IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

EDVIN ADOLFO LOPEZ-SANABRIA, *Petitioner,* v. PAMELA BONDI, *et al.*, *Respondents.*	)	Case No. 1:25-cv-01511-MSN-WBP

FEDERAL RESPONDENTS' MEMORANDUM IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

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INTRODUCTION

On September 10, 2025, Petitioner Edvin Adolfo Lopez-Sanabria filed a Petition for Writ of Habeas Corpus seeking immediate release from Department of Homeland Security ("DHS") custody. Petitioner claims he warrants immediate release because an immigration judge ("IJ") determined Petitioner was subject to discretionary detention pursuant to 8 U.S.C. § 1226(a), which allows for bond. However, DHS, pursuant to regulations implemented by the Executive Office for Immigration Review ("EOIR") through the Attorney General, 8 C.F.R. § 1003.19(i)(2), stayed Petitioner's release on bond pending their appeal with the Board of Immigration Appeals ("BIA"), arguing that Petitioner is an applicant for admission and subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), which does not provide aliens the opportunity to be released on bond. Despite Petitioner clearly being an applicant for admission who is seeking admission and not clearly and beyond a doubt entitled to be admitted, and clear regulatory authority authorizing such stay, Petitioner claims that such detention classification and invocation of the stay violate the Fifth and Eight Amendments, the Immigration and Nationality Act ("INA"), and the Administrative Procedure Act ("APA").

This Court should decline to grant the instant Petition. *First*, this Court lacks jurisdiction over the Petition because the INA precludes judicial review of Petitioner's claims. For Petitioner's INA and APA claims, specifically, such claims should also be dismissed because a case seeking habeas relief is not a civil action. The Fourth Circuit confirms this approach. As to the merits of Petitioner's claims, the INA clearly defines an "applicant for admission" as either an "arriving alien" or "an alien present in the United States ("U.S.") who has not been admitted." And because Petitioner is present in the U.S., has not been admitted, and is seeking admission and not clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention pursuant to § 1225(b)(2). As for Petitioner's constitutional claims, the Supreme Court has made clear that due process afforded to applicants for admission are those that are provided by the INA. And since no additional process is due to the

Petitioner, DHS's as-applied invocation of the automatic stay provision can in no way violate Petitioner's due process rights. Petitioner's Eighth Amendment claims also fails as mandatory detention does not equate with the Excessive Bail Clause or cruel and unusual punishment. Finally, Petitioner's *ultra vires* claim fails as the INA authorizes the Attorney General to establish regulations, like the automatic stay regulation, to carry out the INA.

Therefore, Federal Respondents respectfully request this Court deny and dismiss the instant habeas petition.

BACKGROUND

A. Statutory and Regulatory Background

Before proceeding to the factual and legal premise of the instant habeas petition, it is important to explain the statutory and regulatory provisions governing petitioner's civil immigration detention. Such provisions have been the subject of extensive judicial discussion. *See generally DHS v. Thuraissigiam*, 591 U.S. 103 (2020); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Important to any understanding of this statutory scheme is the concept of "admission." An "admission" is "the *lawful* entry of [an] alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A) (emphasis added). The Supreme Court has explained that the Constitution gives "'the political department of the government' plenary authority to decide which aliens to admit." *Thuraissigiam*, 591 U.S. at 132 (quoting *Nishimura Ekiu v. U.S.*, 142 U.S. 651, 659 (1892)). The INA authorizes the removal of certain aliens who have not been admitted to the U.S. through different procedures, and as the Supreme Court has unequivocally held, *requires* federal immigration officials to detain these aliens pending the conclusion of any necessary proceedings. *See* 8 U.S.C. § 1225(b) (emphasis added).

1. Mandatory Detention – 8 U.S.C. § 1225(b)

Any "alien present in the [U.S.] who has not been admitted or who arrives in the U.S." is treated as "an applicant for admission." 8 U.S.C. § 1225(a)(1); *see* 8 C.F.R. § 235.1(f)(2). "Applicants

for admission are divided into two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Hasan v. Crawford*, --- F. Supp. 3d ---, 2025 WL 2682255, at *5 (E.D. Va. Sept. 19, 2025) (Brinkema, J.) (quoting 8 U.S.C. § 1225(b)); *see Rodriguez v. Perry*, 747 F. Supp. 3d 911, 915 (E.D. Va. 2024) (Brinkema, J.); 8 U.S.C. §§ 1225(b)(1) (arriving aliens), (b)(2) (other applicants for admission). Section 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). And applicants for admission "*shall be detained* for a [removal] proceeding" unless the "examining immigration officer determines that [the] alien seeking admission is clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Although detention pursuant to section 1225(b) is mandatory, it is *not* indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue . . . until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. Further, while section 1225(b) does not provide for bond hearings, *see id.* at 297–303; *Matter of Li*, 29 I. & N. Dec. 66 (BIA 2025) (§ 1225(b)(1)); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218-19 (BIA 2025) (§ 1225(b)(2)), it does contain "a specific provision authorizing release from . . . detention": The Secretary of Homeland Security (hereinafter, the "Secretary") "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *Jennings* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). Relevant here, "parole of such alien[s] *shall not* be regarded as an admission of the alien[s]." 8 U.S.C. § 1182(d)(5)(A) (emphasis added)

2. <u>Discretionary Detention – 8 U.S.C. § 1226(a)</u>

As another jurist of this Court notes, "§ 1226 generally governs the process of arresting and detaining aliens present in the [U.S.]." *Rodriguez*, 747 F. Supp. 3d at 916 (citing *Jennings*, 583 U.S. at

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

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *See In Re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38. Pursuant to 8 U.S.C. § 1226(b), Immigration and Customs Enforcement ("ICE") "at any time may revoke a bond or parole authorized under [§ 1226(a)], rearrest the alien under the original warrant, and detain the alien." *Id.*; *see* 8 C.F.R. §§ 236.1(c)(9), (d)(1).

3. The Automatic Stay Regulation – 8 C.F.R. § 1003.19(i)(2)

Regulations provide that "[a] decision in any proceeding [within EOIR] . . . from which an appeal to the [BIA] may be taken shall not be executed during the time allowed for the filing of an appeal . . . nor shall such decision be executed while an appeal is pending or while a case is before the [BIA] by way of certification[,]" including custody redeterminations by an IJ. 8 C.F.R. § 1003.6(a); *see id.* § 1003.6(c). Indeed, the Attorney General gave DHS discretionary authority that allows them to invoke an automatic stay of any decision by an IJ releasing an alien on bond when DHS files a notice of intent to appeal an IJ's custody redetermination. 8 C.F.R. § 1003.19(i)(2). The regulations provide

that, once DHS has invoked an automatic stay, the "stay shall lapse if DHS fails to file a notice of appeal within ten (10) business days of the issuance of order of the [IJ]." 8 C.F.R. § 1003.6(c)(1). And "[t]o preserve an automatic stay," DHS must file, with the notice of appeal, "a certification by a senior legal official that the official has approved the filing of the notice of appeal and that the motion has evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument." *Id.* § 1003.6(c)(1). "The [IJ] shall prepare a written decision explaining the custody determination within five (5) business days after the [IJ] is advised that DHS has filed a notice of appeal or, with the approval of the [BIA] in exigent circumstances, as soon as practicable thereafter (not to exceed five business days). *Id.* § 1003.6(c)(2). Further, "[t]he [BIA] will track the progress of each custody appeal which is subject to an automatic stay in order to avoid unnecessary delays." *Id.* § 1003.6(c)(3). "If the [BIA] has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." *Id.* § 1003.6(c)(4).[1]

If the BIA fails to act on the appeal before the 90 days expire, "DHS may seek a discretionary stay pursuant to 8 CFR 1003.19(i)(1)[,]" which results in the stay extending for an additional 30 days. 8 C.F.R. § 1003.6(c)(5). If the BIA fails to act on DHS's discretionary stay request pursuant to 8 C.F.R. § 1003.19(i)(1) by the end of the stay period, "the alien's release shall be automatically stayed for five business days." 8 C.F.R. § 1003.6(d). During that five-day period, DHS may refer the case to the Attorney General for consideration. *Id.* If DHS refers the case to the Attorney General, "[t]he automatic stay will expire 15 business days after the case is referred to the Attorney General." *Id.* "All told, the automatic stay regulation can hold an individual in custody for approximately 140 days after the IJ's initial bond determination." *Hasan*, --- F. Supp. 3d ---, 2025 WL 2682255, at *9.

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[1] The regulations provide that the automatic stay provision is intended as a public safeguard, as well as a measure to enhance the agency's ability to effect removal should that be the ultimate decision in a case. 71 Fed. Reg. 57873, 2006 WL 2811410, at 57874 (Oct. 2, 2006). The automatic stay allows ICE to "maintain the status quo" while it seeks expedited review by the BIA of the custody order. *Id.*

B. Petitioner's Immigration History

Petitioner is a 31-year-old native and citizen of Honduras. Federal Respondents' Exhibit ("FREX") 1, Declaration of James A. Mullan ¶ 5; Pet. ¶¶ 1, 17. Petitioner entered the U.S. or about January 1, 2019, near the Rio Grande Valley, Texas, without being admitted or paroled by an immigration officer. FREX 1 ¶ 6. Later that same day, DHS apprehended the Petitioner and issued him a NTA, which charged him with being inadmissible to the U.S. and thus removable from the U.S., *see* 8 U.S.C. § 1229a(e)(2), under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the Attorney General. *Id.* ¶ 7. Petitioner was released from custody on or about January 2, 2019, under an Order of Recognizance. *Id.* ¶ 8. His NTA was cancelled on March 22, 2021, as Petitioner did not meet enforcement priorities at that time. *Id.* ¶ 7. Petitioner filed an affirmative asylum application with the U.S. Citizenship and Immigration Services ("USCIS") on December 30, 2019. *Id.* ¶ 9.

On August 19, 2025, Enforcement and Removal Operations ("ERO") Fugitive Operation officers encountered Petitioner in Washington, D.C. and after establishing Petitioner's identification, placed Petitioner under arrest without incident. *Id.* ¶ 10. On August 21, 2025, ICE filed[2] and Petitioner was issued an NTA which charged him with being inadmissible to the U.S. and thus removable from the U.S. under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the Attorney General. *Id.* ¶ 12; *see* FREX 2, NTA. That same day, Petitioner was placed in immigration custody at the Farmville Detention Center pursuant to 8 U.S.C. § 1225(b)(2)(A) as an alien who is an applicant for admission seeking admission and not clearly and beyond a doubt entitled to be admitted. FREX 1

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[2] Because an NTA has been filed with EOIR, USCIS no longer has jurisdiction over Petitioner's asylum application. *See* 8 C.F.R. §§ 208.2(b) ("[IJ]s shall have exclusive jurisdiction over asylum applications filed by an alien who has been served . . . a [NTA]"); 1208.2(b) (same).

¶ 11.

On August 26, 2025, Petitioner filed a motion for custody redetermination – *i.e.*, a request for release on bond – with the Immigration Court. *Id.* ¶ 13. At the hearing on September 2, 2025, the IJ granted Petitioner bond of $1,500 after a custody redetermination hearing. *Id.* ¶ 14. The IJ, without explanation, found Petitioner was being detained by ICE under 8 U.S.C. § 1226(a). *Id.* On September 3, 2025, ICE timely filed Form EOIR-43, Notice of Intent to Appeal Custody Redetermination. *Id.* ¶ 15; *see* FREX 3, Notice of Appeal. The filing of the form automatically stayed the IJ's custody redetermination decision. *See* 8 C.F.R. § 1003.19(i)(2). On September 15, 2025, ICE perfected the Form EOIR-43 by filing a Notice of Appeal along with the appropriate senior official certification. FREX 1 ¶ 18, FREX 4, Certified BIA Appeal; *see* 8 C.F.R. § 1003.6(c). A legal brief was included with this Notice of Appeal. FREX 1 ¶ 18. The appeal remains pending. *Id.*

On September 8, 2025, Petitioner appeared with his attorney, for a hearing before the Annandale, Virginia Immigration Court. *Id.* ¶ 16. Petitioner, through counsel, requested a continuance for attorney preparation time. *Id.* The IJ granted this request and scheduled another master calendar hearing for September 22, 2025, at 9:00 am. *Id.* On September 11, 2025, ICE filed a Form I-261, Additional Charges of Inadmissibility/Deportability, which additionally charged Petitioner with being inadmissible to the U.S. under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who, at the time of application for admission to the U.S. was not in possession of any valid entry document. *Id.* ¶ 17. On September 22, 2025, Petitioner appeared with his attorney, for another hearing before the Annandale, Virginia Immigration Court. *Id.* ¶ 19. Petitioner's attorney admitted allegations 1, 2, and 4 of the NTA, *see* FREX 2, and conceded the charge of removability under 8 U.S.C. § 1182(a)(6)(A)(i). FREX 1 ¶ 19. He denied allegation 3 and asserted that the Petitioner entered the U.S. on or about January of 2019. *Id.* He further denied being removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* The IJ sustained the charge of removability under 8 U.S.C. § 1182(a)(6)(A)(i), designated Honduras as the country of

removable if it becomes necessary, and held a decision of removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I) in abeyance. *Id.* Petitioner's counsel then requested another continuance to file for relief from removal. *Id.* The IJ granted this request and scheduled the next master calendar hearing for October 2, 2025. *Id.*

C. The Instant Petition

Seeking immediate release, Petitioner filed a Petition for a Writ of Habeas Corpus on September 10, 2025. *See* ECF 1. In his Petition, Petitioner brings forth five claims all pertaining to DHS's decision to invoke the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2). *See* Pet. ¶¶ 30-63. *First*, Petitioner claims the Government violated his Fifth Amendment due process rights by invoking the automatic stay regulation. *See id.* ¶¶ 30-37 (Count One), 38-46 (Count Two). *Second*, Petitioner alleges ICE violated his Eighth Amendment right to not be subjected to excessive bail. *See id.* ¶¶ 47-51 (Count Three). *Finally*, Petitioner claims that that the automatic stay regulation is *ultra vires* and violates the INA and APA. *See id.* ¶¶ 52-55 (Count Four), 56-63 (Count Five). On September 16, 2025, this Court ordered Respondents to show cause why the Petition should not be granted on or before 5:00 pm on Tuesday, September 23, 2025. *See* ECF 4.

ARGUMENT

I. This Court Lacks Jurisdiction Over the Petition

A. Petitioner's claims are barred by the jurisdictional-stripping provisions of the INA (all Counts).

Petitioner's allegations are *not* a challenge to his *prolonged* detention—indeed, Petitioner has only been detained since August 18, 2025—but a challenge to the application of the EOIR's automatic stay regulation. *See, e.g.*, Pet. ¶¶ 52-55, 56-63. Accordingly, several provisions in the INA preclude Petitioner's claims. *See* 8 U.S.C. §§ 1252(b)(9), (g); *but see Hasan*, --- F. Supp. 3d ---, 2025 WL 2682255, at *3-4 (finding jurisdiction).

First, the INA provides that, "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding* brought to remove an alien from the U.S. under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). "This section, known as the 'zipper' clause, consolidates review of matters *arising from* removal proceedings 'only in judicial review of a final order under this section,' and strips courts of habeas jurisdiction over such matters." *Afanwi v. Mukasey*, 526 F.3d 788, 796 (4th Cir. 2008), *vacated on other grounds*, 558 U.S. 801 (2009). In fact, "most claims that even relate to removal" are improper if brought before the district court. *E.O.H.C. v. Sec. U.S. DHS.*, 950 F.3d 177, 184 (3d Cir. 2020); *see Reno v. Am.-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471, 483 (1999) (labeling section 1252(b)(9) an "unmistakable zipper clause," and defining a zipper clause as "[a] clause that says 'no judicial review in deportation cases unless this section provides judicial review.'"); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) ("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."); *Afanwi*, 526 F.3d at 796. Because of this precedent, the Court should conclude that Petitioner must bring his claims as a challenge his detention in immigration court, not in federal district court. *See Johnson v. Whitehead*, 647 F.3d 120, 125 (4th Cir. 2011); *Massieu v. Reno*, 91 F.3d 416, 423 (3d Cir. 1996).

Second, section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any 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). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)." *Id.* Though this section "does not sweep broadly,"

Tazu v. Attorney General U.S., 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as provided by § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

The statute was "'directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion,'" to protect "'no deferred action' decisions and similar discretionary decisions." *Tazu*, 975 F.3d at 297 (quoting *AADC*, 525 U.S. at 485). This limitation exists for "good reason": "[a]t each stage the Executive has discretion to abandon the endeavor." *AADC*, 525 U.S. at 483–84. In addition, through section 1252(g) and other provisions of the INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); *see Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022). The fact Petitioner raises constitutional claims does not restore the jurisdiction of this Court. *See Tazu*, 975 F.3d at 296–98 (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602–04 (6th Cir. 2010) (noting that "a natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution" and finding additional support for the court's interpretation from the remainder of the statute). Indeed, the Supreme Court held that a prior version of section 1252(g) barred claims similar to those brought here. *See AADC*, 525 U.S. at 488 ("[a]s a general matter—and assuredly in the context of claims such as those put forward in the present case—an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation."). Therefore, this Court lacks jurisdiction over the Petition, and the Court should accordingly dismiss the Petition.

B. Petitioner may not seek relief under the INA or APA in a Habeas Petition (Counts Four and Five).

Petitioner expressly challenges his civil detention. *See, e.g.*, Pet. ¶¶ 30-46. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475,

500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus"); *see also, e.g.*, *Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ of habeas corpus[.]" (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, "release from ICE custody . . . is a remedy that is *only* available through a habeas petition." *Armando C. G. v. Tsoukaris*, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added). And indeed, a "Petition for a Writ of Habeas Corpus" is exactly what Petitioner filed. *See* Pet. at 1.

But in the Petition, Petitioner also asserts claims under the INA and APA—civil claims. *See id.* ¶¶ 52-55 (Count Four), 56-63 (Count Five). This he may not do, as a civil claim is not cognizable in the habeas context. *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim") As the Fourth Circuit recently held in the context of EAJA, a "habeas proceeding [i]s not a 'civil action'"; rather, such proceedings "are 'unique' and occupy a special place of their own in our system." *Obando-Segura v. Garland*, 999 F.3d 190, 192-93 (4th Cir. 2021) (quoting *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969)); *see Smith v. Angelone*, 111 F.3d 1126, 1130 (4th Cir. 1997) ("Although a habeas proceeding is considered a civil action for some purposes, it is 'more accurately regarded as being *sui generis*.'" (citation and internal citation omitted)); *see also Barco v. Witte*, 65 F.4th 782, 783 (5th Cir. 2023) ("habeas corpus petitions are not purely civil in nature, and therefore do not unequivocally fall under the text of the EAJA"), *cert. denied* sub nom. *Gomez Barco v. Witte*, 144 S. Ct. 553 (2024). Petitioner may not avail himself of both the specialized procedural rules attendant to habeas proceedings while also maintaining a mine-run civil

claim that, in the usual course, is subject to the Federal Rules of Civil Procedure. Therefore, this Court should dismiss Counts Four and Five for lack of jurisdiction.

II. Even if the Court Has Jurisdiction Over the Petition, Petitioner's Detention is Lawful and Constitutional

A. Petitioner is an applicant for admission who is seeking admission and not clearly and beyond a doubt entitled to be admitted; therefore, he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

Before this Court can analyze Petitioner's due process claim, it must determine what statute authorizes Petitioner's detention. *See Abreu v. Crawford*, 2025 WL 51475, at *3-4 (E.D. Va. Jan. 8, 2025) (Nachmanoff, J.). As a *legal* matter, Petitioner is properly detained under 8 U.S.C. § 1225 as he is an applicant for admission seeking admission and is not clearly and beyond a doubt entitled to be admitted. *See Jennings*, 583 U.S. at 287 (emphasis added).

"There is a statutory distinction between noncitizens who are detained upon arrival into the [U.S.] and those who are detained after they have already entered the country, legally or otherwise." *Abreu*, 2025 51475, at *3. "An alien who 'arrives in the [U.S.],' or is 'present' in this county but 'has not been admitted,' is considered an 'applicant for admission' under 8 U.S.C. § 1225(a)(1)." *Id.* "Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2)." *Olaya Rodriguez v. Bondi*, 2025 WL 2490670, at *2 (E.D. Va. June 24, 2025) (Trenga, J.); *see Jennings*, 583 U.S. at 287 (section 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)") (emphasis added). "Both provisions require that any applicant for admission remain detained until their asylum application is fully adjudicated or until removal proceedings conclude." *Olaya Rodriguez*, 2025 WL 2490670, at *2 (citing 8 U.S.C. §§ 1225(b)(1), (2)); *see Pipa-Aquise v. Bondi*, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (Nachmanoff, J.). And as for § 1226(a), such provision only "cover[s] individuals given *legal* status who are then subsequently placed in removal

proceedings." *Olaya Rodriguez*, 2025 WL 2490670, at *3 n.10 (citing *Rodriguez*, 747 F. Supp. 3d at 916); *see Romero v. Bondi*, 2025 WL 2490659, at *3 (E.D. Va. July 2, 2025) (Alston, J.)[3]

The factual circumstances of this case make clear Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) as an "applicant for admission." *See* Pet. ¶ 17. Petitioner has not been admitted, as a legal matter, to the U.S., *see id.*, and is thus still considered an "applicant for admission." *See* 8 U.S.C. § 1225(a)(1) ("[a]n alien present in the [U.S.] who has not been admitted . . . *shall* be deemed for purposes of this chapter an applicant for admission") (emphasis added). The INA defines admission as "the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). Petitioner entered the U.S., as Petitioner concedes, without inspection. *See* Pet. ¶ 17. Such entry is in violation of 8 U.S.C. § 1182(a)(6)(A)(i), which makes Petitioner inadmissible. And "aliens who are inadmissible . . . are . . . *ineligible to be admitted* to the [U.S.]." 8 U.S.C. § 1182(a) (emphasis added). As the Second Circuit notes, "[i]f the alien is seeking admission, he is charged in removal proceedings as an inadmissible[.]" *Cruz-Miguel v. Holder*, 650 F.3d 189, 198 n.13 (2d Cir. 2011); *see also id.* ("[i]f the alien has been admitted, however, he is charged in removal proceedings as a deportable alien under 8 U.S.C. § 1227"). Indeed, this Court and other jurists of this Court have made clear that, as a *legal* matter, Petitioner must have a lawful status to be detained under 8 U.S.C. § 1226(a). *See Olaya Rodriguez*, 2025 WL 2490670, at *3 n.10 ("Section 1226(a) protections cover individuals given legal status who are then subsequently placed into removal proceedings.")

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[3] Federal Respondents recognize that other district courts have found that to be detained under § 1225(b)(2), applicants for admission must be "*seeking admission*" and not be just "present" in the U.S. *See, e.g.*, *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588, at *4-7 (S.D.N.Y. 2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238, at *3-4 (D. Mass. 2025). Federal Respondents contend, however, that Petitioner is actively "seeking admission" while being present in the U.S. because Petitioner was *never* admitted to the U.S, and is thus *not* allowed to be physically present in the U.S. *See Lopez-Sorto v. Garland*, 103 F.4th 242, 252 (4th Cir. 2024) (citing *Kaplan v. Tod*, 267 U.S. 228, at 229-30 (1925)). And "[b]ecause [Petitioner] was never lawfully admitted, he qualifies as someone *seeking admission*[.]" *Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) (internal quotations omitted) (emphasis added).

(citing *Rodriguez*, 747 F. Supp. 3d at 916); *Romero*, 2025 WL 2490659, at *3 ("Petitioner provides no evidence that his release on bond conferred any legal status itself") (internal quotations omitted); *Abreu*, 2025 WL 51475, at *4 ("Mr. Sawyer obtained no legal status after his initial detention under § 1225. Thus, even though Mr. Sawyer was paroled from ICE custody and later apprehended on criminal charges, he remains detained pursuant to § 1225."); *but see Hasan*, --- F. Supp. 3d ---, at *6-7 (finding no legal status necessary).

Petitioner's release is statutorily foreclosed. Indeed, the Secretary "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *Jennings* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). ICE has no record of Petitioner requesting parole. Even so, the INA is clear that an alien granted parole remains an applicant for admission, even while in the U.S. 8 U.S.C. § 1182(d)(5)(A).

Petitioner is detained pursuant to § 1225(b)(2)(A) because his clearly an applicant for admission who is beyond a doubt not entitled to be admitted and is seeking admission[4]. *See* FREX 1 ¶ 11; Pet. ¶ 19. Indeed, Fourth Circuit case law supports the reading that by simply being present in the U.S. without admission, Petitioner is actively seeking admission to the U.S. *See Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021). The alien in *Jimenez-Rodriguez* entered the U.S. without inspection and "lived in [the] U.S. ever since." *Id.* at 191. The petitioner eventually applied for a U-visa seeking a lawful status. *Id.* at 193. To be eligible to for a U-visa, an alien must not be inadmissible, but he may apply for a waiver of such inadmissibility ground if he is "seeking admission" to the U.S. *See* 8 U.S.C. § 1182(d)(3)(A)(ii); 8 C.F.R. § 214.1(a)(3)(I). In determining whether an alien was "seeking admission,"

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[4] Indeed, Judge Brinkema's recent decision in *Hasan v. Crawford* failed to analyze whether petitioner was in fact seeking admission and was not clearly and beyond a doubt entitled to be admitted. *See* --- F. Supp. 3d ---, 2025 WL 2682255, at *5-9.

the Fourth Circuit looked to § 1225 for guidance. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2; *id.* at 199. Reading the INA and § 1225(a)(1) together, the Fourth Circuit concluded that "[b]ecause Jimenez-Rodriguez was never lawfully admitted, he qualifies as someone "seeking admission[.]" *Id.* at 194 n.2.

While Federal Respondents recognize that Petitioner here is not seeking U-visas or any waivers of inadmissibility, Petitioner, like the petitioner in *Jimenez-Rodriguez*, entered the U.S. without inspection and has never left the U.S. *See generally* Pet. The Fourth Circuit determined that the petitioner in *Jimenez-Rodriguez* was "seeking admission" because he was never lawfully admitted. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2. And because Petitioner is seeking admission to the U.S., he is properly detained under § 1225(b)(2)(A). Indeed, the fact that Petitioner is seeking asylum, *see* Pet. ¶ 8, is further evidence that has been actively seeking admission to the U.S. *See* USCIS, *Affirmative Asylum Procedures Manual*, at 269-271 (last updated Feb. 2025)[5] (explaining that once asylum is granted, an alien will receive an I-94, Arrival-Departure Record Card, which is evidence of an *admission*) (emphasis added).

Judge Brinkema's recent decision in *Hasan v. Crawford* is inapposite to the facts of this case. In *Hasan*, the court found petitioner to be subject to discretionary detention under § 1226(a) instead of § 1225(b) as Federal Respondents contended. *See* --- F. Supp. 3d ---, 2025 WL 2682255, at *5-9. Recognizing that "§ 1226(a) sets forth 'the default rule' for detaining and removing aliens 'already present in the [U.S.][,]'" *id.* at *6 (quoting *Jennings*, 583 U.S. at 303) (citing *Abreu*, 2025 WL 51475, at * 3), the Court found "the federal respondents' treatment of Hasan since he arrived in the [U.S.] unequivocally demonstrates he is detained pursuant to § 1226(a)." *Id.* at *7. The court further reasoned federal respondents' reading of § 1225(b)(2) "would render [§ 1226(c)(1)] superfluous[.]" *Id.* at *8

[5] Retrievable at: https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf (last accessed Sep. 22, 2025).

(quoting *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010)). Therefore, petitioner was subject to detention pursuant to § 1226(a). *See id.* at 9.

Petitioner, like the Petitioner in *Hasan*, claims throughout his Petition that he is subject to discretionary detention pursuant to §1226(a). But while ICE *may* have treated Petitioner as detained pursuant to § 1226(a), *i.e.*, being arrested on an administrative warrant and release on an order of recognizance, his subsequent detention was made based on the facts that he was in fact an applicant for admission who was seeking admission to the U.S. and not clearly and beyond a reasonable doubt entitled to be admitted to U.S. *See* FREX 1 ¶ 11. By *law*, he therefore is subject to mandatory detention pursuant to § 1225(b)(2)(A). *See* 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") (emphasis added); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("it is a commonplace of statutory construction that the specific governs the general"); *Olaya Rodriguez*, 2025 WL 2490670, at *3; *Pipa-Aquise*, 2025 WL 2490657, at *1 n.2.

Additionally, the IJ's determination does not change the fact that Petitioner is, *by law*, an applicant for admission and is thus subject to mandatory detention under 8 U.S.C. § 1225(b). *See* 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") (emphasis added); *Olaya Rodriguez*, 2025 WL 2490670, at *3; *Pipa-Aquise*, 2025 WL 2490657, at *1 n.2. The '[m]ere issuance of an arrest warrant does not endow an [IJ] with authority to set bond for an alien who falls under section [1225](b)(2)(A)[.]" *Matter of Yajure Hurtado*, 29 I. & N. at 227 (citing *Matter of A-W-*, 25 I. & N. Dec. 45, at 46 (BIA 2009); *Matter of D-J-*, 23 I. & N. 572, 575 (A.G. 2003)).

In determining whether an applicant for admission is subject to mandatory detention under § 1226(b)(2)(A), "the examining immigration officer [must] determine[] that [the applicant] seeking admission is not clearly and beyond a doubt entitled to be admitted[.]" *Id.* The court in *Hasan* failed to conduct any analysis as to whether petitioner was seeking admission or was not clearly and beyond a doubt entitled to be admitted. *See generally*, *Hasan*, --- F. Supp. 3d ---, 2025 WL 2682255, at *5-9. Here, when Petitioner was detained, Petitioner had a pending asylum application and was not clearly and beyond a doubt entitled to be admitted to the U.S. *See* FREX 1 ¶ 11; Pet. ¶ 19. Therefore, ICE arrested and detained Petitioner pursuant to its statutory obligations *mandating* his detention, and thus may not be released on bond. *See* 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

This reading of § 1225(b)(2)(A) also does not render § 1226(c)(1) superfluous. Petitioner is mixing apples and oranges here. Section 1226(c)(1) pertains to the mandatory detention of *criminal* aliens, and is *not* limited to those who are applicants for admission. *See id.* ("[t]he Attorney General shall take into custody *any* alien") (emphasis added). Indeed, lawful permanent residents who are inadmissible at the time of their initial entry to the U.S. or time of adjustment may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A), 1182(a)(6)(A)(i). It also reaches those who may have been admitted erroneously but are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A), 1182(a)(6)(C)(i); *Kanu v. Garland*, 672 F. Supp. 3d 108, 117 (E.D. Va. 2023) (Nachmanoff, J.) (finding a lawful permanent residence's initial admission unlawful because he was inadmissible pursuant to § 1182(a)(6)(C)(i)).

To provide additional context, an alien may enter the U.S. without going through a port-of-entry and later seek asylum. Once asylum is granted, an alien will receive an I-94, Arrival-Departure Record Card, which is evidence of an admission. *See* 8 C.F.R. § 1.4. The I-94 will show that the alien was admitted as of the date of the asylum approval. *See supra* at 13. Although such alien was admitted as of the date of the asylum approval, it does not change whether he or she "arrive[d] in the [U.S.] at

any time or place other than as designated by the Attorney General" and thus may still be charged as being deportable as an alien who was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) at the time of their initial entry. *See* 8 U.S.C. § 1227(a)(1)(A). Indeed, Congress' intent in enacting the Illegal Immigration Reform and Immigration Responsibility Act, *see* Pub. L. No. 104-208, 110 Stat. 3009 (1996), was to make sure that those who entered the U.S. without inspection did not have more procedural or substantive due process rights than those who present themselves to authorities for inspection. *See Matter of Yajure Hurtado*, 29 I. & N. at 225 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)); *see also Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012).

Finally, as a matter of statutory construction, § 1225(b)(2)(A) governs because it contains specific mandatory language, *see id.* ("the alien *shall* be detained") (emphasis added), as opposed to § 1226(a)'s general discretionary and permissive language, *see id.* ("an alien *may* be arrested and detained") (emphasis added). *See Morales*, 504 U.S. at 384 ("it is a commonplace of statutory construction that the specific governs the general"). And as the Fourth Circuit makes clear, "a general provision should not be applied when doing so would undermine limitations created by a more specific provision." *In re Wright*, 826 F.3d 774, 779 (4th Cir. 2016) (quoting *Coady v. Vaughn*, 251 F.3d 480, 484 (4th Cir. 2001)) (internal quotations omitted). Such contrary position that § 1226(a) governs "would render mandatory detention under § 1225(b) meaningless." *Florida v. U.S.*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023).

Jennings is instructive. 583 U.S. at 288-89. In *Jennings*, the Supreme Court analyzed three different detention provisions in the INA: 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c). *See id.* at 287-89. In analyzing detention under §§ 1226(a), (c), the *Jennings* Court distinguished applicants for admission who are subject to mandatory detention pursuant to § 1225 with those who are "within one or more . . . classes of *deportable* aliens" and thus fall under § 1226 detention. *Id.* at 288 (quoting 8 U.S.C. §§ 1227(a)(1), (2)) (internal quotations omitted) (emphasis added). Here, Petitioner is not subject to the deportability grounds at 8 U.S.C. § 1227; he is charged with being *inadmissible* under 8 U.S.C. § 1182.

See FREX 3. And since he is not charged with any deportability grounds found in § 1227, he cannot be detained under 8 U.S.C. § 1226. *See Cruz-Miguel*, 650 F.3d at 198 n.13 ("[i]f the alien has been admitted, however, he is charged in removal proceedings as a deportable alien under 8 U.S.C. § 1227").

Therefore, because *by law* Petitioner is defined as an applicant for admission who is clearly seeking admission and is not clearly and beyond a doubt entitled to be admitted, he *shall* be detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and is properly detained under the INA (emphasis added).

B. The due process awarded to Petitioner is such process only afforded by the INA (Counts One and Two).

To assess the merits of Petitioner's constitutional claims, it is necessary to determine first what due process rights Petitioner has. The INA *mandates* Petitioner's detention; it could hardly be clearer:

> [I]n 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 1229a of this title.

8 U.S.C. § 1225(b)(2)(A) (emphasis added). And the Supreme Court has held, nowhere in the statutory rubric did Congress even mention a bond hearing or state a maximum period of time within which an alien could be held in such mandatory detention without providing a bond hearing. *See Jennings*, 583 U.S. at 297. As he admits (Pet. ¶ 17), Petitioner has not been admitted to the U.S., and for any alien that has "not been admitted into the country pursuant to law," the INA provides the appropriate due process. *See Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted). This Court and other jurists of this Court have come to similar conclusions. *See Olaya Rodriguez*, 2025 WL 2490670; *Pipa-Aquise*, 2025 WL 2490657; *Aslanturk v. Hott*, 459 F. Supp. 3d 681 (E.D. Va. 2020) (Alston, J.).

While *Thuraissigiam* recently addressed the due process afforded to arriving aliens detained pursuant 8 U.S.C. § 1225(b)(1), such analysis of § 1225(b)(2) has yet to be addressed by the Supreme Court. However, *Nishimura Ekiu* provides guidance. 142 U.S. 651. There, a Japanese national

petitioned for habeas corpus after being "detained at San Francisco upon the ground that she should not be permitted to land in the [U.S]." *Id.* at 651. Although the petitioner, who had arrived by ship, was not entitled to land, an immigration official had placed her in a mission house in San Francisco with the intent of "keeping her there" until judicial proceedings concluded. *Id.* at 661. After determining that the petitioner had been "restrained of h[er] liberty" and was "doubtless entitled to a writ of *habeas corpus* to ascertain whether the restraint [wa]s lawful," the Supreme Court explained an unadmitted alien's due process rights are closely circumscribed:

> It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the [U.S.], nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government.

Id. at 660. "As to such persons," the court concluded, "the decisions of executive or administrative officers, acting within powers expressly conferred by [C]ongress, *are due process of law.*" *Id.* (emphasis added).

Looking to the statute at issue, the Supreme Court held that the immigration officer's decision to prevent the petitioner from landing was made in accordance with that statute; that his determination "was final and conclusive against the petitioner's right to land in the [U.S.]; and that the petitioner therefore was "not unlawfully restrained of her liberty." *Id.* at 663-64. In other words, the government's adherence to the statute authorizing her detention after a determination that she could not land was the only due process right the petitioner could claim. As the Supreme Court stated in *Thuraissigiam*, "a concomitant" of the government's "plenary authority to decide which aliens to admit" is "the power to set the procedures to be followed *in determining whether an alien should be admitted.*" 592 U.S. at 139 (emphasis added).

Jennings provides further clarity. 583 U.S. 281. In *Jennings*, aliens alleged, notwithstanding other statutory detention provisions, that § 1225(b) provided for periodic bond hearings where the

government must prove by clear and convincing evidence that such detention remains justified. *Id.* at 291. However, the Court found that "nothing in the statutory text imposes any limit on the length of detention. *Id.* And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Id.* at 297. The Court also took note that that the clear exception to detention under § 1225(b) "implies that there are no *other* circumstances under which aliens detained under 1225(b) may be released." *Id.* at 300 (emphasis in the original). The Court's emphasis here thus implies that the Petitioner *shall* not be released on bond. *See id.* (emphasis added). Indeed, "the text of [] [§ 1225(b)], when read most naturally, does not give detained aliens the right to periodic bond hearings during the course of their detention." *Id.* at 286. And recently, the BIA recently found that aliens subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2) are ineligible for bond. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. This line of authority clearly demonstrates that the *only* process due to Petitioner is what the INA provides.

Other Supreme Court cases such as *Zadvydas v. Davis*, 533 U.S. 678 (2000), and *Demore v. Kim*, 538 U.S. 510 (2003), are inapposite to Petitioner's case as they concerned aliens *admitted* who had obtained *lawful* status, rather than an applicant for admission such as Petitioner. This distinction "ma[kes] all the difference" when it comes to due process. *Zadvydas*, 533 U.S. at 693. Indeed, *Zadvydas* made just this point: Acknowledging that "[t]he distinction between an alien who has effected an entry into the [U.S.] and one who has never entered runs throughout immigration law," the Supreme Court conceded that aliens "who have not yet gained initial admission to this country *would present a very different question*." 533 U.S. at 682, 693 (emphasis added). So even on its own terms, *Zadvydas*'s analysis of the process due to an alien admitted into the country says nothing about the process to which an applicant for admission is entitled. *See also Jennings*, 583 U.S. at 298 ("nothing in the text of § 1225(b)(1) or § 1225(b)(2) even hints that those provisions restrict detention after six months"). Indeed,

"*Zadvydas*'s reasoning is particularly inapt here because there is a specific provision authorizing release from § 1225(b) detention whereas no similar release provision applies to § 1231(a)(6)." *Id.* at 300.

Demore is even less helpful to Petitioner's case. There, the Supreme Court held that mandatory civil detention of a legal permanent resident during removal proceedings—with no opportunity to seek release on bond—did not violate due process. *See* 538 U.S. at 526 ("[T]he Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings"). Far from suggesting that applicants for admission have extra-statutory due process rights concerning their civil detention, *Demore* held that even aliens admitted into the country, with a stronger liberty interest, do not necessarily possess such rights.

* * *

To deny the Petition in this case, this Court need only follow the Supreme Court's pellucid instructions. Granting the Petition, by contrast, would require a reading of the Due Process Clause that the Supreme Court never endorsed and in fact has repeatedly rejected. *See Jennings*, 583 U.S. at 297 ("neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings"). This Court should decline to take such a drastic step. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution.").

C. Petitioner's detention conforms with the Eighth Amendment (Count Three).

Without providing *any* evidence or authority, Petitioner next contends that his detention violates his right to not be subjected of excessive bail. *See* Pet. ¶¶ 47-51. But the Supreme Court has rejected this argument on more than one occasion. See *U.S. v. Salerno*, 481 U.S. 739, at 752-53; *Carlson v. Landon*, 342 U.S. 524, 536-37 (1952). The Court should thus dismiss this Court in the Petition. In any sense, Federal Respondents also treat Count Three as a cruel and unusual punishment claim.

The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *Id.* Detention and "[removal] proceeding[s] [are] [] purely civil action[s] to determine eligibility to remain in this country, *not* to punish an unlawful entry, though entering or remaining unlawfully in this country is itself a crime." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (emphasis added). Indeed, "[t]he purpose of [removal] is *not to punish* past transgressions but rather to put an end to a continuing violation of the immigration laws." *Id.* at 1039.

By failing to identify a punishment, Petitioner must show that the allegedly unconstitutional condition of their detention is not "reasonably related to a legitimate governmental objective,"—*i.e.*, the condition is "arbitrary or purposeless." *Bell v. Wolfish*, 441 U.S. 520, 539 (1979); *Seling v. Young*, 531 U.S. 250, 262 (2002) (holding that holding sexually violent predators in civil detention is constitutional because it protects "the public from dangerous individuals with treatable as well as untreatable conditions"). "[I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Bell*, 441 U.S. at 539. And "[o]nce the Government has exercised its conceded authority to detain a person . . . , it obviously is entitled to employ devices that are calculated to effectuate this detention." *Id.* at 537 ("[T]hat such detention interferes with the detainee's understandable desire to live as comfortably as possible . . . does not convert the conditions or restrictions of detention into 'punishment.'"). Certainly, the Supreme Court cautioned lower courts that whether a condition amounts to punishment does not hinge on "a court's idea of how best to operate a detention facility." *Id.*

Petitioner's continued detention is consistent with a legitimate government objective, which has been expressly recognized by the Supreme Court. The Supreme Court has recognized the Government's legitimate interest in protecting the public and preventing aliens from absconding by detaining aliens pending their immigration proceedings. *See Jennings*, 138 S. Ct. at 836-37; *Demore*, 538 U.S. at 520-522; *Zadvydas*, 533 U.S. at 690-91. Nor is detention pending removal an "excessive" means

of achieving those interests. For over a century, the Supreme Court has affirmed detention as a "constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523 (listing cases).

Therefore, Petitioner's continued detention cannot be considered a punishment and merit relief derived from the Eighth Amendment.

D. The Automatic Stay Regulation as applied to Petitioner's detention does not violate the Fifth Amendment (Counts One and Two).

The discussion *supra*, at 12-18, establishes, beyond reasonable dispute, that Petitioner's due process rights extend no further than what the INA provides. However, Petitioner claims that DHS's invocation of the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) after he was incorrectly granted bond violates both his substantive and procedural due process rights under the Fifth Amendment. *See* Pet. ¶¶ 30-46. But because his detention complies with the INA, his claim that due process entitles him to something more must fail.

1. <u>ICE has a compelling intertest in Petitioner's detention (Count One).</u>

Because has a compelling interest in detaining aliens during their removal proceedings., Petitioner's substantive due process claim fails. *See Carlson*, 342 U.S. at 534. Petitioner claims freedom from physical confinement is a fundamental right and thus merits strict scrutiny. *See* Pet. ¶¶ 39-42.

Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. "[G]overnment detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and narrow nonpunitive circumstances where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up). "This guarantee extends to noncitizens present in the U.S." *Hasan*, --- F. Supp. 3d ---, 2025 WL 2682255, at *10 (citing *Zadvydas*, at 693).

Petitioner's substantive due process claim fails on the merits as "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]" *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). Indeed, [the] [Supreme] Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also Wong Wing v. U.S.*, 163 U.S. 228, 235 (1896) (deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character"). And "the government has a substantial interest in ensuring a noncitizen's appearance at immigration hearings." *Rodriguez*, 747 F. Supp. 3d at 918; *see also Toure v. Hott*, 458 F. Supp. 3d 387, 403 (E.D. Va. 2020) (O'Grady, J). Thus, "[Petitioner's] liberty interests must be weighed against the government's interests." *Rodriguez*, 747 F. Supp. 3d at 917.

Petitioner's detention, therefore, cannot violate his substantive due process rights.

2. The governing procedural due process framework confirms that Petitioner's detention satisfies an applicant for admission's due process (Count Two).

The Fourth Circuit analyzes an alien's due process claim by weighing the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Miranda*, 34 F.4th at 359-65. The three factors relevant to assessing Petitioner's due process claim are: (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." *Mathews*, 424 U.S. 319, 335 (1976).

1. Federal Respondents recognize "[f]reedom from bodily restraint 'lies at the heart of the liberty that [the Due Process] Clause protects.'" Pet. ¶ 39 (quoting *Zadvydas*, 533 U.S. at 630). But as an applicant for admission, Petitioner has a less compelling liberty interest than the aliens in *Zadvydas* and *Demore*. *See Wilson v. Zeithern*, 265 F. Supp. 2d 628, 635 (E.D. Va. 2003) (detention of inadmissible alien pending removal did not violate due process); *Hong v. U.S.*, 244 F. Supp. 2d 627, 635 (E.D. Va. 2003)

("Hong's liberty interest, as an inadmissible alien seeking admission into the country, is more attenuated than the liberty interest of a deportable alien already present in the country."). The Supreme Court and Fourth Circuit even made clear that an alien who has not been admitted "does not have the same status for due process purposes as an alien who has 'effected entry.'" *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021) (quoting *Thuraissigiam*, 591 U.S. at 139-40 (cleaned up)).

The Supreme Court emphasized that "detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that aliens have a constitutional right to be released from custody during removal proceedings, and in fact has held precisely the opposite. *See id.* at 530; *see also Carlson*, 342 U.S. at 538 ("Detention is necessarily a part of this deportation procedure."). Petitioner's private liberty interest is diminished when his release is available on the condition that he leaves the U.S. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 1999) (unlike criminal cases, immigration detention "is not entirely beyond [the alien's] control; he is detained only because of the removal proceedings, and he may obtain his release any time he chooses by withdrawing his application for admission and leaving the [U.S.]").

Moreover, Petitioner's private interest is diminished because it is within the Attorney General's discretion to grant bond. *See* 8 U.S.C. § 1226. Section 1226 specifies that whether to grant or deny bond to an alien is within the total discretion of the Attorney General. *See id.* And since aliens cannot have a liberty interest in discretionary relief applications, Petitioner cannot have a liberty interest in DHS's decision to not release him pursuant to the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2). *See Smith v. Ashcroft*, 295 F.3d 424, 429 (4th Cir. 2002). Indeed, there is no statutory provision *requiring* Petitioner be released when bond is granted, meaning he has no right to bond.

An alien's private interest is even more diminished when release into the U.S. would be an assistance to an ongoing violation of U.S. law. *See* 8 U.S.C. § 1182(a) (inadmissibility grounds). In

addition to these inadmissibility grounds, 8 U.S.C. § 1325 provides that any alien who "enters or attempts to enter the [U.S.] at any time or place other than as designated by immigration officers," "shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both[.]" *Id.* § 1325(a)(1); *see id.* § 1325(b) (civil penalties). Petitioner concedes he entered the U.S. without inspection by an immigration official. *See* Pet. ¶ 17. In fact, such violation has been recognized by other courts, including the Supreme Court. *See AADC*, 525 U.S. at 491 ("in all cases, deportation is necessary in order to bring an end [to] an ongoing violation of [U.S.] law"); *Lopez-Mendoza*, 468 U.S. at 1039 ("The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws"); *Gomez-Chavez v. Perryman*, 308 F.3d 796, 800-01 (7th Cir. 2002) (no liberty interest in remaining in violation of applicable U.S. law).

2. Regarding the second factor, Petitioner has already received more process he is due because his ability to seek parole exceeds the opportunity for release available to other aliens detained pursuant to 8 U.S.C. § 1226(c), who could be released only for narrow, witness-protection purposes. *Id.* § 1226(c)(2); *see* 538 U.S. at 513-14. Petitioner, by contrast, may be paroled for any "urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A). Petitioner claims that such risk of erroneous deprivation has already occurred because Petitioner is not subject to mandatory detention and ICE failed to satisfy its requirements to initiate an automatic stay. *See* Pet. ¶¶ 43-45. But as Federal Respondents made clear *supra*, at 12-16, Petitioner is by law an applicant to admission and subject to mandatory detention. And as to Petitioner's allegation that ICE violated the automatic stay regulation, Petitioner seems to ignore that ICE has "ten business days" to file their certified appeal. 8 C.F.R. § 1003.6(c)(1). Indeed, ICE filed its certified appeal on September 4, 2025. *See* FREX 5, at 26.

Regulations specify that the BIA will hear such appeal, and even if it does not act on the appeal, the Petitioner *shall* be released. *See* 8 C.F.R. §§ 1003.6(c), (d). Indeed, the longest time Petitioner may be detained when ICE initiates the automatic stay regulation is *less* than the *Zadvydas*'s six-month

presumption of reasonableness. *See id.* § 1003.6(c); *Hasan*, --- F. Supp. 3d ---, 2025 WL 2682255, at *9 ("the automatic stay regulation can hold an individual in custody for approximately *140 days* after the IJ's initial bond determination") (emphasis added). And as the Fourth Circuit makes clear, "[t]he absence of a date certain—imminent or not—for the conclusion of . . . proceedings is of no moment." *Castaneda v. Perry*, 95 F.4th 750, 758 (4th Cir. 2024). What may happen in the future is likewise immaterial to this proceeding, as Petitioner may challenge only his *present* detention. *See D.B. v. Cardall*, 826 F.3d 721, 734 n.10 (4th Cir. 2016) ("the question before the district court . . . [is] whether [the petitioner's] *current detention* complies with federal statutes and the Constitution" (emphasis added)); *Doe v. Perry*, 2022 WL 1837923, at *2 (E.D. Va. Jan. 31, 2022).

Federal Respondents acknowledge that other courts from this circuit recently held that the automatic stay regulation as-applied to an alien granted bond violates the Due Process Clause. *See Hasan*, 2025 WL 2682255; *Leal-Hernandez, v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025). The courts found that the automatic stay rejects the very core of due process because the Government freed itself from undertaking any individualized review of petitioners' cases or offering any factual or evidentiary basis that petitioners' continued detention is necessary to further a compelling government interest Hasan, at *10-12; *Leal-Hernandez*, at *14. But in those cases, the courts found that petitioners were detained pursuant to § 1226(a), not § 1225(b). *See Hasan*, at *9 ("Hasan's detention is governed by § 1226(a)'s discretionary framework"); *Leal-Hernandez*, at *10 ("[p]etitioner is subject to § 1226(a)"). And because Federal Respondents have shown that Petitioner is seeking admission and is not beyond a doubt admissible to the U.S., he shall be subject to mandatory detention pursuant to § 1225(b)(2)(A).

3. Regarding the third factor, the government's interests in mandatory detention pursuant to section 1225(b) are legitimate and significant. "[T]he government interest includes detention." *Miranda*, 34 F.4th at 364. A court "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature."

Landon v. Plasencia, 459 U.S. 21, 34 (1982); *Miranda*, 34 F.4th at 364 (same). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]" *Miranda*, 34 F.4th at 364. And for one, Petitioner's argument that the Due Process Clause mandates immediate release flouts the Supreme Court's directive that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Diaz*, 426 U.S. at 81.

Additionally, "[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of [U.S.] law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Plasencia*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty."). Mandatory detention remedies this risk by "increasing the chance that, if ordered removed, [Petitioner] will be successfully removed." *Demore*, 538 U.S. at 528. Petitioner's mandatory detention indisputably serves each of these interests. And as the Supreme Court has made clear, civil immigration detention is "constitutionally valid" as long as it "serve[s] its purported immigration purpose." *Demore*, 538 U.S. at 523, 527.[6]

E. The Automatic Stay Regulation is not *Ultra Vires* because Congress granted the Attorney General discretion in implementing the INA (Counts Four and Five).

Petitioner cannot claim that ICE's invocation of the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) is *ultra vires* because the INA authorizes the Attorney General to prescribe regulations to carry out the powers conferred to him in the INA. *See* 8 U.S.C. §§ 1103(a)(1), (3).

The *ultra vires* standard is "necessarily narrow." *Perez v. Cissna*, 914 F.3d 846, 852 (4th Cir.

[6] Instead of the *Mathews* analysis, this Court has applied a five-factor test outlined in *Portillo v. Hott*, 322 F. Supp. 3d 698, 707 (E.D. Va. 2018) (Brinkema, J.). *See Abreu*, 2025 WL 51475, at *5-7. It remains Federal Respondents' position that *Portillo* is inapplicable. Indeed, the only relevant factor here would be the length of his detention, which this Court has found to not favor Petitioner. *See Pipa-Aquise*, 2025 WL 2490657, at *2.

2019), *on reh'g en banc sub nom. Perez v. Cuccinelli*, 949 F.3d 865 (4th Cir. 2020); *Ancient Coin Collectors Guild v. U.S. Customs & Border Prot.*, 698 F.3d 171, 179 (4th Cir. 2012). The Fourth Circuit has determined that its "role is only to determine whether an agency has acted within the bounds of its authority or overstepped them." *Perez*, 914 F.3d at 853 (citing *Ancient Coin Collectors Guild*, 698 F.3d at 179). "Government action is ultra vires if the agency or the government entity 'is not doing the business which the sovereign has empowered [it] to do or [it] is doing it in a way which the sovereign has forbidden." *Id.* (quoting *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689 (1952)).

The government action at issue in this case is ICE's invocation of the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2). Petitioner fails to recognize the INA explicitly authorizes that the Attorney General "shall establish such regulations . . . [he] determines to be necessary for carrying out his authority under the provisions of this chapter" 8 U.S.C. § 1103(a)(3) (emphasis added). And while Petitioner alludes to the fact that DHS, not the IJ, may invoke the automatic stay regulation, Petitioner fails to recognize that such regulation was established by the Attorney General, not the Secretary of Homeland Security. *See* 71 Fed. Reg. 57873, 2006 WL 2811410, at 57884. The Attorney General, through 8 U.S.C. § 1103(a)(3), expressly gave the power to stay immigration bond decisions to DHS. Therefore, the invocation of such regulation cannot be *ultra vires.*

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court decline to issue a Writ of Habeas Corpus and dismiss the Petition.[7]

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[7] In the even this Court grants Petitioner relief on due process grounds, "it need not address [Petitioner's] APA or INA claims or his argument that the automatic stay regulation is ultra virus." *Hasan*, --- F. Supp. 3d ---, 2025 WL 2682255, at *1 n.1.

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Respectfully submitted,

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