

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-03433-PAM-DLM

HOLGER EUCLIDES TAPUY HUATAOCA,

Petitioner,

v.

**RESPONDENTS' RETURN
TO ORDER TO SHOW
CAUSE AND IN OPPOSITION
TO HABEAS PETITION**

PAMELA BONDI, *Attorney General*; KRISTI NOEM, *Secretary, U.S. Department of Homeland Security*; DEPARTMENT OF HOMELAND SECURITY; TODD M. LYONS, *Acting Director of Immigration and Customs Enforcement*; IMMIGRATION AND CUSTOMS ENFORCEMENT; SIRCE OWEN, *Acting Director for Executive Office for Immigration Review*; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; SAMUEL OLSON, *Acting Director, St. Paul Field Office Immigration and Customs Enforcement*; JOEL BROTT, *Sheriff of Sherburne County*,

Respondents.

INTRODUCTION

This case comes before the Court on a Verified Petition for a Writ of Habeas Corpus (ECF No. 1)(habeas petition) and an Emergency Motion for Temporary Restraining Order (ECF No. 5)(TRO motion) filed by Holger Euclides Tapuy Huatatoca (“Tapuy” or “Petitioner”). In his habeas petition, Tapuy seeks an order (1) enjoining Respondents¹ from

¹ “Respondents” include: Pamela Bondi, Attorney General; Kristi Noem, Secretary of the U.S. Department of Homeland Security; Department of Homeland Security; Todd Lyons, Acting Director of Immigrations and Customs Enforcement, Immigration and Customs Enforcement (“ICE”); Sirce Owen, Acting Director for Executive Office for Immigration Review, Fort Snelling Immigration Court, Executive Office for Immigration Review; Samuel Olson, Acting Director of the Fort Snelling Field Office of ICE. Per the Court’s

moving Petitioner out of Minnesota while this habeas case is pending and (2) requiring Respondents to release Tapuy on \$5000 bond in accordance with the Immigration Court's alternative decision. ECF No. 1, ¶ 4. The Court entered an Order to Show Cause (ECF No. 3) requiring Respondents to file their return by September 16, 2025. Respondents previously filed a declaration with exhibits (ECF No. 13) outlining the procedural history of Petitioner's detention and now file this return to the OTSC. Respondents respectfully request that this Court dismiss or deny the habeas petition.

First, this Court lacks jurisdiction. Petitioner has not exhausted his administrative remedies. Additionally, numerous provisions of 8 U.S.C. § 1252 deprive this Court of jurisdiction to review the Petitioner's claims and preclude this Court from granting the relief he seeks. Congress unambiguously stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Congress further directed that any challenges arising from any removal-related activity—including detention pending removal proceedings—must be brought before the appropriate federal court of appeals, not a district court. *See Acxel S.Q.D.C. v. Bondi*, 2025 U.S. Dist. LEXIS 175957 (D. Minn., September 10, 2025).

Second, Tapuy's habeas petition should be denied for lack of merit. Tapuy's detention is lawful under 8 U.S.C. § 1225(b)(2) because he is an applicant for admission who is not "clearly and beyond a doubt entitled to be admitted" to the United States. Tapuy does not claim lawful status to remain in the United States. *See* ECF 1. Under these

OTSC (ECF No.3) regarding representation for Joel Brott, Sherburne County Sheriff, Respondents notified the Sherburne County Attorney and understand that office intends to file an Appearance on behalf of Sheriff Brott.

circumstances, Tapuy “shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). Because Tapuy’s detention is fully supported by statute, regulation, and the Constitution, this Court should deny the habeas petition.

BACKGROUND

I. Facts

Holger Euclid Tapuy Huatatoca (“Tapuy”) is a citizen and national of Ecuador. ECF No. 1, ¶ 33. He entered the United States on or about April 11, 2023 near Lukeville, Arizona, without inspection or admission. ECF No. 1, ¶ 34. U.S. Border Patrol encountered Tapuy and several family members shortly after his illegal entry and issued him a Notice to Appear, Form I-862 (“NTA”). ECF No. 1, ¶ 36; Declaration of Angel R. Minner (Minner Decl.)(ECF No. 13), ¶ 4, Ex. A. Then, U.S. Border Patrol released Tapuy on his own recognizance due to a lack of detention space. ECF No. 1, ¶ 37; ECF No. 13, ¶ 4, Ex. B.

On August 17, 2023, Tapuy failed to appear for a scheduled immigration court hearing, and an immigration judge at Fort Snelling, Minnesota ordered Tapuy removed *in absentia* to Ecuador. Minner Decl., ECF No. 13, ¶ 5, Ex. C.

On January 4, 2024, Tapuy filed a Motion to Reopen his case with the immigration court. The Immigration Judge granted Tapuy’s Motion to Reopen on January 24, 2024. Minner Decl., ECF No. 13, ¶¶ 6, 7.

On July 23, 2025, St. Paul ICE/ERO officers took Tapuy into ICE custody, pursuant INA 241, the final order of removal *in absentia* issued on August 17, 2023, and the Warrant of Removal dated and issued on August 18, 2023 by Peter B. Berg, St. Paul Field Office Director, St. Paul ICE/ERO. ECF No. 1, ¶ 39; Minner Decl., ECF No. 13, ¶ 8, Ex. D. St. Paul ICE/ERO officers mistakenly believed Tapuy’s case had not been reopened and

that he still had a final order of removal. Minner Decl., ECF No. 13, ¶ 8.

On August 11, 2025, Tapuy filed a Bond Redetermination Request in his reopened removal proceedings under INA 240. ECF No. 1, ¶ 44. The Immigration Court held a hearing and, on August 26, 2025, the immigration judge denied bond in Tapuy's case, citing a lack of jurisdiction pursuant to Section 235(b)(2)(A) of the Immigration and Nationality Act. See 8 U.S.C. § 1225(b)(2)(A). ECF No. 1, ¶ 45; Minner Decl., ECF No. 13, ¶ 10, Ex. E. The Immigration Judge also made an alternative finding that, if she had authority or jurisdiction, she would set a bond of \$5,000 based on Tapuy's flight risk. ECF No. 1, ¶ 46; Minner Decl., ECF No. 13, ¶ 10, Ex. E. Consistent with that Immigration Judge's decision, ICE is currently detaining Tapuy pursuant to that Immigration Judge's decision and INA Section 235(b)(2)(A). Minner Decl., ECF No. 13, ¶ 10, Ex. E. Tapuy's next scheduled merits hearing in immigration court is October 20, 2025. Minner Decl., ECF No. 13, ¶ 11.

Tapuy appealed the Immigration Court's decision denying bond to the Board of Immigration Appeals (BIA). ECF No. 1, ¶ 48; Declaration of Gabriela Anderson in Support of Holger Euclides Tapuy Huatatoca Petition for Writ of Habeas Corpus, ¶ 19, Ex. P (ECF Nos. 8, 8-1). Upon request from the BIA, the Immigration Court entered a Bond Memorandum dated September 12, 2025 to explain her decision. See Supplemental Declaration of Clara Fleitas-Langford in Support of Holger Euclides Tapuy Huatatoca Petition for Writ of Habeas Corpus, ¶ 4, Ex. R (ECF Nos. 16, 16-1).

After the Immigration Court denied him release on bond, Tapuy filed his habeas petition on August 30, 2025. ECF 1. This Court entered an Order to Show Cause (OTSC) on September 2, 2025 ordering a return to be filed by September 16, 2025 (ECF No. 3).

Tapuy then filed his “emergency” motion for a temporary restraining order on September 7, 2025 (ECF No. 5). The Court ordered Respondent’s to respond by September 10, 2025 and set a hearing on the TRO motion for September 16, 2025. ECF No. 11. The Court should deny the habeas petition the reasons set forth below and previously. See ECF No. 12.

II. Legal Background for Individuals Seeking Admission to the United States

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. “The rule has been clear for decades: “[d]etention during deportation proceedings [i]s ... constitutionally valid.” *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)); *see Demore*, 538 U.S. at 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”). Indeed, removal proceedings ““would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.”” *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

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” noncitizens “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 noncitizens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the individual “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An individual “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the individual 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. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2), under which Tapuy is detained, 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 individual “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt

entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland Security (“DHS”) has the sole discretionary authority to release temporarily 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 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Section 1226(a) provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The Attorney General and the Department of Homeland Security (“DHS”) thus have broad discretionary authority to detain a noncitizen during removal proceedings.² *See* 8 U.S.C. § 1226(a)(1)

² Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General’s authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is “one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings.” *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

(DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019) (highlighting that “subsection (a) creates authority for *anyone*’s arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”).

When a noncitizen is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the noncitizen, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the noncitizen may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen’s ties to the United States and evaluate whether the noncitizen poses a flight risk or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);³ *see*

³ The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien’s history of immigration

also 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].”).

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factor that must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Included within the Attorney General and DHS’s discretionary authority are limitations on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), the immigration judge does not have authority to redetermine the conditions of custody imposed by DHS for any arriving alien. The regulations also include a provision that allows DHS to invoke an automatic stay of any decision by an immigration judge to release an individual on bond when DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) (“The decision whether or not to file [an automatic stay] is subject to the discretion of the Secretary.”).

violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien’s manner of entry to the United States.” *Guerra*, 24 I. & N. Dec. at 40.

C. Custody determination review at the Board of Immigration Appeals (“BIA”).

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

If an automatic stay is invoked, regulations require the BIA to track the progress of the custody appeal “to avoid unnecessary delays in completing the record for decision.” 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days, unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R. § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R. § 1003.6(c)(5). Here, the automatic stay has been in place for just over one week.

ARGUMENT

A. Applicable Legal Standards.

“The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]” *Exxon Mobil Corp. v.*

Allapattah Servs., Inc., 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day[.]” *Thuraissigiam*, 591 U.S. at 125 n.20. To warrant a grant of habeas corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

B. Petitioner Is Properly Detained Under Section 1225.

Tapuy is properly detained pending the outcome of his removal proceedings. Tapuy has never been “admitted” into the United States. Initially, on April 12, 2023, ICE served him with a Notice to Appear (NTA) alleging he is an alien present without admission or parole and inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). ECF No. 13-1. 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). A person who has not been inspected, admitted, or paroled into the United States is subject to removal. *Id.* In this case, Tapuy does not dispute that he has never been admitted.

Section 1225(b) provides for the inspection of aliens in the United States for admission. Section 1225(b)(1) pertains to inspection of “arriving aliens,” contains the “expedited removal” provision for such aliens, and thus does not apply directly here.

Rather, this case involves the catch-all provision, Section § 1225(b)(2)(A), which provides for the inspection of all “other” applicants for admission and 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.”⁴ 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Here, Tapuy had never been inspected by immigration officials before his apprehension on June 23, 2025. As noted, Tapuy entered without inspection and was issued an NTA charging him with being present without being inspected or admitted. Minner Decl., ECF No. 13, ¶ 4, Ex. A (ECF No. 13-1). The NTA ordered him to appear in Immigration Court on August 17, 2023 in Ft. Snelling, Minnesota. *Id.* See also ECF No. 13-2. When Tapuy failed to appear on August 17, 2023, the Immigration Court ordered him removed *in absentia*. Minner Decl., ECF No. 13, ¶ 5, Ex. C (ECF No. 13-3). Then, on July 23, 2025, Immigration officials took Tapuy into custody based on the final order of removal *in absentia* and the Warrant of Removal issued on August 18, 2023. Minner Decl., ECF No. 13, ¶ 8, Ex. D. ICE officials apparently were not aware Tapuy’s removal case had been reopened. *Id.* In neither his habeas petition nor his TRO motion, Tapuy does not complain about his original removal charge and order, his apprehension, his being taken into custody, or his being in removal proceedings. Rather, Tapuy sought a custody redetermination before the Immigration Judge, filed exhibits and a memorandum in support

⁴ Section 240 of the INA, codified at 8 U.S.C. § 1229a, refers to the full removal proceedings that the Petitioner is currently subject to before the Immigration Court.

of his bond request, the Immigration Court held a bond hearing on August 26, 2025 and heard arguments from both counsel. ECF No. 1, ¶ 45; Minner Decl., ECF No. 13, ¶¶ 9, 10, Ex. E (ECF No. 13-5). The Immigration Court denied Tapuy's bond request in writing, citing Section 1225(b)(2), but also made an alternative finding. *Id.* The Immigration Court also explained her reasoning in a Bond Memorandum. See ECF No. 16, ¶ 4, Ex. R.

The Immigration Court concluded that Tapuy had entered without inspection, was an applicant for admission, and thus not eligible for bond under Section 1225(b)(2). ECF No. 16, ¶ 4, Ex. R. *See also Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I & N Dec. 66 (BIA 2025). Tapuy appealed this determination to the BIA. ECF No. 1, ¶ 48.

Tapuy has made this 1225/1226 issue the basis of his habeas petition. The Immigration Judge's decision was correct based on the clear statutory language of the INA, in particular Section 1225(b)(2)(a). Congress wrote (or rewrote) Section 1225(b)(2)(a) in IIRIRA in 1996 and it has not changed materially since. The Immigration Judge applied it correctly to the undisputed facts of this case. To the extent that Section 1225(b)(2)(A) may leave persons who have not been inspected, admitted, or paroled in "exclusion" proceedings, as opposed to persons who have been admitted but deportable and to whom 1226(a) would apply, that has been the case for many decades leading up to IIRIRA and does not implicate due process. In short, Tapuy's detention under Section 1225(b)(2)(A) comports with the facts, the INA, and due process. To the extent that any error may have occurred, that can be corrected on any appeal to the BIA, or the Court of Appeals should any such appeal become necessary. If Tapuy prevails on the merits in his removal

proceedings, the detention issue will become moot. The Court should dismiss the habeas petition on the merits.

C. The Court lacks subject matter jurisdiction.

As described, Tapuy is properly in removal proceedings and is detained properly under Section 1225. The court should dismiss the habeas petition on the merits. The Court also lacks subject matter jurisdiction to delve any further into this detention issue raised by the habeas petition. Tapuy has appealed the denial of bond decision to the BIA and that appeal remains pending. Tapuy has not exhausted his administrative remedies depriving the court of subject matter jurisdiction. Additionally, 8 U.S.C. §§ 1252(g), 1252(b)(5), and (b)(9) preclude review of Tapuy's claims. Accordingly, this Court may also dismiss the habeas petition for lack of subject matter jurisdiction.

1. Lack of Exhaustion.

Tapuy has not exhausted his administrative remedies. He appealed the adverse bond decision to the BIA and that appeal remains pending. Through this petition and emergency motion for temporary restraining order, he seeks to bypass the administrative review process. Because this case fundamentally involves an Immigration Courts denial of bond which decision is on appeal to the BIA, this Court should defer to the BIA. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007); *see also Reiter v. Cooper*, 507 U.S. 258, 269 (1993) ("Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed."); *Mathena v. United States*, 577 F.3d 943, 946 (8th Cir. 2009); *Arroyo v. Fikes*, No. 21-CV-2489 (KMM/BRT),

2022 WL 2820405, at *2 (D. Minn. May 5, 2022). While “[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court],” *Araujo- Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), exhaustion should be required as a prudential matter, *accord Paz Nativi v. Shanahan*, No. 16 Civ. 8496 (JPO), 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017) (“[B]efore immigration detention may be challenged in federal court. . . exhaustion is generally required as a prudential matter.” (collecting cases)).

Further, Petitioner’s assertion that an administrative appeal is “futile” because it “will take several months to complete” rings hollow for several reasons. First, the BIA is well-positioned to assess how agency expertise affects the interplay between 8 U.S.C. §§ 1225, 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (finding denial of bond to an immigration detainee was “a question well suited for agency expertise”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (addressing the interplay of §§ 1225(b)(1) and 1226); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019). *See also Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025).

Second, waiving exhaustion will “encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district court.” *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). Put another way, judicial intervention through habeas may stop the flow from immigration courts to the BIA and redirect it—prematurely, as here—to the federal courts. *See id.* The Court should dismiss or deny the habeas petition for lack of exhaustion.

2. 8 U.S.C. § 1252(g).

Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title.”⁵ Except as provided in § 1252, courts “cannot entertain challenges to the enumerated executive branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during removal proceedings”).

Tapuy’s claim stems from his detention during removal proceedings which has been approved by the Immigration Court. That detention arises from the decision to commence

⁵ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title” after “notwithstanding any other provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

such proceedings against him. *See, e.g., Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]”); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

As other courts have held, “[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises from the Attorney General’s decision to commence proceedings” and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, Section 1252(g) bars judicial review of the Immigration Judge’s decision to deny bond in Tapuy’s case. The Court should dismiss or deny the habeas petition for lack of jurisdiction.

3. § 1252(a)(5) and § 1252(b)(9).

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action

taken . . . to remove an alien from the United States” is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here, Tapuy challenges the government’s decision and action to detain him, which arises from DHS’s decision to commence removal proceedings against him as an unadmitted alien and is thus an “action taken . . . to remove [them] from

the United States.” See 8 U.S.C. § 1252(b)(9); see also, e.g., *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks jurisdiction over this action and should deny the TRO motion.

The reasoning in *Jennings* outlines why Petitioner’s claims are unreviewable here. While holding that it was unnecessary to address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). See *Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, Tapuy *does* challenge the government’s decision to detain him in the first place. Though Petitioner may attempt to frame his challenge as one relating to detention authority, rather than a challenge to DHS’s decision to detain him pending his removal proceedings in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Tapuy challenges the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” See *Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the habeas petition for lack of jurisdiction under § 1252(b)(9).

The Court lacks jurisdiction over this case. The Court should dismiss the habeas petition.

D. The habeas petition should be denied on the merits.

As argued above, the court should dismiss the habeas petition on the merits, because under the plain text of Section 1225, Tapuy must be detained pending the outcome of his removal proceedings. The Immigration Court properly denied the bond hearing under the plain reading of Section 1225 and prevailing precedent.

1. The plain reading of Section 1225 and basic statutory construction.

The Court should reject Tapuy's foundational argument that his detention, after a hearing, is governed by § 1226(a) instead of § 1225. 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); *Hickman v. Cliff Peck Chevrolet, Inc.*, 566 F.2d 44, 48 (8th Cir. 1977); *In re Bender*, 338 B.R. 62, 69 (Bankr. W.D. Mo. 2006). 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 Tapuy falls within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

Applying this reasoning, the United States District Court for the District of Massachusetts recently confirmed in a habeas action that an unlawfully present alien, who

had been unlawfully present in the country for approximately 20 years, was nonetheless an “applicant for admission” upon the straightforward application of the statute. *See Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al., Respondents.*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025). The court explained this resulted in the “continued detention” of an alien during removal proceedings as commanded by statute. *Id.*

Tapuy’s argument that 1226(a) applies rests on a factual error. Petitioner argues his detention is unlawful because Respondents are detaining him under 8 U.S.C. § 1225 while they should release him on bond per the Immigration Judge’s alternative finding. *See Minner Decl.* ¶ 10, Ex. E. Tapuy is in 1229a proceedings. The Immigration Court reopened his proceedings. Recently, the Immigration Court conducted a bond hearing and determined his continued detention was appropriate under Section 1225. Tapuy is properly detained during his removal proceedings under section 1225(b)(2), which is mandatory.

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 Tapuy is present in the United States without being admitted.

Any argument that Tapuy should be treated differently because he has been in the interior of the United States is unpersuasive. 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). 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. Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013).

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," 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.

The court's decision in *Florida v. United States* is instructive here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion "would render mandatory detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1225(a) and release illegal border crossers whenever the agency saw fit." *Id.* The court pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that "wholesale failure" by the federal government motivated the 1996 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019), in which the Attorney General explained "section [1225] (under which detention is mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens." *Florida*, 660 F. Supp. 3d at 1275.

Because Tapuy indisputably is an “applicant for admission” who “is not clearly and beyond doubt entitled to be admitted,” he is appropriately detained under the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) pending his removal and asylum proceedings. The Court should dismiss the habeas petition.

2. Congress did not intend to treat individuals who unlawfully enter the country better than those who appear at a port of entry.

When the plain text of a statute is clear, that meaning is controlling and courts “need not examine legislative history.” *Doe v. Dep’t of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). 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 IIRIRA, among other reasons, 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), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). Congress “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). The Court should reject Tapuy’s interpretation because it would put aliens who “crossed the border unlawfully” in a better position than those “who present themselves for inspection at a port of entry.” *Id.* Aliens who presented at 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). Congress did not intend such a

result, as demonstrated by the fact that both sets of noncitizens are defined as “applicants for admission.”

Nothing in the Laken Riley Act (“LRA”) changes the analysis. Redundancies in statutory drafting are “common . . . sometimes in a congressional effort to be doubly sure.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible alien “was paroled into this country through a shocking abuse of that power.” 171 Cong. Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed the LRA out of concern that the executive branch “ignore[d] its fundamental duty under the Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). One member even expressed frustration that “every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims.” *Id.* at H278 (statement of Rep. McClintock). The LRA reflects a “congressional effort to be doubly sure” that such unlawful aliens are detained. *Barton*, 590 U.S. at 239.

The Court should deny the habeas petition.

3. Prior agency practices are not entitled to deference under *Loper Bright*.

Prior agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis to support its reasoning. *See* 62 Fed. Reg. at 10323; *see also* *Maldonado v. Bostock*, No. 2:23-cv-00760-LK-BAT, 2023 WL

5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting the agency provided “no authority” to support its reading of the statute).

To be sure, “when the best reading of the statute is that it delegates discretionary authority to an agency,” the Court must “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*, 603 U.S. at 395 (cleaned up). But “read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Tapuy as an applicant for admission must be detained pending the outcome of his removal proceedings. This is yet another reason why the court should deny the habeas petition.

4. Tapuy’s detention is for the purpose of conducting his removal proceedings.

Tapuy may claim his current temporary detention pending removal is illegitimate, deterrent, or punitive. Congress, the Eighth Circuit, and the Supreme Court disagree.

As mentioned above, Congress broadly defined “applicants for admission” to include undocumented aliens present within the United States like Tapuy. *See* 8 U.S.C. § 1225(a)(1). And, Congress directed aliens like the Tapuy to be detained during removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. As explained above, that is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. See *Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”). With this power to remove aliens, the Supreme Court has recognized the United States’s longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien’s status without running the risk of the alien’s either absconding or engaging in criminal activity before a final decision can be made.”).

In light of Congress’s interest in dealing with illegal immigration by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the *Mathews v. Eldridge* test. See generally *Zadvydas*, 533 U.S. at 690-91.

Because Tapuy’s detention is in aid of his removal proceedings, the Court should deny the habeas petition.

5. Any claim related to Tapuy's arrest should be dismissed.

Tapuy appears to suggest that Respondents had some nefarious motive in apprehending Tapuy. ECF No. 1, ¶ 38. However, Tapuy's arguments regarding the alleged illegality of his arrest are not cognizable in habeas. "The 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest . . . occurred." *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). One court recently addressing this in a similar context explained, "Thus, even if Petitioner's initial arrest was unlawful, her detention pending removal may stand." *Rodrigues De Oliveira v. Joyce*, No. 2:25-CV-00291-LEW, 2025 WL 1826118, at *5 (D. Me. July 2, 2025). The fact that Respondents mistakenly believed Tapuy was under a final removal order when they apprehended him in July 2025 does not undermine the fact that as an applicant for admission in removal proceedings he is appropriately being detained under Section 1225(b)(2)(A). The Immigration Court so found at a bond redetermination hearing conducted at Tapuy's request. The Court should deny the habeas petition.

E. The due process claim lacks merit.

Tapuy asserts that his current detention is in violation of his constitutional rights to due process of law under the Fifth Amendment. ECF No. 1, ¶¶ 4, 93-95. This argument fails. The cause of Tapuy's detention is that, as an applicant for admission who "is not clearly and beyond a doubt entitled to be admitted," Tapuy is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), as the Immigration Court determined, and as explained above.

To the extent Petitioner intends to argue that he expects to remain released on his own recognizance during the pendency of his removal proceedings, this argument is unavailing. An “expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause.” *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983). And, the Supreme Court has held that applicants for admission such as Tapuy are only entitled to the protections set forth by statute and that “the Due Process Clause provides nothing more.” *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

The Supreme Court has long recognized that Congress exercises “plenary power to make rules for the admission of foreign nationals and to exclude those who possess those characteristics which Congress has forbidden.” *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, “an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). The broad scope of the political branches’ authority over immigration is “at its zenith at the international border.” *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). Accordingly, “certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

The Supreme Court has explained that applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: “[w]hatever the procedure authorized by Congress is, it is due process as far as

an alien denied entry is concerned,” *Mezei*, 345 U.S. at 212, and “it is not within the province of any court, unless expressly authorized by law, to review [that] determination”. *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). The Supreme Court reaffirmed “[its] century-old rule regarding the due process rights of an alien seeking initial entry” in *Thuraissigiam*, explaining that an individual who illegally crosses the border—like Petitioner—is an applicant for admission and “has only those rights regarding admission that Congress has provided by statute.” 591 U.S. at 139-40.

As explained by the Supreme Court, “[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country ...”. *Thuraissigiam*, 591 U.S. at 139. Stated further, “aliens 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.’” *Id.* (quoting *Mezei*, 345 U.S. at 215). The Court held that this same “threshold” rule applies to individuals, like Tapuy, who are apprehended after trying “to enter the country illegally” since by statute, such individuals are also defined as applicants for admission. *Id.* at 139-40. Treating such an individual in a more favorable manner than an individual arriving at a port of entry would “create a perverse incentive to enter at an unlawful rather than a lawful location” and therefore the Supreme Court rejected the argument that an individual who “succeeded in making it 25 yards into U.S. territory before he was caught” should be entitled to additional constitutional protections. *Id.* at 140.

Instead, applying the “century-old rule regarding the due process rights of an alien seeking initial entry[,]” the Court explained that aliens arrested after crossing the border

illegally, such as Petitioner, have “only those rights regarding admission that Congress has provided by statute.” *Id.* at 140. The Court was clear: “the Due Process Clause provides nothing more” than the procedural protections set forth in 8 U.S.C. § 1225 that allow an individual to seek protection from removal if he fears return to his home country and also seek parole from the agency. *Id.*

The Supreme Court’s decision in *Thuraissigiam* is instructive. In relevant part, *Thuraissigiam* concerned a due process challenge raised by an alien apprehended 25 yards from the border, which he crossed illegally. 591 U.S. at 139. DHS detained and processed him for expedited removal because he lacked valid entry documents. *Id.* at 114. An asylum officer then determined that Mr. Thuraissigiam lacked a credible fear of persecution. *Id.* Mr. Thuraissigiam petitioned for a writ of habeas corpus, asserting a fear of persecution and requesting another opportunity to apply for asylum. *Id.*

In its decision, the Supreme Court delineated the boundaries of due process claims that can be made by applicants for admission. Specifically, the Court held that, for such aliens stopped at the border, “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Id.* at 131 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)); *see also Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) (“In concluding that Thuraissigiam’s due process rights were not violated, the Supreme Court emphasized that the due process rights of noncitizens who have not ‘effected an entry’ into the country are coextensive with the statutory rights Congress provides.”).

The U.S. Court of Appeals for the First Circuit also held that detention of an alien seeking admission to the United States does not violate due process in *Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987). In that case, the Court explained that “the detention of the appellants is entirely incident to their attempted entry into the United States and their apparent failure to meet the criteria for admission—and so, entirely within the powers expressly conferred by Congress.” *Id.* The appellants were detained pursuant to 8 U.S.C. § 1225(b) and the Court found no due process violation in the denial of their parole applications “pending the ultimate (seasonable) resolution of the exclusion/asylum proceedings” as there was “no suggestion of unwarranted governmental footdragging in these cases” and because “prompt attention appears to have been paid to the administrative aspects of exclusion and asylum.” *Id.*

This Court should apply the “century-old rule” reaffirmed in *Thuraissigiam* and conclude that Tapuy’s due process rights are coextensive with the rights provided him under statute. Here, the law 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 for a proceeding under section 240.” 8 U.S.C. § 1225(b)(2)(A). For the reasons set forth above, Tapuy is subject to mandatory detention under this statute.

Moreover, mandatory detention is warranted under 8 U.S.C. § 1229a whether Tapuy remains in ongoing removal proceedings or is later processed for expedited removal. *See Matter of Q. Li*, 29 I&N Dec. 66, 67 (“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.” (emphasis added) (quoting 8 U.S.C. § 1235(b)(2)(A)). ICE’s decision to place an alien arriving in the United States in either expedited removal proceedings under 8 U.S.C. § 1225(b)(1), or full removal proceedings 8 U.S.C. § 1229a, is discretionary. However, ICE’s decision to detain or release aliens deemed applicants for admission is not. “For those placed in expedited removal proceedings who are referred to an Immigration Judge for consideration of their asylum application. . . 8 U.S.C. § 1225(b)(1)(B)(ii), requires detention until the final adjudication of the asylum application.” *Q. Li*, 29 I&N Dec. at 68 (citing *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019)). “Likewise, for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section . . . 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’” *Q. Li*, 29 I&N Dec. at 68 (quoting *Jennings*, 583 U.S. at 299). Thus, even if the Court were not barred from reviewing Tapuy’s claim under 8 U.S.C. § 1252(a)(2)(A), his claim that his current detention violates his Fifth Amendment right to due process is without merit and his habeas petition denied.

F. The APA claim lacks merit.

Tapuy makes several arguments under the APA. But, a habeas petition is no place to raise APA claims. If Petitioner has any APA claims, he must raise them in a complaint filed in a civil action and properly serve and that complaint with an appropriate summons. Moreover, there is no final agency action for the Court to review at this juncture. 5 U.S.C. § 704. Even if there were a final agency action, there is no APA claim here to review. Detention is fundamentally within the discretion of the Executive Branch and discretionary decisions,

like commencing removal proceedings and detaining a noncitizen pending those removal proceedings, are fundamentally not subject to judicial review under the APA. 5 U.S.C. § 701. *See Heckler v. Chaney*, 470 U.S.C. 821 (1985). For these and other reasons, the APA claims are not cognizable in this habeas action. The Court should deny the habeas petition.

G. The Court should deny the TRO.

For all the reasons stated above and previously, *see* ECF No. 12, the Court should deny the TRO motion and dismiss or deny the habeas petition. As described, Tapuy cannot succeed on the merits of his habeas petition. *See Devisme v. City of Duluth*, No. 21-CV-1195 (WMW/LIB), 2022 WL 507391, at *4 (D. Minn. Feb. 18, 2022) (“Because Devisme has not demonstrated a likelihood of success on the merits, the Court need not address the remaining *Dataphase* factors.”). Additionally, Tapuy has not and cannot show irreparable harm, and the public interest and balance of the equities favor the United States’s position.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss or deny Tapuy's petition for a writ of habeas corpus. Respondents see no need for any evidentiary hearing.

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