UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MATEO JOEL CHAVEZ-CHILEL,

Petitioner,

Case No.: 25-cv-914-MAV

v.

JOSEPH E. FREDEN, in his official capacity as ICE Deputy Field Office Director; KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION FOR DISMISS

TABLE OF CONTENTS

TABLE OF CONTENTS i

INTRODUCTION 1

STATEMENT OF FACTS AND PROCEDURAL HISTORY 2

LEGAL STANDARD 2

ARGUMENT 3

I. PETITIONER IS NOT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES 3

II. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a) AND ENTITLED TO A BOND HEARING 4

a. The plain text of 8 U.S.C. § 1225 and § 1226 does not support Respondents' position. 5

b. Case law rejects Respondents' interpretation of 8 U.S.C. §§ 1225 and 1226. 8

c. The legislative history of the detention statutes and historical practice also support Petitioner's position. 10

d. Respondents have designated and treated Petitioner as detained under 8 U.S.C. 1226(a). 11

CONCLUSION 12

INTRODUCTION

Petitioner opposes Respondents' motion to dismiss this action under Federal Rule of Civil Procedure 12(b)(6) for failure to state a cause of action. Respondents' motion fails for several reasons. First, the Respondents claim that Petitioner failed to exhaust his administrative remedies by not seeking a bond hearing in front of an immigration judge. But this argument fails for several reasons. First, Respondents can cite no statute requiring Petitioner to exhaust his administrative remedies. In addition, Petitioner meets the exceptions for a court to excuse the Petitioner for failing to exhaust administrative remedies, i.e., futility and constitutional claims. Respondents have reinterpreted the detention statutes, 8 U.S.C. § 1225 and 8 U.S.C. § 1226, in such a way that prohibits immigration judges from exercising jurisdiction over Petitioner for purposes of giving him a bond. This makes any attempt to exhaust any administrative remedies futile and violates his constitutional rights.

The Respondents' second basis for its motion fails as well. Respondents claim that a noncitizen like Petitioner, i.e., someone who entered the United States without inspection in 1987, is detained under 8 U.S.C. § 1225(b), which precludes a Petitioner from getting a bond from an immigration judge instead of under 8 U.S.C. § 1226(a), which permits Petitioner to get a bond from an immigration judge. Respondents claim that the terms "applicants for admission" and "seeking admission" are the same. Therefore, regardless of how long someone is in the United States, he or she is detained under 8 U.S.C. § 1225(b). This argument is legally flawed based on the plain text of the detention statutes and for other reasons discussed below.

For these reasons, Petitioner requests that the Court deny the motion to dismiss and grant his habeas petition.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner is a native and citizen of Guatemala and entered the United States without inspection in or about 2007. Dkt. No. 1 at ¶¶ 1, 20. Petitioner filed an affirmative application for asylum with United States Citizenship and Immigration Service ("USCIS"). *Id.* at ¶ 24. Based on that application, he has a valid work permit. *Id.* at ¶ 25. This work permit was valid when he was arrested by a DHS agent on or about September 22, 2025, in Buffalo, New York. *Id.* at ¶ 21. He was working in Buffalo, New York when an agent with the Department of Homeland Security arrested him and detained him and took him to the Buffalo Federal Detention Facility in Batavia, New York. *Id.* at ¶ 22. Upon information and belief, Petitioner was not in removal proceedings when he was detained. But Petitioner's counsel later received notice that Petitioner received a Notice to Appear ("NTA") on September 20, 2025. See **Exhibit A** to Declaration of Aaron J. Aisen. On September 22, 2205, Petitioner filed this Petition for a Writ of Habeas Corpus. Dkt. No. 1. On November 4, 2025, the Government filed its motion to dismiss for failure to state a cause of action. Dkt. 4-1. Petitioner also notes that his wife is approximately 33 weeks pregnant and asks the Court to expedite consideration of this motion and Petition. *See* Aisen Declaration at 2.

LEGAL STANDARD

"In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010). "A court should consider the motion by 'accepting all factual allegations as true and drawing all reasonable inferences in favor of the plaintiff.'" *Gedney v. DolGen N.Y., LLC*, 763 F. Supp. 3d 356, 360 (W.D.N.Y. 2025) quoting

Trs. of Upstate N.Y. Eng'rs Pension Fund v. Ivy Asset Mgmt., 843 F.3d 561, 566 (2d Cir. 2016). "To withstand dismissal, a plaintiff must set forth 'enough facts to state a claim to relief that is plausible on its face.'" *Gedney*, 763 F. Supp. 3d at 360, quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "'A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Turkmen v. Ashcroft*, 589 F.3d 542, 546 (2d Cir. 2009), quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal quotations and citations omitted). "To state a plausible claim, the complaint's '[f]actual allegations must be enough to raise a right to relief above the speculative level.'" *Nielsen v. AECOM Tech. Corp.*, 762 F.3d 214, 218 (2d Cir. 2014), quoting *Twombly*, 550 U.S. at 555).

ARGUMENT

I. PETITIONER IS NOT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES

First, Respondents argue that Petitioner is required to exhaust his administrative remedies. But this argument fails. First, no statutory requirement exists that Petitioner exhaust his administrative remedies. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 236-37 (W.D.N.Y. 2019). But even if the requirements is judicially imposed, it is not required in certain circumstances, including when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Id.*

at 237 citing *Able v. U.S.*, 88 F.3d 1280, 1288 (2d Cir. 1996).

Here, two of these exceptions apply. First, any attempt to seek administrative remedy will be futile. In *Matter of Yajure Hurtado*, the Board of Immigration Appeals (the "Board") ruled for the first time that anyone who is classified as an "inadmissible alien who establishes that he or she has been present in the United States for over 2 years" can be detained under 8 U.S.C. § 1225(b)(2) and "shall be detained for a proceeding under section 240." 29 I&N Dec. 216, 219-220 (BIA 2025). The consequence of this decision is that individuals who were historically classified as entry without inspection or EWI and eligible to apply for a bond before an immigration judge under 8 U.S.C. 1226(a) are now ineligible for an immigration judge-issued bond. Therefore, any attempt to seek release before an immigration judge would be futile. Second, this petition raises a substantial constitution question, i.e., whether DHS has violated his due process rights under the U.S. Constitution in detaining him and not giving him a detention hearing. Therefore, Petitioner is not required to exhaust his administrative remedies.

II. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a) AND ENTITLED TO A BOND HEARING.

Next, Respondents argue that this case should be dismissed because Petitioner is detained under 8 U.S.C. § 1225(b). But this argument is also problematic. For the reasons that follow, the Court should deny the motion to dismiss on this basis.

Two statutory provisions govern the detention of non-citizens present in the US pending the outcome of their removal proceedings. Broadly speaking, 8 U.S.C. § 1225 governs the detention of non-citizens arriving in the United States. 8 U.S.C. § 1226 governs the detention of non-citizens already physically present in the United States. DHS alleges specifically that Petitioner is detained under 8 U.S.C. § 1252(b)(2).

8 U.S.C. § 1225(b)(2) states in relevant part that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under" 8 U.S.C. § 1229a. 8 U.S.C. § 1225(a)(1) defines an "applicant for admission" as "[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 . . .)."

8 U.S.C. § 1226(a) states that "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." After that arrest, the Attorney General "may continue to detain the arrested alien" or release the alien on a bond with conditions or on conditional parole. 8 U.S.C. § 1226(a)(1)-(2).

In July 2025, DHS took the position that anyone who is an applicant for admission is no longer detained under 8 U.S.C. § 1226(a) and is instead an applicant for admission seeking admission under 8 U.S.C. § 1225(b). The Board of Immigration Appeals later adopted this position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, all individuals who were once eligible for bond under 8 U.S.C. § 1226(a) were now detained under 8 U.S.C. § 1225(b) and no longer eligible for bond. But as demonstrated below, this interpretation is not supported by the plain language of the detention provisions, the legislative history, past practice, and DHS's treatment of this Petitioner.

a. The plain text of 8 U.S.C. § 1225 and § 1226 does not support Respondents' position.

First, the plain text of these statutes does not support the government's position. The term "seeking admission" denotes an active activity. The term "seeking" is a present participle denoting something happening in the present. As one court explained, while the term "seeking admission" is not defined in 8 U.S.C. § 1225(b)(2)(A), the term "necessarily implies some sort of present-

tense action." *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, at *19 (S.D.N.Y. Aug. 8, 2025) (internal citations and quotations omitted). That court further explained, "The INA defines 'admitted' and 'admission' as 'the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.'" *Id.* quoting 8 U.S.C. § 1101(a)(13)(A). Even if an individual never lawfully enters the United States and is an "applicant for admission," "it does not follow that he continues to be actively 'seeking' such lawful entry at this time. [The non-citizen] has already 'entered' the country (albeit unlawfully)." *Id.* "The Respondents' interpretation of § 1225(b)(2)(A) simply ignores the statute's present-tense active language." *Id.*

This interpretation of "seeking" in the present tense is also reflected in the accompanying regulations. In 8 C.F.R. § 1225, the regulations use the phrase "seeking admission" to denote inspection at the border. For example, 8 C.F.R. § 1225(a)(5) states,

> An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

The phrase "seeking admission" is used in the context of an inspection at the border. Similarly, 8 C.F.R. § 1225(b)(2)(A) 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." Again, "seeking admission" is done in the present at the border by an immigration officer.

The *Benitez* court used the following analogy. Suppose someone sneaks into a movie theater without purchasing a ticket and then sits through the first part of a movie. *Id.* at *21. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe

them as "seeking admission" (or "seeking" "lawful entry") at that point — one would say that they had entered unlawfully but now seek a lawful means of remaining there. *Id.* Similarly, a person who has been in the United States for a period of time cannot be said to be actively seeking admission to the United States. Therefore, an individual who has been present for several years and already designated by DHS as present, even if not admitted or paroled, could not be said to be seeking admission to the United States.

In addition, the terms “applicant for admission” and “seeking admission” are not synonymous because this would create surplusage problems with the INA. It is axiomatic that every clause and word of a statute should have meaning. *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). “It is a basic canon of statutory interpretation that a statute should be construed as to give effect to all its provisions and that no part will be superfluous.” *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 U.S. Dist. LEXIS 191630, at *22 (E.D.N.Y. Sep. 29, 2025) citing *Corley v. United States*, 556 U.S. 303, 314 (2009). “This presumption is ‘strongest when an interpretation would render superfluous another part of the same statutory scheme.” *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *22-23 quoting *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013).

> Mandatory detention under § 1225(b)(2)(A) applies to a noncitizen who meets three criteria: (1) one who is an "applicant for admission" (a "term of art" in the INA that includes noncitizens who arrive in the United States," as well as those already present in the United States who have not been admitted, U.S.C. § 1225(a)(1)); (2) who is actively "seeking admission" to the country, and (3) whom an examining immigration officer determines "is not clearly and beyond a doubt entitled to be admitted.

Benitez, 2025 U.S. Dist. LEXIS 157214, at *17-18 (cleaned up). “If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all ‘applicant[s] for admission,’ there would be no need to include the phrase ‘seeking admission’ in the statute.” *Id.* at *18. In other words, if mandatory

detention was required for all applicants for admission, the statutes would not use the phrase "seeking admission. *Id.* The "statute would instead provide for mandatory detention for any 'applicant for admission,' if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted.'" *Id.*

Second, 8 U.S.C. § 1226(c)(1)(A) states that the "Attorney General shall take into custody any alien who is inadmissible by reason of having committed any offense covered in" 8 U.S.C. § 1182(a)(2), which includes offenses such as crimes of moral turpitude and offenses relating to controlled substances. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *23. "'[T]his mandatory detention under [8 U.S.C. § 1226(c)] would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions.'" *Id.* quoting *Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 U.S. Dist. LEXIS 184734, *9 (E.D. Va. Sep. 19, 2025). In a similar vein, in January 2025, Congress passed the Laken Reily Act, which amended 8 U.S.C. § 1226 and 8 U.S.C. § 1226(c)(1)(E). This amendment makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions in 8 U.S.C. § 1182 and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes. 8 U.S.C. § 1226(c)(1)(E). Even under this new amendment, Congress intended for mandatory detention to apply only when both the inadmissibility and criminal conduct criteria are satisfied. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *23-24.

b. Case law rejects Respondents' interpretation of 8 U.S.C. §§ 1225 and 1226.

Both Supreme Court precedent and recent decisions by numerous courts around the country, including here in the Western District of New York and other districts in this Circuit have rejected Respondents' argument. First, in, the Supreme Court has noted that "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under [8

U.S.C. §1225(b)(1) and 8 U.S.C. § 1225(b)(2)]. It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c)." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). In other words, the court distinguishes between those who are seeking admission from those already in the country.

Respondents' reliance on *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) is misplaced and even supports Petitioner's case. In that case, Court was asked to consider whether a petition for a writ of habeas corpus, usually used to challenge unlawful detentions, could be used to obtain "additional administrative review of [an] asylum claim, and ultimately to obtain authorization to stay in" the United States," *Id.* at 107. The Court said that this was not a proper use of the writ. *Id.*

In addition, that petitioner also invoked a due process argument by claiming due process rights even though he "enter[ed] the country illegally and was apprehended just 25 yards from the border" and put into expedited removal. *Id.* at 107. The Supreme Court also rejected this argument distinguishing between those who "have established connections in this country" and those "at the threshold of initial entry." *Id.* Respondents' reliance on the Court's reference to "paroled elsewhere in the country for years" fares no better. DHS can parole noncitizens who fall under 8 U.S.C. § 1225 (b) (2). But parole does not change the status of arriving alien because parolees are treated as if they are still at the border. 8 U.S.C. § 1182(d)(5) (when the purposes of parole are accomplished, the noncitizen shall return or be returned "from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."). Therefore, the reference from this case to parolees is limited to those designated as arriving aliens, which Petitioner was not, a fact verified by DHS's acknowledgment on his NTA that he was present in the United States without admission or parole.

In addition, this Court and Judge Vilardo from the Western District of New York have joined numerous courts in the Second Circuit and around this country in rejecting the Respondents' re-interpretation of these detention provisions because it goes against "the plain language of the statute, the legislative history, and traditional canons of statutory interpretation." *Astudillo v. Hyde*, No. 25-551-JJM, 2025 U.S. Dist. LEXIS 214063, at *7 (D.R.I. Oct. 30, 2025) (internal citations and quotations omitted); *see e.g., Andrade Lozano v. Hyde, et al.* 6:25-cv-06528-MAV, Dkt. No. 20 (October 17, 2025); *Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 U.S. Dist. LEXIS 217654, at *3 (W.D.N.Y. Nov. 4, 2025)(collecting cases); *see Orellana v. Moniz*, Civil Action No. 25-cv-12664-PBS, 2025 U.S. Dist. LEXIS 196282, at *13-14 (D. Mass. Oct. 3, 2025) (collecting cases).

c. The legislative history of the detention statutes and historical practice also support Petitioner's position.

The legislative history of these statutes also supports Petitioner's position. In drafting the detention provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [division C of Public Law 104–208] [As Amended Through P.L. 112–176, Enacted September 28, 2012] ("IIRIRA"), "Congress clarified that the IIRIRA amendment of § 1226(a) simply "restate[d]" the detention authority previously found at § 1252(a) "to arrest, detain, and release on bond a noncitizen who is not lawfully in the United States." *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 U.S. Dist. LEXIS 182412, at *11 (D. Nev. Sep. 17, 2025) (internal citations and quotations omitted and cleaned up). "In distinguishing between noncitizens arriving versus noncitizens residing in the U.S., Congress reflected its understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving." *Id.* at 12. Amendments to 8 U.S.C. § 1225(b)(1) and (b)(2) "were designed to address the perceived problem of noncitizens *arriving* in the U.S." *Id.* at 11-12.

Until recently, when DHS and DOJ adopted this new interpretation, it was the "longstanding practice of the agencies charged with interpreting and enforcing the INA applied § 1226(a) to noncitizens like Petitioner, who entered the U.S. without inspection and were apprehended while residing in the U.S." *Id.* at 12. "[I]n the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond." *Id.* at 13.

Respondents contend that *Loper Bright Enters. v. Raimondo,* 603 U.S. 369 (2004) gives them permission to change agency practices and, therefore, the court should give longstanding agency practice little weight. Dkt. No. 17-1 at 11. Respondents state that the "weight given to agency interpretations "must always depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade." Dkt. No. 17-1 at 11 quoting *Loper Bright*, 603 U.S. at 432-33 (internal citations and quotations omitted). But this only supports Petitioner's argument. Respondents' new interpretation cannot be squared with the plain language of the statutes, historical context, and past practice. In other words, there is very little to support Respondents' new interpretation. In addition, *Loper Bright* does not require this Court to give deference to the Respondents' new interpretation if there is very little or nothing to support it, as is the case here.

d. Respondents have designated and treated Petitioner as detained under 8 U.S.C. 1226(a).

As a practical matter, DHS has affirmatively designated Petitioner as falling under 8 U.S.C. 1226(a). The NTA has specific boxes for those who fall under 8 U.S.C. § 1225(b)(1) and (b)(2). Those under 8 U.S.C. § 1225(b)(1) fall under the box that states, "Section 235(b)(1) order was vacated pursuant to: [ ] 8 CFR 208.30 [ ] 8 CFR 235.3(b)(5)(iv)." Those under 8 U.S.C. 1225(b)(2)

fall under the box that states, "You are an arriving alien." Finally, those who fall under 8 U.S.C. § 1226(a) fall under the box entitled "You are an alien present in the United States who has not been admitted or paroled."

In the NTA issued on September 20, 2025, DHS had the opportunity to designate him as an arriving alien, but it did not. *See* **Exhibit A** to **Aisen Declaration**. It designated him has an "alien present in the United States who has not been admitted or paroled." *Id.* This is the designation generally given to those who are detained under 8 U.S.C. § 1226. Therefore, the Court should declare him to be detained under 8 U.S.C. § 1226(a) and grant him a bond hearing.

CONCLUSION

For these reasons, the Court should deny the Respondents' motion to dismiss and grant Petitioner's Petition for a Writ of Habeas Corpus.

DATED: November 5, 2025
Buffalo, New York

Respectfully submitted,

/s/ Aaron J. Aisen

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