UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HARSH PATEL, Petitioner, v. KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, Respondents.	)	No. 25 C 11180 Judge Cummings

MEMORANDUM IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS

This case involves petitioner Harsh Patel, a foreign national who has never been lawfully admitted.[1] *See* Dkt. 1 ("Pet.") at ¶ 18. He is currently detained by U.S. Immigration and Customs Enforcement ("ICE") while that agency initiates administrative removal proceedings against him. Patel thus seeks habeas relief from his mandatory detention while those proceedings play out before an immigration judge. Pet. ¶¶ 5–8, 14; *see also* Exhibit 1. Hoping to undermine this process, he filed his habeas petition the same day he was placed into those proceedings. *See id.* But Patel's habeas petition should be denied for numerous reasons.

First, to the extent he now seeks to use case law regarding bond determinations to force his relief, such an argument is unripe because Patel has no idea how his removal proceedings will progress—or if he will be detained throughout those proceedings. Second, this court should dismiss the Secretary of Homeland Security from this lawsuit, leaving the ICE Field Office

[1] This memorandum uses the term "foreign national" as equivalent to the statutory term of "alien" within the Immigration and Nationality Act ("INA").

Director as the sole respondent, because the latter is the only relevant custodian of Patel. Third, this court lacks jurisdiction to entertain Patel's habeas challenge because 8 U.S.C. § 1252(g) strips district courts of jurisdiction to intervene in ongoing removal proceedings, including the method by which those proceedings are conducted and decisions related to bond or release from custody during those proceedings. Fourth, the court should reject petitioner's due process claim because an "arriving alien's" due process rights are coextensive with whatever process Congress chooses to provide. Here, Patel is receiving all such procedures while he remains in removal proceedings. Fifth, Patel is properly detained by ICE under 8 U.S.C. § 1225(b)(2)'s plain text. Finally, the court should require that petitioner address his challenge to an immigration judge and from there, with the Board of Immigration Appeals ("BIA"), before addressing it to this court.

Background

Patel is an Indian national who arrived in the United States on foot near San Luis, Arizona, on December 15, 2022. Exhibit 1 at 1. He was encountered by U.S. Customs and Border Protection ("CBP") and was "released on his own recognizance." Exhibit 2 at 2. He thereafter "filed an I-589 Asylum Application with U.S. Citizenship and Immigration Services ('USCIS') in 2024," Pet. ¶ 19, and appeared at the agency's field office on September 15, 2025, *see* Exhibit 2 at 2–3. He was arrested after that appointment by ICE officers, *see id.*; *see also* Exhibit 3, and detained at ICE's Broadview detention facility, Pet. ¶ 21. ICE issued him a Notice to Appear ("NTA") on September 16, 2025, placing him into removal proceedings under 8 U.S.C. § 1229a. *See* Exhibit 1 at 1. His first hearing before an immigration judge is scheduled for September 29, 2025. *Id.*

Instead of waiting for his first hearing, Patel filed his habeas petition on September 16, 2025. *See* Dkt. 1. His petition brings two claims: (1) an assertion that his detention is unconstitutional under the Fifth Amendment's Due Process Clause, Pet. ¶¶ 52–61; and (2) a

similar statutory challenge alleging that any detention of him during his removal proceedings is unlawful under the INA, *id.* at ¶¶ 62–101.[2]

Since the filing of his petition, this court ordered that (1) Patel not be removed from this country or detained outside of Illinois, Indiana, or Wisconsin; and (2) the parties provide their respective positions regarding this court's jurisdiction and "in addition, . . . whether, as a matter of deference to the statutory framework . . . a bond determination should be presented to the immigration courts in the first instance" by noon (CDT) on September 18, 2025. Dkt. 5.

Legal Standard

Section 2241 confers jurisdiction on this court to order the release of any person who is held in the custody of the United States in violation of the "laws . . . of the United States" or the United States Constitution. 28 U.S.C. § 2241(c). The burden rests on the person in custody to prove their detention is unlawful. *See, e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Argument

I. This Case Is Not Yet Ripe.

As a threshold matter, this case is not yet ripe because Patel is essentially arguing that he may not ever be detained during his removal proceedings—no matter how long (or not) they may go and before they even truly begin. "Much like standing, ripeness gives effect to Article III's Case or Controversy requirement by 'preventing the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.'" *Sweeney v. Raoul*, 990 F.3d 555, 559–60 (7th Cir. 2021) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)). A claim is unripe—and therefore non-justiciable—when it would require the court to issue an advisory opinion. *Wis. Cent., Ltd. v. Shannon*, 539 F.3d 751, 759 (7th Cir. 2008); *see also Evers v.*

[2] For whatever reason, the petition jumps from paragraphs 64 to 100. *See* Pet. at 15–16.

Astrue, 536 F.3d 651, 662 (7th Cir. 2008) (a claim is unripe if it depends on "contingent future events that may not occur as anticipated, or indeed may not occur at all"). In this case, Patel is attempting to use habeas to challenge his detention during his removal proceedings because he *assumes* he will not be afforded a bond hearing. But it is his own petition that has up to this point prevented Patel from *even having a hearing* before any immigration judge.

Another problem with Patel's approach is that it runs directly against how the Supreme Court has already held that detention during removal proceedings is reasonable and does not violate a detainee's Fifth Amendment rights. *See Demore v. Kim*, 538 U.S. 510, 529 (2003). Patel tries to ignore this background and argues that he must at least receive a bond hearing to comport with due process. *See, e.g.*, Pet. ¶¶ 7, 26. But this entire argument is wrong because it omits how the Seventh Circuit rejected the argument that due process is violated by not affording a foreign national with a bond hearing. *See Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999). In *Parra* the court of appeals held that the prospect of a foreign national ultimately avoiding removal was so remote that he had no liberty interest meriting protection:

> An alien in Parra's position can withdraw his defense of the removal proceeding and return to his native land, thus ending his detention immediately. He has the keys in his pocket. A criminal alien who insists on postponing the inevitable has no constitutional right to remain at large during the ensuing delay, and the United States has a powerful interest in maintaining the detention in order to ensure that removal actually occurs.

Parra, 172 F.3d at 958; see also *Velez-Lotero v. Achim*, 414 F.3d 776, 782 (7th Cir. 2005).

These cases mean there is no constitutional or statutory impediment to detaining Patel during his removal proceedings, and his claims of such an entitlement can only be plausible where he may begin to endure unconstitutionally prolonged detention (such as where no prospect for deportation exists). *See, e.g.*, *Lopez Santos v. Clesceri*, No. 20 C 50349, 2021 WL 663180, at *3–

7 (N.D. Ill. Feb. 19, 2021). The problem with analogizing Patel's situation to such a case is that Patel has only been detained for days because his removal proceedings have just begun. *See* Exhibit 1 (showing that Patel's NTA was issued two days ago). It is therefore impossible to argue that his detention pending those proceedings are now unconstitutionally prolonged or "indefinite." Any argument to the contrary is simply speculative and, therefore, unripe. Hence, the Seventh Circuit's background precedent should control in this situation—meaning Patel's detention is entirely lawful.

II. The Court Should Dismiss the Secretary of Homeland Security.

As alluded to above, another jurisdictional flaw here is that the petition names an improper respondent. This is important because "standing is not dispensed in gross," and simply lumping defendants together is improper. *TransUnion v. Ramirez*, 594 U.S. 413, 431 (2021). Instead, a party "'must demonstrate standing for each claim that they press' against *each defendant*, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (emphasis added) (quoting *TransUnion*, 594 U.S. at 431). That rule dictates dismissal of the Secretary of Homeland Security since a writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Thus, except in extraordinary circumstances, the only proper respondent in a habeas case is the detainee's immediate custodian. *See, e.g.*, *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Because Patel was detained at the Broadview ICE facility at the of filing, this means that only the ICE Field Office Director is the proper respondent. *See Kholyavskiy v. Achim*, 443 F.3d 946, 953 (7th Cir. 2006).

III. Petitioner Is Now in Removal Proceedings and This Court Lacks Jurisdiction to Intervene in Those Ongoing Proceedings.

To the extent Patel is attempting to use his petition to undermine his nascent removal proceedings, doing so is equally erroneous. This is because even though a petitioner may challenge

a removal order at a court of appeals, 8 U.S.C. § 1252(a)(1), U.S.C. § 1252(g) strips all federal courts of jurisdiction over challenges to executive branch decisions to commence removal proceedings. *See* 8 U.S.C. § 1252(g) ("'Except as provided in this section and notwithstanding any other provision of law . . . including section 2241 of Title 28, *or any other habeas corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings*, adjudicate cases, or execute removal orders against any alien under this chapter." (emphases added)); *see also E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). More specifically for the purposes of this case, § 1252(g) 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 a foreign national 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" or to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Here, Patel is challenging ICE's decision to detain him during his removal proceedings. That detention arises from the decision to commence such proceedings against him and is therefore barred by § 1252(g). *See, e.g.*, *Albarran v. Wong*, 157 F.Supp.3d 779, 784–85 (N.D. Ill. 2016), (court lacked jurisdiction to hear challenges to discretionary denials of requests for stay of removal, rescission of reinstatement order, and release on order of supervision); *Valencia-Mejia v. United States*, No. 08-cv-2943, 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[.]"). This is because "Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion" regarding removal

decisions. *Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999); *see also Fathers of St. Charles v. USCIS*, No. 24 C 13197, 2025 WL 2201013, at *5 (N.D. Ill. Aug. 1, 2025); *Koleda v. Jaddou*, No. 23 C 15064, 2024 WL 1677408, at *3 (N.D. Ill. Apr. 18, 2024).

With this backdrop in mind, "[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. 08-cv-2941, 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). And at that point, "[t]he Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from that choice is thus barred under § 1252(g). *Id.*

Similarly, under 8 U.S.C. § 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 court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *AADC*, 525 U.S. at 483. Section 1252(b)(9) is thus 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 also Lopez v. Barr*, No. 20-cv-1330, 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)). This jurisdictional bar works in tandem with § 1252(a)(5), which provides that a petition for review is the *exclusive* means for judicial review of immigration proceedings. "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); *see also id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims . . . whenever they 'arise from' removal proceedings"); *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007) (similar).

These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removals, including decisions to detain for purposes of removal or for removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (§ 1252(b)(9) includes challenges to the "decision to detain [foreign nationals] in the first place or to seek removal"). Here, Patel challenges the decision to detain him for his removal proceedings, which arises from ICE's decision to commence removal proceedings and invoke the automatic stay provision in those proceedings, and is thus an "action taken . . . to remove [him] from the United States." 8 U.S.C. § 1252(b)(9). In sum, this court should dismiss this case for lack of jurisdiction, as Patel must first present his arguments to the immigration judge, the Board of Immigration Appeals ("BIA"), and then to the appropriate court of appeals, not this court. *See id.*

IV. Patel's Detention Does Not Violate Due Process.

Setting aside the jurisdictional problems, Patel's due process claim, Pet. ¶¶ 52–61, is off-base because he never effected a lawful entry, *see Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that, despite nine years of physical presence on parole, a foreign national "was still in theory of law at the boundary line and had gained no foothold in the United States"). Without a lawful entry or admission, he has no more due process rights than what processes Congress chooses to provide him. *See DHS v. Thuraissigiam*, 591 U.S. 103, 114, 139–40 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that 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"); *United States ex rel. Knauff*

v. Shaughnessy, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process[.]"); *Zamirov v. Olson*, No. 25 C 6540, 2025 WL 2618030, at *4 (N.D. Ill. Aug. 29, 2025) ("Zamirov's challenge to his detention fails, too. Because he is presently in expedited removal proceedings, his detention is permitted under the expedited removal statute. There is no basis for this court to conclude that his detention pursuant to that statute is illegal (it is expressly permitted), so his unlawful detention claim also fails. Finally, as to Zamirov's due process challenge, ... he has been afforded proceedings before an Immigration Judge and the processes described in the expedited removal statute include the opportunity to express a fear of persecution or torture and to apply for asylum, withholding of removal, and protection under the convention against torture in connection with a credible fear interview."); *cf. also Licea-Gomez v. Pilliod*, 193 F. Supp. 577, 580 (N.D. Ill. 1960) ("Nor does the fact that the excluded alien is paroled into the country . . . change [a foreign national's] status or enlarge his rights. He is still subject to the statutes governing exclusion and has no greater claim to due process than if he was held at the border."). This is critical here because, as discussed above, the Court has confirmed that statutes denying bond during removal proceedings does not violate due process when such proceedings have a definite end point. *See Kim*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process."); *see also Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (even after foreign national is ordered removed and detention may be indefinite, detaining him for up to 180 days is presumptively valid).

In this regard, Patel has not submitted any evidence that he is being detained for any purpose beyond the resolution of his removal proceedings. *Cf. Chaviano v. Bondi*, No. 25-cv-22451, 2025 WL 1744349, at *8 (S.D. Fla. June 23, 2025) (noting how hearings before an immigration court and opportunities for credible fear interviews, together with a one month

detention, was not a sufficient basis for finding a due process violation, particularly where "detention, even for far longer periods, pending immigration proceedings" did not violate due process). And any argument that Patel "entered the United States," Pet. ¶ 18, is incorrect under the Supreme Court's decision that foreign nationals intercepted shortly after crossing the border are still considered to be "on the threshold" and have *only* the procedural rights that Congress has provided them by statute. *Thuraissigiam*, 591 U.S. at 140. Here, Patel was so intercepted close to the border. See Exhibit 2 at 2. And at this point, he has been given notice of the charges against him, has access to counsel, may attend hearings with an immigration judge, can request bond at that time, and has the right to appeal the denial of any request for bond. *See* Exhibit 1; 8 U.S.C. § 1362. The fact that he does not want to appeal any immigration judge's bond order through the procedures provided to him by Congress does not make those procedures constitutionally deficient. *See Thuraissigiam*, 591 U.S. at 138–40. Instead, Patel's only plausible challenge to his detention is that he is detained under the wrong statute, which, even if true, would make his detention unlawful, but it would not make it unconstitutional. *See id.*; *cf. also Al-Shabee v. Gonzales*, 188 F. App'x 333, 339 (6th Cir. 2006) ("Shabee's disagreement with the Immigration Judge's order, however, does not constitute a violation of the Due Process Clause."). Therefore, the court should reject Patel's due process claim.

V. Patel Is Properly Detained Under 8 U.S.C. § 1225(b)(2).

Turning to Patel's statutory claim under the Immigration and Nationality Act ("INA"), Pet. ¶¶ 62–101, the court should also hold that Patel is properly detained under § 1225(b)(2) because he unambiguously meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support respondents' interpretation. The statute here, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous. Including its definitions, it is only

three sentences long. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A). It states:

> Subject to subparagraphs (B) and (C), 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 1229a of this title.

8 U.S.C. § 1225(b)(2)(A).[3] The first relevant term is "applicant for admission," which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any foreign national "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, under its plain terms, all unadmitted foreign nationals in the United States are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. *See id.* While this may seem like a counterintuitive way to define an "applicant for admission," "[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, under the plain text of the statute, Patel is unambiguously an "applicant for admission" because he is a foreign national, he was not admitted, and he was present in the United States when he was apprehended by ICE. *See* Exhibit 2 at 2–3; Exhibit 3.

The next relevant portion of the statute is whether an examining immigration officer determined that Patel was "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" as "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). Therefore, the inquiry is whether an immigration officer determined that Patel was seeking a "lawful entry." *See id.* A foreign national's past unlawful physical entry has no bearing on this analysis. *See id.* This

[3] The first clause referencing subparagraphs (B) and (C) is not relevant to this case.

element of "lawful entry" is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021); *Gomez v. Lynch*, 831 F.3d 652, 658 (5th Cir. 2016) (distinguishing "admission," which is "an occurrence" where an individual "presents himself at an immigration checkpoint" and gains entry, with status, which "describes [an individual's] type of permission to be present in the United States"). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he did not enter lawfully. *See* 8 U.S.C. § 1182(a)(6). Indeed, one of the charges of removal against Patel is based on his unlawful entry. Exhibit 1. So, unless Patel obtains a lawful admission in the future, he will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6).

The INA provides two examples of foreign nationals who are not "seeking admission." The first is someone who withdraws his application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). This means even in removal proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the United States who have not been lawfully admitted and who do not agree to immediately depart are seeking lawful entry and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). In removal proceedings, if an unlawfully admitted foreign national does not accept removal, he can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b. Accordingly, Patel is still "seeking admission" under § 1225(b)(2) because he has not agreed to depart, he has

not yet conceded his removability, or allowed his removal proceedings to play out—he wants to be admitted via his removal proceedings. *See Thuraissigiam*, 591 U.S. at 108–09 (discussing how "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival)" is deemed "an applicant for admission").

The court should likewise reject Patel's argument that he is not "seeking admission" as it is not a reasonable interpretation of § 1225(b)(2)'s text. *See* Pet. ¶¶ 41–44. This is because Patel ignores how he has not agreed to immediately depart, so logically he must be seeking to remain in this country, which (for him) requires an "admission" (which is, as discussed above, a lawful entry). It also defies the legal presumption created by the definition of "applicant for admission," which characterizes *all* unlawfully present foreign nationals as applying for admission until they are either removed or successfully obtain a lawful entry, regardless of their own intent. *See* 8 U.S.C. § 1225(a)(1). Further, treating Patel as if he is no longer "seeking admission" would reward him for violating the law, provide him with better treatment than a foreign national who lawfully presented himself at a port of entry, and encourage others to enter unlawfully—defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a "perverse incentive to enter at an unlawful rather than a lawful location"). Accordingly, Patel's interpretation of "seeking admission" does not create an ambiguity in the statutory text because his proposed alternative is not reasonable.

The final textual requirement here is that Patel "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). In this case, Patel is not in expedited removal at all. He has instead been placed in full removal proceedings where he will receive the benefits of the procedures (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. *See* Exhibit 1. Therefore, he also meets this element within § 1225(b)(2)(A)'s text.

In sum, § 1225(b)(2)'s plain text unambiguously applies to Patel. "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies even where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g.*, *Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts "must adopt the plain meaning of a statute, however severe the consequences"). Therefore, no further exercise in statutory interpretation is necessary or permissible in this case and the court should conclude that Patel's detention under § 1225(b)(2) is lawful.

VI. Alternatively, The Court Should Require Administrative Exhaustion.

Finally, when Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs" whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* Here, the court may require that Patel at least attempt to request bond before an immigration judge, or appeal any denial of bond to the BIA, before considering the merits of his claims here. *See, e.g.*, *Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 876–77 (E.D. Wis. 2007).

As alluded to above, Congress has provided a robust administrative hearing and appeal process for foreign nationals in removal proceedings that include evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). Requiring Patel to exhaust that process before seeking review in federal court may reduce the number of similar cases filed in this court, even though Patel may be unlikely to obtain the relief he seeks through the administrative process based on a recent decision by the BIA in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) (attached as Exhibit 4), which is currently binding on the agency

and the immigration courts, and which rejects Patel's statutory arguments in this case, *see id.* at 228 (concluding that foreign nationals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer" because "[r]emaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission'").

However, the BIA's decision from earlier this month may not be the last word in that matter. This is because there is still the possibility that *Yajure Hurtado* might be subject to en banc review. *See* 8 C.F.R. § 1003.1(a)(5). In addition, the Attorney General may exercise her "referral and review power" in that matter, which allows her to review and overrule decisions made by the BIA. *See* 8 U.S.C. § 1103(g)(2) ("The Attorney General shall . . . review such administrative determinations in immigration proceedings . . . as the Attorney General determines to be necessary."); 8 C.F.R. § 1003.1(h)(1) ("The [BIA] shall refer to the Attorney General for review of its decision all cases that . . . (i) The Attorney General directs the [BIA] to refer to h[er]."). Patel's petition completely ignores these potential pathways for further review.

Conclusion

For the foregoing reasons, the court should deny the petition.

Respectfully submitted,

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