioner's current detention also comports with due process. Although the due process clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), some amount of detention is generally permissible, *Demore v. Kim*, 538 U.S. 510, 511 (2003). The Third Circuit's decision in *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203 (3d Cir. 2020), is instructive on this point. There, the court held that when ICE detains a noncitizen pending removal proceedings under 8 U.S.C. § 1226(c) (which, like § 1225(b)(2), requires mandatory detention), the Due Process Clause demands a bond hearing only once detention has become "unreasonably prolonged." *Id.* at 210–11. This is a "highly fact-specific inquiry" without a bright line. *Id.* But courts in this District have held that detentions under § 1225(b) considerably longer than Petitioner's were not unreasonable. *See Adel G. v. Warden, Essex Cnty. Jail*, No. 19-13512 (KM), 2020 WL 1243993, at *2 (D.N.J. Mar. 13, 2020) (collecting cases holding that "detention for

fifteen months or less is insufficient to support an as-applied challenge to detention under § 1225(b)").[11]

Here, ICE detained Petitioner on May 21, 2025, which is less than six months ago. Pet. ¶ 28. Therefore, it is ICE's position that his detention is presumptively reasonable. *See, e.g.*, *Pena,* 2025 WL 2108913, at *2–3 (holding detention of 17 days under § 1225(b) comported with due process); *Pipa-Aquise*, 2025 WL 2490657, at *1 (holding that "Petitioner two-month detention" under § 1225(b) did not violate due process). Moreover, Petitioner can request release on parole under § 1225. 8 U.S.C. § 1182(d)(5)(A).

Finally, even where mandatory detention becomes "unreasonable" under the Due Process Clause, the appropriate remedy is a bond hearing, rather than immediate release. *See, e.g.*, *Akhmadjanov v. Oddo*, No. 25-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025). "Here, however, Petitioner has already received a bond hearing and has been detained for approximately [five] months, which is substantially less than the length of detention that courts have previously determined would constitutionally require a hearing under the Due Process Clause." *Rodriguez*, 2025 WL 2490670, at *3 (collecting cases); Ex. L (Bond Memorandum), at 2–3 (denying Petitioner's request for release after a bond hearing).

[11] Courts outside this District have held similarly. *See, e.g.*, *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025) (collecting cases).

Accordingly, the Court should dismiss Petitioner's due process challenge to his detention.

II. Alternatively, Detention is Lawful Under 8 U.S.C. § 1226(a)

Even if the Court holds that 8 U.S.C. § 1226(a) governs Petitioner's detention, which it should not for the reasons discussed above, Petitioner's statutory and constitutional claims fail. The Court should therefore dismiss or deny the Petition.

A. Petitioner's Detention Complies with 8 U.S.C. § 1226(a).

Petitioner argues that DHS violated 8 U.S.C. § 1226 by detaining him notwithstanding the fact that an IJ released him on bond under § 1226(a) in October 2012. As Petitioner acknowledges, § 1226(b) provides that "[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." Pet. ¶ 29. Here, DHS cancelled Petitioner's bond in March 2017 and re-detained him in May 2025. Ex. H (Mar. 2017 Bond Cancellation); Ex. K (May 2025 Custody Determination).

Petitioner contends that his detention is unlawful because DHS detained him, while § 1226 vests detention and re-detention authority in the "Attorney General." Pet. ¶¶ 29–34. He is mistaken. Section 1226 predates the Homeland Security Act, under which the former "Immigration and Naturalization Service (INS), under the direction of the Attorney General, ceased to exist and its functions were transferred to DHS." *Young v. Aviles*, 99 F. Supp. 3d 443, 447 n.3 (S.D.N.Y. 2015) (citing *Vasquez v. Holder,* 602 F.3d 1003, 1006 n. 3 (9th Cir. 2010)); *see also* 6 U.S.C. §§ 202, 251, 557. "With that transfer of authority the title 'Attorney General' in Section 1226 is

synonymous with the Secretary of Homeland Security." *Id.* (cleaned up) (citing *United States v. Rios–Zamora,* 153 F. App'x 517, 520–21 (10th Cir. 2005)). Further, the fact that IJs (who fall under the Attorney General) perform certain functions related to custody determinations does not limit the statutory authority of DHS under § 1226. *Cf. Szentkiralyi v. Ahrendt*, No. 17-1889 (SDW), 2017 WL 3477739, at *4 (D.N.J. Aug. 14, 2017) (holding that "the Homeland Security Act of 2002 transferred virtually all immigration enforcement and administrative functions vested in the Attorney General to the Secretary of Homeland Security," but that the Secretary of Homeland Security could still delegate certain duties to IJs under 8 U.S.C. § 1226(a)).

Lastly, insofar as Petitioner challenges the merits of the decision to re-detain him, Pet. ¶ 34, the Court lacks jurisdiction. The INA provides that "[n]o court may set aside any action or decision by the Attorney General [or DHS] under [§ 1226] regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e).

Petitioner's statutory challenge to detention under § 1226(a) therefore fails.

B. Petitioner Received a Constitutionally Sufficient Bond Hearing

Petitioner further claims that his detention under § 1226(a) violates Due Process. Where a petitioner detained under 8 U.S.C. § 1226(a) has received a bond hearing, a federal court's review is limited to determining whether that hearing was conducted lawfully and with Due Process. *See, e.g., Medrano v. Taylor*, No. 17-5521 (ES), 2018 WL 2175774, at *4 (D.N.J. May 11, 2018). By contrast, the INA strips jurisdiction over any challenge to "the discretionary decision of the IJ to deny

Petitioner's release on bond." *Id.* (citing 8 U.S.C. 1226(e)). Accordingly, the only potential relief available to Petitioner is an appropriate bond hearing (which has already occurred), rather than release. *Id.* ("Because Petitioner has received the only relief this Court can provide to him under § 1226(a)—a bond hearing before an immigration judge—the Court will deny his Petition.").

Petitioner acknowledges that he received a bond hearing but argues that DHS should have had the burden to establish the necessity of continued detention by clear and convincing evidence. Pet. ¶ 42. But it is well settled that the government does not bear the burden of proof at § 1226(a) bond hearings. *See Jennings*, 138 S. Ct. at 847–48 (holding that "[n]othing in § 1226(a)'s text . . . even remotely supports the imposition" of the burden on the government to prove that a noncitizen is a danger or a flight risk, much less by clear and convincing evidence); *Borbot v. Warden Hudson Cnty. Corr. Facil.*, 906 F.3d 274, 279–80 (3d Cir. 2018) (holding that Due Process does not require the government to bear the burden of proof in bond hearings under 8 U.S.C. § 1226(a)).[12]

During administrative proceedings, a noncitizen may present any evidence they believe bears on the issues of flight risk or dangerousness, see 8 C.F.R. § 1003.19(d) (immigration judge may consider "any information that is available . . .

[12] By contrast, the Third Circuit has held that when mandatory detention under 8 U.S.C. § 1226(c), has become unreasonably prolonged, Due Process demands a bond hearing at which the government bears the burden of proof. *German Santos*, 965 F.3d at 207 (citing *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 474–75 (3d Cir. 2015) and *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011)). But that line of decisions does not apply to discretionary proceedings under § 1226(a), as *Borbot* recognized. 906 F.3d at 278–29.

or that is presented to him or her by the [noncitizen] or the [Department of Homeland Security]"), with the possibility of further review in the event of changed circumstances, *see id.* §§ 236.1(d)(3), 1236.1(d)(3). The existing procedures governing bond hearings are flexible, permitting an immigration judge to consider a wide range of factors and the noncitizen to present any evidence that may bear on any of those factors. *Matter of Guerra*, 24 I. & N. Dec. 37, 40–41 (BIA 2006). And courts have rejected challenges to the procedures adopted in a § 1226(a) bond hearing. *See Miranda v. Garland*, 34 F.4th 338, 361 (4th Cir. 2022) (rejecting petitioner's "litany of complaints about the procedures the government has adopted for § 1226(a) hearings" including "that detention, with limited visitation rights, prejudices an alien's ability to prepare for hearings," and that the burden was improperly on petitioner).

The Court should therefore reject Petitioner's Due Process challenge to his detention.[13]

CONCLUSION

For the foregoing reasons, the Court should dismiss or deny the Petition.

.

Respectfully submitted,

TODD BLANCHE
U.S. Deputy Attorney General

[13] Petitioner does not challenge his removability, nor could he through this habeas action. A stay of removal is not the type of relief subject to habeas review. *See Thuraissigiam*, 140 S. Ct. at 1970 (holding that the relief sought, which did not include release, fell "outside the scope of the common-law habeas writ"); *Tazu v. U.S. Att'y Gen.*, 975 F.3d 292, 300 (3d Cir. 2020) ("And Tazu's constitutional right to habeas likely guarantees him no more than the relief he hopes to avoid—release into 'the cabin of a plane bound for Bangladesh.'").

ALINA HABBA
Acting United States Attorney
Special Attorney

By: /s/ *Andrew Boccio*
ANDREW BOCCIO
Assistant United States Attorney

Dated: October 16, 2025