

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

Jose Ayala Casun,)
Plaintiff.)

v.)

PATRICIA HYDE, Field Office)
Director, MICHAEL KROL, HSI New)
England Special Agent in Charge,)
TODD LYONS, Acting Director U.S.)
Immigrations and Customs)
Enforcement, and KRISTI NOEM, U.S.)
Secretary of Homeland Security,)
Respondents.)

Case No: 1:25-cv-00427-JJM-AEM

**RESPONDENTS' OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF
HABEAS CORPUS**

The United States, on behalf of Respondents Patricia Hyde, Michael Krol, Todd Lyons, and Kristi Noem, in their official capacities, respectfully submits its Opposition to Petitioner's Petition for Writ of Habeas Corpus ("Petition," ECF 1).

Petitioner claims that his detention is unlawful in that it violates his Fifth Amendment right to due process and seeks a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately. ECF 1, Prayer for Relief. In fact, Petitioner's detention is lawful under 8 U.S.C. § 1225(b) because he is an applicant for admission who is not "clearly and beyond a doubt entitled to be admitted" to the United States. Under these circumstances, Petitioner "shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). In the alternative, Petitioner's detention is lawful under 8 U.S.C. § 1226 because the Board of Immigration Appeals has accepted ICE's notice of appeal of Petitioner's custody determination under 8 U.S.C. § 1226, and judicial review of any action or decision by the Attorney General under that provision is not permitted. 8 U.S.C. §

1226(e). Because Petitioner's detention is fully supported by statute, regulation, and the Constitution, the Petition should be denied.

BACKGROUND

A. Petitioner's Immigration History

Petitioner is a native and citizen of Guatemala. *See* Declaration of Keith M. Chan, Assistant Field Officer Director, U.S. Department of Homeland Security ("Decl."), filed herewith, at ¶ 6. Petitioner entered the United States in or about April 28, 2022 without inspection of an immigration officer at a place other than a port of entry, or a designated area by the Attorney General, near Presidio, Texas. *Id.* He was encountered by Customs and Border Protection ("CBP") at that time and subsequently released.

On July 24, 2023, Petitioner filed a Form I-360, Petition for Amerasian, Widower or Special Immigrant, ("Form I-360") with the United States Citizenship and Immigration Service ("USCIS"). Decl. ¶ 7. On October 18, 2023, Petitioner's Form I-360 was approved by USCIS, and he was granted deferred action with regards to the approved Form I-360. Decl. ¶ 8.

On August 10, 2025, Petitioner was arrested by the Lynn Police Department in Lynn, Massachusetts for Assault and Battery on a Household Member. The related police report states that Petitioner grabbed the victim, his girlfriend, by the wrist and would not let her collect her belongings from his car. Decl. ¶ 9. According to the police report, the victim accused Petitioner of attempting to punch the left side of her face. *Id.* The Petitioner denied dating and any altercation with the victim. *Id.*

On August 13, 2025, ICE encountered Petitioner at the Essex County Sheriff's Department House of Corrections in Middleton, Massachusetts after he posted bail. Decl. ¶

10. At the time of the encounter, ICE administratively arrested Petitioner for violations of United States immigration laws. Decl. ¶ 10. Petitioner was detained by ICE pursuant to 8 U.S.C. § 1225 at its office in Burlington, Massachusetts. *Id.* Later that day, he was transferred to the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island. *Id.* That same day, ICE served Petitioner with an I-200, Warrant for Arrest, and Form I-862, Notice to Appear, which alleges that he is inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). Decl. ¶ 11.

On August 21, 2025, Petitioner filed a motion for a custody redetermination hearing. Decl. ¶ 12. Petitioner's motion was granted, and on August 28, 2025, the Immigration Court held said hearing. Decl. ¶ 13. At the hearing, ICE argued that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. *Id.* Immigration Judge Yul-mi Cho found that Petitioner qualified for a hearing under 8 U.S.C. § 1226 and granted Petitioner release from custody under a bond of \$8,000. *Id.* ICE reserved appeal before the Board of Immigration Appeals. *Id.* The following day, ICE filed a Notice of ICE Intent to Appeal Custody Determination and invoked the 90-day automatic stay of the Immigration Judge's bond order. Decl. ¶ 14.

On September 2, 2025, Immigration Judge Cho issued a bond order reflecting her August 28, 2025 decision. Decl. ¶ 15. The next day, ICE filed the previously served Form I-862, Notice to Appear with the Immigration Court. Decl. ¶ 16. The Immigration Court scheduled the first hearing in Petitioner's removal proceedings for September 11, 2025. *Id.* To date, Petitioner remains detained at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island. Decl. ¶ 17.

B. Legal Background for Aliens Seeking Admission to the United States

i. The applicability of 8 U.S.C. § 1225.

In exercising its plenary power over immigration, Congress delegated to the Secretary of Homeland Security the responsibility for “[s]ecuring the borders,” enforcing the immigration laws, and “control[ling] and guard[ing] the boundaries and borders of the United States against the illegal entry of aliens.” 6 U.S.C. §§ 202(2) & (3); 8 U.S.C. § 1103(a)(5). Pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is known as an “applicant for admission.” Per Section 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. The term “admission” is defined by the Immigration and Nationality Act (“INA”) to mean “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A); *See also* 8 C.F.R. § 1235.1 (setting forth inspection procedures). Section 1225(b)(1) provides for the inspection of aliens arriving in the United States for admission, whereas Section 1225(b)(2)(A) provides for the inspection of all “other” applicants for admission. Notably, Section 1225(b)(2)(A) states 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* for a proceeding under section 240.”¹ 8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See also Matter of Yajure Hurtado*, 29 I&N Dec. 216, page 224 (BIA 2025) (“The legislative history confirms that, under a plain language reading of section 235(b)(1) and (2)

¹ Section 240 of the INA, codified at 8 U.S.C. § 1229a, refers to the full removal proceedings that Petitioner is currently subject to before the Immigration Court.

of the INA, 8 U.S.C. § 1225(b)(1), (2), Immigration Judges do not have authority to hold a bond hearing for arriving aliens and applicants for admission.”). Such is the case here.

ii. Special Immigrant Juvenile Classification.

Where an alien has been granted a Special Immigrant Juvenile (“SIJ”) classification, he is still subject to the provisions of 8 U.S.C. § 1225(b), and thus detention. *Benito Vasquez v. Moniz*, No. CV 25-11737-NMG, 2025 WL 1737216, at *2 (D. Mass. June 23, 2025) (“The fact that petitioner has been given special immigrant juvenile (‘SIJ’) status has no effect on ICE’s statutory and regulatory authority to detain him.”).

“Congress established SIJ status in 1990 in order to protect abused, neglected or abandoned children who, with their families, illegally entered the United States, ... and it entrusted the review of SIJ petitions to USCIS, a component of DHS.” *Osorio-Martinez v. Attorney General United States of America*, 893 F.3d 153, 162 (3d Cir. 2018) (quotations and citations omitted). An individual who obtains a SIJ classification thus receives several important benefits, but is still subject to arrest, detention, and removal from the United States. *See Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 432, 433 n.11 (3d Cir. 2023) (“Congress could have rationally decided that SIJS recipients should be given the opportunity to apply for adjustment of status, while also contemplating that they may be removed if their application is denied or for another appropriate basis.”); *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (Explaining that while “[t]he SIJ program offers aliens a multitude of benefits and protections, including the opportunity to seek lawful permanent resident status[,] ... [i]n and of itself, though, an SIJ designation

does not strip the U.S. government of all removal powers.”)²

iii. The applicability of 8 U.S.C. § 1226.

For aliens who are not applicants for admission as defined by 8 U.S.C. § 1225(b)(1), 8 U.S.C. § 1226 “generally governs the process of arresting and detaining that group of aliens pending their removal.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).

Pursuant to Section 1226(a), immigration authorities have discretion to arrest an alien subject to removal from the United States and then either continue detention or to release the alien on “bond ... or conditional parole.” *Id.* § 1226(a)(1)-(2). Per regulation, immigration authorities have discretion to release an individual under this statutory provision “provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If the immigration officer opts for continued detention, the alien can seek review of that decision at a bond hearing before an Immigration Judge. *Id.* § 236.1(d)(1). At the bond hearing, ICE bears the burden of proof to demonstrate danger by clear and convincing evidence or flight risk by a preponderance of evidence. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021).

Section 1226(e) commands that “[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e). *See A. v. Garland*, No. 23-CV-

² USCIS guidance explains that “[n]oncitizens without lawful status who have an approved SIJ petition remain subject to removal” because “SIJ classification does not render a noncitizen lawfully present, does not confer lawful status, and does not result in eligibility to apply for employment authorization.” USCIS Policy Alert-2022-10, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>.

1696 (PJS/TNL), 2023 WL 8469655, at *1–2 (D. Minn. Dec. 7, 2023) (Explaining that the court “has doubts about whether it has jurisdiction to essentially review and reverse an order of the BIA granting a stay pending the BIA’s resolution of an administrative appeal.”).

Instead, the appropriate remedy to challenging an Immigration Judge’s custody decision is for either party to appeal that decision to the Board of Immigration Appeals (“BIA”). 8 C.F.R. §§ 236.1(d)(3); 1003.19(f). ICE’s filing of an appeal “shall not operate to delay compliance with the order (except as provided in § 1003.19(i)).” 8 C.F.R. § 236.1(d)(4). Pursuant to 8 C.F.R. § 1003.19(i)(2), where DHS “has determined that an alien should not be released or has set a bond of \$10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS’s filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 C.F.R. 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board.”

ARGUMENT

A. Petitioner’s Habeas Petition is Premature.

To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his custody is in violation of the Constitution, laws, or treaties of the United States. See 28 U.S.C. § 2241(c)(3); *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) (“The burden of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner.”); *Farrell v. Lanagan*, 166 F.2d 845, 847 (1st Cir. 1948) (“The burden of proof is on the petitioner to establish denial of his constitutional rights. The court must be convinced by a preponderance of evidence.”). The question is which laws does Petitioner allege ICE to have violated.

At the heart of this matter is whether Petitioner's detention determination should be analyzed under 8 U.S.C. § 1225 or 8 U.S.C. § 1226. ICE argues the former. Immigration Judge Cho concluded the latter on August 28, 2025, following a custody redetermination hearing. ICE has filed a Notice of ICE Intent to Appeal Custody Redetermination to the BIA. A final ruling on whether Petitioner is subject to 8 U.S.C. § 1225 or 8 U.S.C. § 1226 is a prerequisite to properly assessing Petitioner's claim in his Petition that he is "currently being arrested and detained by federal agents without cause..." ECF 1, Claims for Relief. Thus, a ruling by this Court on Petitioner's claims is premature.

Notwithstanding the above, under either 8 U.S.C. § 1225 or 8 U.S.C. § 1226, Petitioner's claim fails.

B. Petitioner Is Properly Detained Under 8 U.S.C. § 1225(b)(2)(A).

Petitioner is subject to 8 U.S.C. § 1225. Specifically, his detention is proper under 8 U.S.C. § 1225(b)(2)(A), which mandates that he remain in detention during the pendency of his removal proceedings. 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." 8 U.S.C. § 1225(b)(2)(A). In the present case, Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement.

To start, Petitioner is an "applicant for admission" to the United States. As described above, an "applicant for admission" is an alien *present in* the United States who has not been admitted. 8 U.S.C. § 1225(a)(1) (emphasis added). Next, because Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt

entitled to be admitted,” his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Indeed, 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 per 8 U.S.C. § 1182(a)(6). Thus, the Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he “shall be” detained.

The plain language of the statute makes clear that applicants for admission fall into one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to “aliens *arriving* in the United States and certain other aliens who have not been admitted or paroled.” Section 1225(b)(2), on the other hand, is broader and applies to the “other aliens” who are applicants for admission.

In short, while Section 1225(b)(1) applies to aliens “arriving” in the United States, Section 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 simply because he was inspected at a time other than his immediate arrival in the United States. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, page 220 (BIA 2025) (holding that aliens 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, regardless of whether they have lived in the United States for years).

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.” (emphasis added)).

Petitioner suggests that his classification as a SIJ impacts the applicability of Section 1225(b)(2). It does not. As explained above, USCIS’ approval of Petitioner’s SIJ petition does not provide him with lawful immigration status in the United States and does not bar the government from effectuating his removal and detaining him. *See Vasquez v. Moniz*, Civil Action No. 25-11737-NMG, 2025 WL 1737216, at *2 (D. Mass. June 23, 2025) (holding that an individual’s SIJ classification has no effect on the government either detaining or removing him).

Accordingly, because all “other” applicants for admission—like Petitioner—who do not fall under Section 1225(b)(1) and have not demonstrated “clearly and beyond a doubt” that they are entitled to be admitted to United States under Section 1225(b)(2) “shall” be detained, Petitioner’s detention is lawful.

**C. If 8 U.S.C. § 1226 Controls, the Court Lacks Jurisdiction Over
Petitioner’s Claims.**

While the appeal is pending, this Court lacks jurisdiction over Petitioner’s claims that he has been arrested and detained by federal agents without cause. Congress has made clear that “discretionary judgment[s] regarding the application of [Section 1226] shall not be subject to review.” 8 U.S.C. § 1226(e). Section 1226(e) commands that “[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” *Id.*

As the Supreme Court explained in *Demore v. Kim*, 538 U.S. 510, 516-17 (2003), Section 1226(e) blocks judicial review of discretionary judgments and decisions by immigration officials regarding the arrest, detention, and issuance of bond to aliens per 8

U.S.C. § 1226. *See also Jennings*, 583 U.S. at 295-96 (Section “1226(e) precludes an alien from challenging a discretionary judgment by the [Secretary] or a decision that the [Secretary] has made regarding his detention or release.”) (cleaned up).

ICE’s decision to seek a stay of an Immigration Judge’s bond order or its decision to re-arrest an individual after the BIA grants a stay of release is insulated by Section 1226(e) from judicial review. *See 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) (“To the extent the challenged regulation represents the judgment of [ICE] as to how best implement the authority granted him by 8 U.S.C. § 1226, judicial review may be barred by § 1226(e).”); *Pisciotta*, 311 F. Supp. 2d at 453 (Finding no jurisdiction over claim challenging ICE’s “determination that he should be detained without bond, despite his previous conditions of custody, which permitted his release on \$12,000 bond.”); *Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *5 (N.D. Okla. June 12, 2025) (Dismissing for lack of jurisdiction any claim “that could be understood as seeking habeas review of discretionary decisions made by DHS to revoke petitioner’s bond and to detain him pending conclusion of his removal proceedings.”).

The First Circuit has recognized that § 1252(a)(2)(B)(ii)’s bar on review of discretionary immigration decisions applies to discretionary bail determinations under 8 U.S.C. § 1226(a). *Alsamhoury v. Gonzalez*, 484 F.3d 117, 122 (1st Cir. 2007); *see also Saint Fort v. Ashcroft*, 329 F.3d 191, 2032 (1st Cir. 2003) (habeas review may consider whether an alien is eligible for discretionary determination, but may not consider the “agency’s decision to exercise or not exercise its discretion to grant relief.”); *see also Flores-Powell*, 677 F. Supp. 2d at 475 (finding that federal court would “lack jurisdiction to review a

discretionary bail determination made pursuant to § 1226(a)").

The exception to the jurisdictional bars of both § 1226(e) and § 1252(a)(2) is where a party brings constitutional challenges to the immigration bail system. *See Pensamiento*, 315 F. Supp. 3d at 688; 8 U.S.C. § 1252(a)(2)(D). This is consistent with *Hernandez-Lara*, in which the First Circuit underscored that the petitioner was not challenging the Immigration Judge's "ultimate exercise of discretion, but rather "the extent of the Government's detention authority under the statutory framework as a whole." 10 F.4th at 33 (cleaned up). But here, Petitioner has not pled in his Petition any constitutional challenges to ICE's Notice of Appeal.

Petitioner's writ fails to state a claim for a due process violation. Because the Immigration Court determined that Petitioner was entitled to a bond hearing under Section 1226(a), this Court is precluded from reviewing the appeal and related stay that followed that discretionary bail determination under both 8 U.S.C. § 1226(e) and 8 U.S.C. § 1252(a)(2)(B)(ii). The writ should therefore be denied not only under Rule 12(b)(6) for failure to state a due process claim, but also Rule 12(b)(1) for lack of jurisdiction.

D. The Stay of the Immigration Judge's Bond Order Does Not Violate Due Process.

To the extent Petitioner challenges on due process grounds the BIA's allowance of ICE's motion to stay the Immigration Judge's bond order, this claim fails. As explained by the district court in *El-Dessouki*, no procedural due process violation occurs when "the BIA reviewed the particular circumstances of petitioner's case and the merits of ICE's request and determined that an emergency stay [was] warranted under the circumstances." 2006 WL 2727191, at *3. Stated further, "disagreement with the BIA's expeditious resolution of ICE's

motion in ICE's favor does not rise to a level of a violation of his right to procedural due process." *Id.* The court also found no substantive due process violation, explaining that petitioner did not face indefinite detention, that the government had a strong "interest in preventing flight of aliens likely to be ordered removable and in protecting the community" and therefore "petitioner's temporary detention pursuant to 8 C.F.R. § 1003.19(i)(1) pending ICE's appeal to the BIA does not violate his right to substantive due process." *Id.*

Other courts have similarly found no due process violation in detention after the BIA allows a stay of an Immigration Judge's bond order. *See e.g., Hussain*, 492 F. Supp. 2d at 1032 ("It is difficult to see how DHS's exercise of its responsibilities within that system operates as a denial of due process."); *Zavala v. Ridge*, 310 F. Supp. 2d, 1071, 1077 (N.D. Cal. 2004) ("The emergency stay provision found in 8 C.F.R. § 1003.19(i)(1) presents an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner's liberty interest."); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446, 451 (D. Conn. 2003) (same).

Courts have recognized that due process is not violated by the BIA's grant of a motion to stay because an alien can file a motion in opposition to the stay request or can file a motion for reconsideration of the stay if granted. *See e.g., A. v. Garland, No. 23-CV-1696 (PJS/TNL)*, 2023 WL 8469655, at *1-2 (D. Minn. Dec. 7, 2023) (finding no due process violation in the BIA's grant of a motion to stay release as petitioner "was able to make his arguments in his (pending) motion for reconsideration."); *Organista v. Sessions*, No. CV-18-00285-PHX-GMS (MHB), 2018 WL 776241, at *3 (D. Ariz. Feb. 8, 2018) (finding that petitioner who did not receive opportunity to contest discretionary stay of release had not shown likelihood of success on claim that he had not received sufficient opportunity to be

heard, given availability of reconsideration motion). For these reasons, Petitioner's claim that a stay of the Immigration Judge's bond order violates the Fifth Amendment fails.

CONCLUSION

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

Respectfully submitted,

UNITED STATES OF AMERICA,
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CERTIFICATION OF SERVICE

I hereby certify that on September 11, 2025, I electronically filed the foregoing motion and it is available for viewing and downloading from the Court's CM/ECF system, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system.

/s/ Taylor A. Dean