

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

NESTOR J. BELTRAN BARRERA

PETITIONER

v.

NO. 3:25-CV-541-RGJ

JEFF TINDALL, in his Official Capacity as
Oldham County Jailer; and
SAMUEL OLSON, in his Official Capacity as
Field Office Director, Chicago Field Office,
U.S. Immigration and Customs Enforcement

RESPONDENTS

RESPONSE TO ORDER TO SHOW CAUSE

Respondent Samuel Olson, in his official capacity as Field Office Director for U.S. Immigration and Customs Enforcement (ICE) Chicago Field Office, responds to the Court's Order to Show Cause why Petitioner's writ of habeas corpus should not be granted.¹

INTRODUCTION

Petitioner is a noncitizen who was not lawfully admitted to the United States, and he has no lawful immigration status. He is currently detained by ICE while the agency pursues administrative removal proceedings against him. Petitioner does not challenge the agency's decision to initiate removal proceedings against him. Rather, Petitioner challenges the agency's decision to detain him under a statutory provision

¹ This response is filed on behalf of Respondent Samuel Olson. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition names Jeff Tindall, the Oldham County Jailer, as a respondent.

that does not entitle him to a bond hearing. Because Petitioner has not been admitted to the United States, he is lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

BACKGROUND

Petitioner, a native and citizen of Mexico, entered the United States on or about March 2004 without inspection. [Doc. 1-4, PageID. 38.] He was not admitted or paroled into the United States. [Doc. 1-8, PageID. 52.]

On June 24, 2025, ICE officials issued a warrant for arrest for Petitioner determining that there was probable cause to believe that he was removable from the United States. [Doc. 1-2, PageID. 33.] ICE officials also issued a Notice of Custody Determination indicating that pending a final administrative determination, Petitioner would be detained. [Doc. 1-3, PageID. 34.] Although the forms ICE used for the warrant and notice cited 8 U.S.C. § 1226 (Immigration and Nationality Act “INA” § 236) as the authority for Petitioner’s detention, ICE detained him under 8 U.S.C. § 1225(b)(2)(A) because he has been present in the United States without admission or parole. [Doc. 1-8, PageID. 52.]

On June 24, 2025, ICE officials also issued Petitioner a Notice to Appear in immigration court stating that he had not been admitted or paroled after inspection by an Immigration Officer. [*Id.*] As a noncitizen without admission or parole, Petitioner is considered an “applicant for admission” in 8 U.S.C. § 1229 removal proceedings and is therefore detained pursuant to 8 U.S.C. § 1225(b)(2)(A). [Doc 1-7, PageID. 50.]

On August 5, 2025, Petitioner’s counsel filed a Motion for Bond Redetermination. [Doc. 1-4, PageID. 36-43.] A hearing was scheduled for August 6, 2025. [*Id.*; Doc 1,

PageID. 6.] At the hearing, ICE argued that Petitioner was not eligible for bond because he had been detained under 8 U.S.C. § 1225(b)(2)(A), which does not allow detainees to be released on bond. [Doc. 1, PageID. 6.] The immigration judge disagreed and ordered that Petitioner be released on bond. [See Doc. 1-1, PageID. 31.] On the same day, ICE filed a Notice of ICE Intent to Appeal Custody Redetermination, which invoked 8 C.F.R. § 1003.19(i)(2) that automatically stayed the immigration judge's bond order. [Doc. 1-6, PageID. 46.] On August 15, 2025, ICE appealed the immigration judge's order to the Board of Immigration Appeals ("BIA"). [Doc. 1-7, PageID. 47-51.]

Petitioner is detained at Oldham County Detention Center. [Doc. 1, PageID. 1-2.] Petitioner has an application for cancellation of removal pending before the Immigration Court. [Doc. 1, PageID. 2.] On August 27, 2025, Petitioner filed his petition seeking a writ of habeas corpus. [Doc. 1, PageID. 1.]

STANDARD OF REVIEW

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241. Petitioner bears the burden to show that his detention is unlawful. *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)).

ARGUMENT

Petitioner's detention pursuant to the automatic stay of 8 C.F.R. § 1003.19(i)(2) is reinforced by Congress's command to detain him throughout his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Because Petitioner is an "applicant for admission," he

is lawfully detained under 8 U.S.C. § 1225(b)(2)(A). As such, he cannot show that his detention violates due process or the INA, or that the automatic stay is unconstitutional as applied to him or ultra vires.

I. Petitioner Is Properly Detained Under § 1225(b)(2)(A)

Petitioner falls within the category of noncitizens that must be detained during their removal proceedings under 8 U.S.C. § 1225(b)(2)(A). Under § 1225(b)(2)(A), immigration officials “shall” detain “an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). While the plain meaning of many of the terms in § 1225(b)(2)(A) could imply that the statute only applies to noncitizens in the process of initially arriving at an international border, the statutory definitions provided for those terms make it clear that the provision is broader and applies to many noncitizens who have already entered the United States unlawfully.

The statute defines an “applicant for admission” as any noncitizen “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). Thus, this definition deems any noncitizen who entered unlawfully as one applying for entry, even if they are already physically present within the United States. *See id.*; *see also* 8 U.S.C. § 1182(d)(5)(A); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (“[noncitizens] who arrive at ports of entry – even those paroled elsewhere in the country for years pending removal – are ‘treated’ . . . ‘as if stopped at the border.’”).

Nevertheless, Petitioner argues that the phrase “seeking admission” “implies some sort of present tense action,” and that the “plain language of 1225 applies to immigrants currently seeking admission into the United States at the nation’s border or another port of entry.” [Doc. 1, PageID. 14.] However, the statutory definition of “admission” does not refer to a noncitizen physically crossing the border into the country; instead, it describes “lawful entry,” which relates to a noncitizen’s legal right to enter, without regard to where or when that right may be granted. 8 U.S.C. § 1101(a)(13)(A). In particular, the statute defines “admission” as “the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.” *Id.* Therefore, the term “seeking admission” in § 1225(b)(2)(A) does not refer to a noncitizen attempting to physically access the United States; it instead refers to a noncitizen seeking a *lawful* means of entering the United States (e.g. receiving a visa). *See id.*; *see also* Admission, Black’s Law Dictionary (12th ed. 2024) (“Admission: Immigration law. The entry into a country by [a noncitizen] with apparent legal permission to do so, usu. as obtained with a visa.”).

Thus, § 1225(b)(2)(A) requires an immigration officer to detain any noncitizen “present” in the United States who has not been lawfully admitted or paroled and who seeks a lawful means of entry if the official determines that the noncitizen is “not clearly and beyond doubt entitled to be admitted” and the officer refers the noncitizen for removal proceedings under 8 U.S.C. § 1229a, which is the statute providing the procedural aspects of removal. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A).

This understanding of the statute is consistent with the circumstances of its enactment. Section 1225(b)(2)(A) was added to the Immigration and Nationality Act as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. Congress enacted IIRIRA to eliminate “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).

As the BIA explained in its recent decision, *Matter of Yajure Hurtado*, “placement of [a noncitizen] in exclusion or deportation proceedings before the 1996 passage of IIRIRA depended on whether the [noncitizen] had made an ‘entry’ within the meaning of the INA.” 29 I& N Dec. 216, 223 (BIA 2025). Congress, however, enacted IIRIRA to “substitute the term ‘admission’ for ‘entry’ and replaced deportation and exclusion proceedings with removal proceedings.” *Id.* The BIA further explained that “Congress acted, in part, to remedy the ‘unintended and undesirable consequence’ of having created a statutory scheme where [noncitizens] who entered without inspection could take advantage of...the right to request release on bond” as afforded in deportation proceedings, “while [noncitizens] who ‘actually presented themselves to authorities for inspection...were subject to mandatory custody’” as provided for in exclusion proceedings. *Id.* (citing *See Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)).

Additionally, in *Matter of Lemus*, the BIA explained that “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 country without having formally requested or received such permission . . .”). 25 I&N Dec. at 734, 743 (BIA 2012). Therefore, IIRIRA created the interpretation that noncitizens who had already entered the United States unlawfully were deemed “applicants for admission” and treated as if they were still on the threshold. *Torres*, 976 F.3d at 928.

Petitioner, however, asserts that the plain language of § 1225(b)(2) only applies to noncitizens at the border and cites *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018), to argue that only §1226 applies to noncitizens already present in the country. [Doc. 1, PageID. 14.] To the contrary, *Jennings* shed light on how even noncitizens present in the United States may still be considered not “admitted” and thus fall in the category of seeking or applying for admission.

In describing § 1225(b)(2), the Court characterized it as a broad “catchall” provision that applied to “applicants for admission” or noncitizens “seeking admission,” which are the exact words used in § 1225(b)(2)(A). See *Jennings*, 583 U.S. at 287, 297; 8 U.S.C. § 1225(a)(1). The Court explained that a noncitizen “present in the country may still be removed if he or she falls ‘within one or more...classes of deportable [noncitizens]’”. See *Jennings*, 583 U.S. at 288 (citing § 1227(a), which applies to noncitizens “in and *admitted* to the United States”)(emphasis added); 8 U.S.C. § 1227(a). The Court noted that “[s]ection 1226 generally governs the process of arresting and detaining that group of [noncitizens] pending their removal.” *Id.* Petitioner, however, has not been admitted.

Here, Petitioner falls within the scope of § 1225(b)(2)(A). Petitioner was not inspected or admitted to the United States, and he was apprehended while present in the United States, so he is an “applicant for admission.” 8 U.S.C. § 1225(a)(1). He is “seeking admission” because he wishes to remain in the United States and the only way for him to do that is after a lawful entry. *See* 8 U.S.C. §§ 1225(a)(1), 1101(a)(13)(A). An immigration official found that he was not clearly and beyond doubt entitled to admission. [*See* Doc. 1-8, PageID. 52.; Doc. 1-7, PageID. 50.] And ICE has pursued administrative immigration proceedings against him under 8 U.S.C. § 1229a. [Doc. 1-8, PageID. 52.] Accordingly, Petitioner meets the elements of § 1225(b)(2)(A) and his detention under that statute is proper.

II. Detention Under 8 U.S.C. § 1226(a) Does Not Apply to Petitioner

Under 8 U.S.C. § 1226(a), ICE may obtain a warrant to arrest and detain a noncitizen to pursue administrative removal proceedings against them. 8 U.S.C. § 1226(a). Noncitizens detained under 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they fall into an exception, such as the exceptions described in § 1226(c). *See id.*

Section 1226(a) applies to noncitizens “arrested and detained pending a decision” on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to noncitizens who are “applicants for admission,”—a specially defined subset of noncitizens that explicitly includes those “present in the United States who ha[ve] not been admitted.” *Id.* § 1225(a). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275

(N.D. Fla. 2023) (“§ 1225(a) treats a specific class of [noncitizens] as ‘applicants for admission,’ and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen].”). Because Petitioner falls squarely within the “applicants for admission” category, the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

Moreover, the language of § 1225(b)(2)(A) is mandatory and requires detention for noncitizens who fall within the scope of the statute until the conclusion of their administrative immigration proceedings. *See* 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 300 (“§§ 1225(b)(1) and (b)(2) do not use the word ‘may.’ Instead, they unequivocally mandate that [noncitizens] falling within their scope ‘shall’ be detained. Unlike the word ‘may’ which implies discretion, the word ‘shall’ usually connotes a requirement.”). Thus, noncitizens who qualify as “applicants for admission” or who otherwise meet the criteria for § 1225(b)(2)(A) must be detained.

Nevertheless, Petitioner argues that ICE must rely on § 1226(a) in this case because ICE typically detained noncitizens like Petitioner under that statute in the past. [Doc. 1, PageID. 10, 13.] In 2018, however, the Supreme Court in *Jennings* explained that § 1225(b) mandates detention for “applicants for admission.” *Jennings*, 583 U.S. at 287-288, 300. In May of 2025, the BIA similarly concluded that noncitizens that fall within the scope of 8 U.S.C. § 1225(b) must be detained under that section and are “ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).” *Matter*

of *Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). More recently, on September 5, 2025, the BIA held that [noncitizens] “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.” *Matter of Yajure Hurtado*, 29 I& N Dec. 216, 220 (BIA 2025).

In *Matter of Yajure Hurtado*, the respondent alleged that because he had been residing in the interior of the United States for almost 3 years (since his November 2022 entry without inspection), he could not be considered as “seeking admission” as the phrase is used in section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A). *Id.* at 221. The BIA posed the following question, “[i]f he is not admitted to the United States (as he admits), but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* The BIA explained that the respondent did not provide any legal authority illustrating how after an “undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer seeking admission and has somehow converted to a status that renders him or her eligible for a bond hearing under 8 U.S.C. § 1226(a)” and thus his argument must fail.² Similarly, Petitioner acknowledges he has not been admitted by virtue of his entry without inspection and has not provided such legal authority either. [Doc. 1-4, PageID. 38.]

² The BIA does acknowledge that for years Immigration Judges have conducted bond hearings for noncitizens who entered the United States without inspection. *Matter of Yajure Hurtado*, 29 I& N Dec. at 225. The BIA, however, explains that it does not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue (the Immigration Judge’s authority to hold a bond hearing for a noncitizen present in the United States who has not been admitted after inspection) before them. *Id.*

Further, to the extent that Petitioner relies on 1226(a) because he was detained under a DHS warrant, the BIA recently explained that such does not change Petitioner's status. "[T]he mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for [a noncitizen] who falls under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)." *Matter of Yajure Hurtado*, 29 I& N Dec. at 227.

Additionally, Petitioner argues that ICE cannot detain him under § 1225(b)(2)(A) because applying it to cases like his (noncitizens who have already entered the country), would render the recent amendment to § 1226(c) (the Laken Riley Act), redundant. [Doc. 1, PageID. 15.] However, as stated by the BIA in its recent decision, "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)," which requires noncitizens who fall within the definition of the statute to be detained for a proceeding under section 240. *Matter of Yajure Hurtado*, 29 I& N Dec. at 222.

The BIA also explained that simply because "section 236(c) of the INA, 8 U.S.C. § 1226(c), mandates detention of a subset of the category of [noncitizens] that are also subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)," that "is not a basis on which to determine that section 235(b)(2)(A) is null and void." *Id.* (citing *Barton v. Barr*, 590 U.S. 222, 239 (2020) ("redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure"..."[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text")).

Accordingly, Petitioner cannot show that his detention is governed by § 1226(a).

III. Petitioner Cannot Show That The Automatic Stay Is Unlawful Or *Ultra Vires*

Petitioner cannot show that the automatic stay violates his due process, the Constitution as applied to him, or is *ultra vires*. The regulation 8 C.F.R. § 1003.19(i)(2) entitles the Department of Homeland Security to appeal an immigration judge's bond decision. If the requirements set out in 8 C.F.R. § 1003.6(c) are satisfied, the immigration judge's bond decision is stayed until the BIA resolves the appeal or 90 days passes, whichever happens first. *Id.* § 1003.6(c)(4). Here, Petitioner alleges that his detention became unlawful on August 6, 2025, when the immigration judge granted his release on bond and ICE initiated the automatic stay. [Doc. 1, PageID. 2.] The automatic stay, however, is lawful and comports with the due process clause.

a. The Automatic Stay is Not Unlawful

The Fifth Amendment's Due Process Clause requires that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process contains both procedural components, which require the government to follow certain procedures before a deprivation, and substantive components, which "bar[] certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Zinerman v. Burch*, 494 U.S. 113, 125 (1990) (internal quotation omitted); *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 145 (4th Cir. 2014).

In general, the Supreme Court has recognized that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003). Further, in addressing the automatic stay, the district court in *Altayar v. Lynch* explained that “a stay of some length is afforded precisely because it allows the Government an opportunity to appeal before a detainee might flee.” 2016 WL 7383340, at *4 (D. Ariz. Nov. 23, 2016) (citing *El-Dessouki, v Cangemi*, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006) (“a finite period of detention to allow the BIA an opportunity to review the immigration judge’s bond redetermination is a narrowly tailored procedure that serves the government’s interest in preventing flight of [noncitizens] likely to be ordered removable and in protecting the community”).

Yet, Petitioner claims that the automatic stay may result in an indefinite period of detention, is arbitrary, and constitutes a unilateral decision to override the immigration judge’s decision. [Doc. 1, PageID. 21, 22, 28.] However, the regulation provides that the immigration judge’s bond decision is stayed until the BIA resolves the appeal or 90 days passes, *whichever happens first*. 8 C.F.R. § 1003.6(c)(4).³

Furthermore, as observed by the court in *Altayar*, “the regulations under 8 C.F.R. § 1003.38 provide for a constitutionally permissive appellate process in compliance with due process, which provides both parties in bond proceedings with an avenue to appeal the Immigration Judge’s custody and bond decision.” *See* 2016 WL 7383340, at *5 (citing 8 C.F.R. § 1003.38). In this respect, the *Altayar* court concluded that “the automatic stay

³ 8 C.F.R. § 1003.6 provides for additional process, but that is not at issue in this case because the BIA has not resolved this appeal, nor has Petitioner been detained for 90 days.

[] does not turn the IJ decision into a meaningless formality because it affords the BIA time to consider an appeal,” and “the purpose of the automatic stay is to ‘avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.’” *Id.* (citing *Review of Custody Determinations*, 71 FR 57873-01, 2006 WL 2811410). As such, the automatic stay does not violate Petitioner’s substantive due process.

In regards to procedural due process, Petitioner argues that the three *Mathews* factors weigh in his favor: (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); [Doc. 1, PageID. 23.] However, Petitioner’s due process rights as a noncitizen who has not been admitted to the United States does not overcome the Government’s interests in maintaining his detention during the limited automatic stay time period. As discussed above, “[d]etention during removal proceedings is a constitutionally permissible part of that process,” *Demore*, 538 U.S. at 531, and because he falls within the scope of 8 U.S.C. § 1225(b)(2)(A), he is subject to mandatory detention.

Further, [a noncitizen’s] right to procedural due process is violated “only if [1] the proceeding was ‘so fundamentally unfair that the [noncitizen] was prevented from reasonably presenting his case,’” and [2] the [noncitizen] proves that “the alleged

violation prejudiced his or her interests.” *Altayar*, 2016 WL 7383340, at *5 (citing *Mendez–Garcia v. Lynch*, 840 F.3d 655 (9th Cir. 2016) (citations omitted); *see also Vargas–Hernandez v. Gonzales*, 497 F.3d 919, 926–27 (9th Cir. 2007) (“Where [a noncitizen] is given a full and fair opportunity . . . to present testimony and other evidence in support of the application, he or she has been provided with due process.”)).

Here, Petitioner was given notice of the charges against him, he has access to counsel, he has attended a hearing with an immigration judge, he has requested bond, he will have or has had an opportunity to submit a response to ICE’s appeal regarding the bond decision⁴, and he has applied for cancellation of removal which is pending before the immigration court. As such, Petitioner has not identified a statutory procedure, which he is entitled, that ICE has denied him. Under these circumstances, Petitioner cannot show that his detention violates his procedural due process.

b. The Automatic Stay is Not *Ultra Vires*

The authority for the automatic stay stems from the discretion provided to the Attorney General to implement the INA. The Attorney General was authorized to promulgate 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c) under 8 U.S.C. § 1226. Those regulations reflect the Attorney General’s determination that “certain bond cases require additional safeguards before [a noncitizen] is released during the pendency of removal proceedings against him or her. In these cases, the immigration judge’s order is only an interim one, pending review and the exercise of discretion by another of the

⁴ Pursuant to the BIA Practice Manual, once an appeal is filed, the Board will issue a briefing schedule allowing the parties to file briefs within twenty-one (21) days. See BIA Practice Manual § 7.3(b)(1), § 4.2(e).

Attorney General's delegates, the [BIA]." *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1032 (E.D. Wis.), *aff'd sub nom. Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007) (quoting 71 Fed. Reg. 57873, 80); *see also Altayar v. Lynch*, 2016 U.S. Dist. LEXIS 175819, at *11-15 (Nov. 23, 2016) (report and recommendation adopted in *Altayar v. Lynch*, 2016 U.S. Dist. LEXIS 175817, 2016 WL 7373353 (Dec. 20, 2016)). The *Hussain* court also acknowledged that it appears that "the lower court decisions finding the automatic stay provision invalid were based on a misunderstanding of the relationship between DHS, the IJs, and the BIA, and their respective roles in exercising the authority of the Attorney General to make custody determinations in cases involving the removal of [noncitizens]." *Hussain v. Gonzales*, 492 F. Supp. 2d at 1032. Therefore, the automatic stay does not exceed ICE's authority under the INA.

Moreover, as indicated by the BIA's decision in *Yajure Hurtado*, under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), the immigration judge lacked authority to hear bond requests or to grant bonds to noncitizens, who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I& N Dec. at 227. Thus, as it pertains to Petitioner who falls within the scope of 8 U.S.C. § 1225(b)(2)(A), ICE exercised the mechanism it was granted via the Attorney General's discretion under 236(a) of the INA, 8 U.S.C. § 1226 to appeal the immigration judge's decision. As such, the automatic stay is not *ultra vires*.

CONCLUSION

Because Petitioner is lawfully detained, Respondents respectfully request that the Court dismiss his petition for a writ of habeas corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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/s/ Calesia Henson
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