UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ANGEL DE A-E[1], *Petitioner,*	§	
v.	§	CIVIL ACTION NO. 1:25-cv-00219
KRISTI NOEM, Secretary, Department of Homeland Security, *et al.*, *Respondents.*	§	

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

Respondents, Kriti Noem, the Secretary of Homeland Security, *et al.*, file this opposition to Petitioner, Angel De A-E's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (hereafter "the Petition") (Dkt. No. 1) and pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1), move to dismiss the Petition for lack of subject matter jurisdiction. As explained below, the Court lacks jurisdiction to review the Government's exercise of discretion to detain Petitioner, an alien subject to removal proceedings, and even to the extent this Court found it did have authority to do so, it lacks jurisdiction as this action is premature because Petitioner has failed to exhaust administrative remedies available to Petitioner in his ongoing removal proceedings prior to seeking habeas relief under 28 U.S.C. § 2241.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

1. Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the Port Isabel Service Detention Center in Los Fresnos, Cameron County, Texas. Dkt. No. 1, ¶ 6;

[1] "Due to significant privacy concerns in immigration cases and noting that judicial opinions are not subject to Federal Rule of Civil Procedure 5.2, any opinion, order, judgment, or other disposition in this case will refer to the petitioner only by first name and last initial." Dkt. No. 8 at 1, n.1.

Dkt. No. 1-1. Petitioner brought this habeas corpus petition against Respondents seeking release from immigration detention or a bond hearing pursuant to Section 236(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a). But Petitioner's claims lack merit and the Court should dismiss the Petition for three significant reasons.

2. First, Petitioner is lawfully detained on a mandatory basis as an applicant for admission pending removal proceedings before an immigration judge. This case is governed not only by the plain language of Section 235(b) of the INA, 8 U.S.C. § 1225(b), but also by Supreme Court precedent. There is no jurisdiction for this Court to review Petitioner's challenge to DHS's initial decision to detain him for adjudication of his removal proceedings, because his claims directly arise from the decision to commence or adjudicate removal proceedings against him. To the extent that Petitioner challenges the interpretation or the constitutionality of the statute under which his removal proceedings are brought, he must raise that challenge in the Fifth Circuit Court of Appeals upon review of a final order of removal. While as applied constitutional challenges may be brought in district court under certain circumstances, Petitioner has not raised any colorable claim that his mandatory detention under § 1225(b) is unconstitutional as applied to him. His detention is neither indefinite, nor prolonged, as it will end upon the completion of his removal proceedings.

3. Second, this Court lacks jurisdiction under habeas to order an immigration judge to hold a bond hearing. The only remedy available through habeas is release from custody, but even if this Court ordered Petitioner's immediate release, which it should not, such release would not provide him any lawful status in the United States and produce him no net gain.

4. Third, and in the alternative, the Court lacks jurisdiction under habeas because Petitioner failed to exhaust administrative remedies available to him in ongoing removal

proceedings. For these reasons and those that follow, this Court should dismiss the Petition for lack of subject matter jurisdiction or alternatively, deny the Petition without the need for an evidentiary hearing.

BACKGROUND AND PROCEDURAL HISTORY[2]

5. On or about July 1, 2025, DHS conducted a worksite enforcement on a construction company in Brownsville, Texas and found Petitioner, a native and citizen of Mexico, as undocumented alien present in the United States without prior admission or parole. Dkt. No. 1, ¶¶ 1, 11; **Gov't Ex. 1**, ¶¶4(a)-(c) (Unsworn Declaration of DHS/ICE Deportation Officer Bryan Zepeda); **Bates 0023-0026**. Petitioner admitted to DHS that he illegally entered the United Sates "on or about an UKNONWN DATE, by wading across the Rio Grande River at or near an UNKNOWN PLACE." **Bates 0025**; **Gov't Ex. 1**, ¶ 4(c). Accordingly, Petitioner was taken into custody of DHS and served with a Notice to Appear ("NTA") on July 1, 2025, commencing removal proceedings, on grounds that Petitioner is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General in violation of INA Section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). **Bates 0012**; **Gov't Ex. 1**, ¶ 4(d).

6. On that same date, DHS issued a warrant for arrest of Petitioner, who was taken into custody and detained by DHS at the Port Isabel Service Detention Center and determined Petitioner ineligible for release under a bond. Dkt. No. 1, ¶ 11; **Gov't Ex. 1**, ¶ 4(e); **Bates 0020-0021, 0027**. While Petitioner refused to sign the issued Notice of Custody Determination by DHS,

[2] As ordered by the Court, a Bates-stamped copy of Petitioner's A-File (**Angel De A-E A-File Bates 0001-0036**) is filed under seal contemporaneously with Respondents' Opposition to Petition for Writ of Habeas Corpus and Motion to Dismiss. *See* Dkt. No. 8 at 2. Respondents' Background and Procedural History is taken from the Petition (Dkt. No. 1), Petitioner's Exhibits 1-2 (Dkt. Nos. 1-1, 1-2), Petitioner's A-File 0001-0036, and attached Government Exhibit 1.

Petitioner acknowledged requested that an immigration judge review of DHS's custody determination. **Bates 0021**; **Gov't Ex. 1**, ¶¶4(f)-(g).

7. On August 28, 2025, the Immigration Judge ("IJ") presiding over Petitioner's removal proceedings held a bond hearing, where the IJ granted Petitioner's requested custody redetermination and ordered his release from custody under a bond of $2,000.00. Dkt. No. 1, ¶ 1; **Gov't Ex. 1**, ¶ 4(g); **Bates 0004-0005**. DHS reserved its right to appeal the IJ's August 28, 2025, Order and on September 5, 2025, DHS filed its Notice of Appeal from a Decision of an Immigration Judge with the Board of Immigration Appeals ("BIA"), challenging the IJ's August 28, 2025 decision; an automatic stay was implemented upon filing of the appeal. Dkt. No. 1-1 at 9-10; **Gov't Ex. 1**, ¶ 4(h); **Bates 0001-0006**.

8. On September 19, 2025, in support of the pending appeal with BIA, the IJ presiding over Petitioner's removal proceedings issued a "Bond Decision," where he reasoned that respondent is not subject to mandatory custody because DHS had issued an immigration warrant that placed Petitioner "into removal proceedings pursuant to I.N.A. Section 236." Dkt. No. 1-1 at 5; **Bates 0009**. The IJ found he had jurisdiction to hear and grant Petitioner's bond request, therefore, the IJ ordered that Petitioner's request for a change in custody be granted as he met the criteria to be released on bond. Dkt. No. 1-1 at 1-5; **Bates 0007-0009**. Petitioner is scheduled for final merits hearing on October 24, 2025, at 1:00 p.m. **Gov't Ex. 1**, ¶ 4(i). DHS's appeal of the IJ's bond decision of August 28, 2025 remains pending. *Id.*, ¶ 4(h).

9. On September 29, 2025, Petitioner filed the instant habeas action, claiming: (1) the mandatory detention provision of 8 U.S.C. § 1225(b)(2) is inapplicable to Petitioner and his continued detention by DHS/ICE without issuance of bond is unlawful; (2) to the extent the automatic-stay provisions of 8 C.F.R. §§ 1003.6, 1003.19 permit the continued detention of

Petitioner without a bond, the provisions are ultra vires; and (3) the denial of Petitioner's release on bond violate his procedural and substantive due process rights under the Fifth Amendment. Dkt. No. 1, ¶¶ 34-42. Petitioner further contends that he did not have to exhaust administrative remedies. *Id.*, ¶¶ 33. Per the Court's Order, the Government submits this motion to dismiss in response to the Petition on the reasons why the writ should not be granted *See* Dkt. No. 8 at 2-3.

STANDARD OF REVIEW

Fed. R. Civ. P. 12(b)(1).

10. Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court must dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also id.* 12(h)(3) ("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action."). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th Cir. 2005) (quotations omitted); Fed. R. Civ. P. 12(h)(3). The burden of establishing subject matter jurisdiction in federal court is on the party seeking to invoke it. *Hartford Ins. Group v. Lou–Con Inc.*, 293 F.3d 908, 910 (5th Cir. 2002). Accordingly, the party with the burden of proof must establish that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980). In ruling on a motion to dismiss for lack of subject matter jurisdiction, a court may rely on any of the following to decide the matter: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *St. Tammany Parish, ex. rel. Davis v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 315 (5th Cir. 2009) (quotations omitted). A court must accept all factual allegations in the plaintiff's complaint as true. *Saraw Partnership v. United*

States, 67 F.3d 357, 569 (5th Cir. 1995). "In considering a challenge to subject matter jurisdiction, the district court is 'free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has the power to hear the case.'" *Krim*, 402 F.3d at 494.

ARGUMENT

11. As a preliminary matter, the sole relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118-19 (2020). Petitioner, however, has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release. Even if this Court were to order his release from custody, Petitioner would be subject to re-arrest as an alien present within the United States without having been admitted or paroled. Ordering his release in this circumstance produces no net gain to Petitioner, while mandating continued detention until at least the conclusion of removal proceedings furthers DHS's interests in enforcing the immigration laws.

I. The Petition should be dismissed because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and review of a bond redetermination is beyond this Court's authority.

12. The Court should dismiss the Petition for lack subject matter jurisdiction because judicial review is unavailable of pending removal proceedings under INA § 235(b), 8 U.S.C. § 1225(b)(2), which subjects Petitioner to mandatory detention. There are two types of aliens living unlawfully within the United States who are subject to "full" removal proceedings under 8 U.S.C. § 1229a and not expedited removal: (1) those who have never been admitted but have lived in the United States for longer than two years (*i.e.*, inadmissible under § 1182); and (2) those who were once admitted but no longer have permission to remain (*i.e.*, removable under § 1227). 8 U.S.C. § 1229a(e)(2). As outlined in more detail below, Congress intended for the inadmissible aliens in this context to be detained on a mandatory basis under § 1225(b)(2)(A), while the removable aliens

are detained under § 1226(a) and eligible to seek bond. This interpretation is consistent with the allocation of the burden of proof during removal proceedings. If the NTA charges the alien under 1182 as inadmissible, the burden lies on the alien to prove admissibility or prior lawful admission. 8 U.S.C. § 1229a(c)(2). On the other hand, the burden is on the government to establish deportability for aliens charged under § 1227. *Id.* § 1229a(c)(3).

A. 8 U.S.C. § 1225(b) unambiguously defines an "applicant for admission" as an alien present in the United States without having been admitted or paroled.

13. Petitioner is properly subject to mandatory detention, ineligible to be released on bond, as he is an applicant for admission as defined in 8 U.S.C. § 1225. The statutory language is unambiguous: "An alien present in the United States who has not been admitted … shall be deemed … an applicant for admission." 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109; *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025). Even though DHS encountered Petitioner within the interior of the United States on July 1, 2025, he is nonetheless an applicant for admission who DHS has determined through the issuance of an NTA (**Bates 0012-0014**) is an alien seeking admission who is not clearly and beyond a doubt entitled to be admitted to the United States. *See* 8 U.S.C. §§ 1225(b)(2)(A); 1229a; **Gov't Ex. 1**, ¶ 4(d). In other words, the INA mandates that Petitioner "shall be detained for a proceeding under section 1229a ["full" removal proceedings]…" 8 U.S.C. § 1225(b)(2)(A).

14. Given the plain language of § 1225(a)(1), Petitioner cannot plausibly argue that he is not an applicant for admission. Nor can Petitioner plausibly challenge a DHS's officer's determination that he is "seeking admission" simply because he is not currently at the border requesting to come in. The Fifth Circuit explored these nuances in detail while analyzing a different

INA provision *that is not at issue here* (8 U.S.C. § 1182(h)). *See Martinez v. Mukasey*, 519 F. 3d 532, 541–42 (5th Cir. 2008).

15. In *Martinez*, the Court reviewed § 1182(h)(2), which statutorily bars certain aliens from eligibility for a discretionary inadmissibility waiver if, for example, the alien was "admitted to the United States as an alien lawfully admitted for permanent residence" and convicted of an aggravated felony since that "admission." *Id.* The relevant question in *Martinez* was whether Congress intended to also statutorily bar those aliens who had adjusted their status to lawful permanent resident ("LPR") within the interior of the United States, as opposed to only those who were initially admitted at the port of entry as LPRs. *Id.* at 541–42. Martinez argued that because he had adjusted his status to LPR while in the interior, as opposed to having been admitted as an LPR at the border, he was not statutorily barred from applying for the waiver under § 1182(h)(2). *Id.* at 542. The government, however, argued that because of the agency's interpretation of the word "admission" in the INA's aggravated felony removal provision, the Court should find that aliens who adjusted their status to LPR are also barred from seeking discretionary waivers under § 1182(h)(2), reasoning that adjusting status "accomplished admission" for purposes of the aggravated felony provision. *Id.* (citing 8 U.S.C. § 1227(a)(2)(A)(iii); *In re Rosas-Ramirez*, 22 I&N Dec. 616 (BIA 1999)). As a result, the Fifth Circuit was tasked with deciding which interpretation to use to determine whether an LPR who adjusted status within the United States was statutorily barred from seeking a discretionary waiver. *Id.* at 543.

16. The Fifth Circuit rejected *Chevron* deference, because the Court found the language of the INA to be unambiguous:

> For determining ambiguity… if this statutory text stood alone, we would define "admitted" by its ordinary, contemporary, and common meaning…Congress has relieved us from this task, however, by providing the following definition: "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry

> of that alien into the United States *after inspection and authorization* by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Under this statutory definition, "admission" is the lawful entry of an alien after inspection, something quite different … from post-entry adjustment…

Id. at 544. The Court further noted that the phrase "lawfully admitted for permanent residence" is an entirely separate term of art defined in § 1101(a)(20), which does encompass both admission to the United States as an LPR and post-entry adjustment of status. *Id.* at 546. Section 1182(h), however, expressly incorporates that term of art, as defined by § 1101(a)(20), separate and apart from its use of "admitted," as defined by § 1101(a)(13). In other words, waivers are denied only to those aliens who have been admitted [§ 1101(a)(13)] to the United States as an alien lawfully admitted for permanent residence [§ 1101(a)(20)].

17. Similar to the Fifth Circuit's analysis in *Martinez*, this Court should navigate these nuanced issues by examining the unambiguous language of the controlling INA provisions in this case, which clearly define these various terms in proper context, to determine the following: Petitioner (1) has not been "admitted" to the United States after inspection by an immigration officer [§§ 1182(a)(6), 1101(a)(13)]; (2) is an "applicant for admission" [§ 1225(a)(1)];[3] and (3) is subject to detention during "full" removal proceedings as an alien who DHS has determined to be seeking admission and who is not clearly and beyond a doubt entitled to be admitted [§ 1225(b)(2)(A)]. DHS is properly detaining Petitioner on a mandatory basis during his removal proceedings.

B. Congress intended to mandate detention of all applicants for admission, not just those who presented for inspection at a designated port of entry.

18. Furthermore, through the Illegal Immigration Reform and Immigrant

[3] Nothing in § 1101(a)(4) contradicts this definition. Section 1101(a)(4) simply differentiates between an alien seeking admission to the United States at entry (with DHS) versus an alien by applying for a visa (with the State Department) with which to eventually seek admission at entry into the United States.

Responsibility Act of 1996 ("IIRIRA"), Congress corrected an inequity in the prior law by substituting the term "admission" for "entry." *See Chavez*, 2025 WL 2730228, at *4 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *United States v. Gambino-Ruiz*, 91 F.4th 918, 990 (9th Cir. 2024)). Under the prior version of the INA, aliens who lawfully presented themselves for inspection were not entitled to seek bond, whereas aliens who "entered" the country after successfully evading inspection were entitled to seek bond. *Id.* DHS's current interpretation of the mandatory nature of detention for aliens subjected to the "catchall" provision of § 1225 furthers that Congressional intent. *Id.*; *see* Dkt. No. 1, ¶¶ 26-27. Petitioner's interpretation, however, would repeal the statutory fix that Congress made in IIRIRA. *Chavez*, 2025 WL 2730228, at *4; *see* Dkt. No. 1, ¶¶ 19-20.

19. Contrary to Petitioner's interpretation, 8 U.S.C. § 1226(a) applies to aliens within the interior of the United States who were once lawfully admitted but are now subject to removal from the United States under 8 U.S.C. § 1227(a). *See Jennings,* 583 U.S. at 287–88. § 1226(a) allows DHS to arrest and detain an alien during removal proceedings and release them on bond, but it does not mandate that all aliens found within the interior of the United States be processed in this manner. 8 U.S.C. § 1226(a). Nothing in the plain language of § 1226(a) entitles an applicant for admission to be released from DHS's custody under a bond, especially not one that requires DHS to bear the burden of proof by clear and convincing evidence.

20. Nor does this interpretation render the Laken Riley Act superfluous simply because it appears redundant. Indeed, "redundancies are common in statutory drafting…redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute…" *Barton v. Barr*, 590 U.S. 222, 229 (2020). In summary, Congress intended to mandate the detention of Petitioner as correctly interpreted by DHS.

C. Petitioner fails to overcome the jurisdictional hurdles under the INA.

1. INA § 242 (8 U.S.C. § 1252).

21. Petitioner fails to overcome the jurisdictional hurdles under INA § 242, 8 U.S.C. § 1252. Where an alien, like this Petitioner, challenges any part of the process by which his removability will be determined, the court lacks jurisdiction to review that challenge. 8 U.S.C. § 1252(g); *see also Jennings*, 583 U.S. at 294–95. In *Jennings*, the Court did not find that the claims were barred, because unlike Petitioner here, the aliens in that case were challenging their continued and allegedly prolonged detention during removal proceedings. *Id.* Here, Petitioner is challenging the decision to remain subject to mandatory detention, without release from custody on bond, which arises directly from the decision to commence and/or adjudicate removal proceedings against him. *See id.*

22. Even if Petitioner claims he is not appropriately categorized as an applicant for admission subject to § 1225(b), such a challenge must be raised before an IJ in removal proceedings. 8 U.S.C. § 1225(b)(4). In other words, if an alien contests that he is an applicant for admission subject to removal under § 1225(b), any claim challenging his continued detention under § 1225(b) is inextricably intertwined with the removal proceedings themselves, meaning that judicial review is available only through the court of appeals following a final administrative order of removal. *See* 8 U.S.C. § 1225(b)(4).[4] This is consistent with the channeling provision at 8 U.S.C. § 1252(b)(9), which mandates that judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action or proceeding brought to remove an alien from the United States must be reviewed by the

[4] While bond proceedings under § 1226(a) are separate and apart from removal proceedings under § 1229a, challenges to decisions under § 1225(b), including the mandatory detention provision found within that statute, are to be raised in the same § 1229a proceedings. *See* 8 U.S.C. § 1225(b)(4).

court of appeals upon review of a final order of removal. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL2617973 (D. Minn. Sept. 9, 2025). Accordingly, Petitioner fails to overcome the jurisdictional hurdles under 8 U.S.C. § 1252.

2. INA § 236(e) (8 U.S.C. § 1226(e)).

23. Furthermore, Petitioner's claims fail because DHS's discretionary decision to not accept the bond is not subject to judicial review under 8 U.S.C. § 1226(e). Congress has stripped district courts of jurisdiction to hear challenges to decisions to issue a bond or not, decisions to revoke a bond, or the decision to delay compliance with an ultra-virus bond. The detention of an alien prior to a final order of removal is generally governed by INA § 236, 8 U.S.C. § 1226. According to 8 U.S.C. § 1226(e), DHS's "discretionary judgment" regarding bond determinations "shall not be subject to judicial review." To be clear, this provision does not strip courts of jurisdiction over constitutional questions. *Demore v. Kim*, 538 U.S. 510, 517 (2003). And Petitioner has asserted a Due Process claim here. *See* Dkt. No. 1, ¶¶ 39-42. But what Petitioner is really challenging in this action is DHS's refusal to accept the bond. *See id.*, ¶¶ 26-33. This challenges a discretionary decision not subject to review pursuant to § 1226(e). *See e.g., Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 875 (E.D. Wis. 2007) (holding that the decision to disregard the IJ's order and refuse to accept the bond was subject to § 1226(e)).[5] In this case, DHS has a legitimate justification for delaying its compliance with the bond determination: an intervening change in law. This is the type of discretion that Congress decided to afford DHS through § 1226(e). Accordingly, Petitioner fails to overcome the jurisdictional hurdle under 8 U.S.C. § 1226(e).

[5] On appeal, the Seventh Circuit held that the petitioner in *Al-Siddiqi* had pled a Due Process claim which overcame § 1226(e). *Al-Siddiqi v. Achim*, 531 F.3d 490, 493 (7th Cir. 2008).

D. 8 U.S.C. § 1225(b) on its face, and as applied to Petitioner, comports with Due Process.

24. Lastly, 8 U.S.C. § 1225 does not provide for a bond hearing or release from custody on bond, regardless of whether the applicant for admission is placed into full removal proceedings. The Supreme Court upheld the facial constitutionality of § 1225(b) in *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n.12 (1983).

25. That the alien in *Thuraissigiam* failed to request his own release in his prayer for relief does not make the holding any less binding here. *But see Lopez-Arevelo v. Ripa*, No. 25–CV–337–KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025). The alien in *Thuraissigiam* undisputedly brought his claim in habeas, and the Court noted that even if he had requested release, his claim would have failed. *Thuraissigiam*, 591 U.S. at 118–19. Regardless of whether the alien in *Thuraissigiam* was on "the threshold of entry" as an applicant for admission detained under § 1225(b)(1), as opposed to an applicant for admission found within the interior and detained under § 1225(b)(2), the reasoning of *Thuraissigiam* extends to all applicants for admission. Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *Id.; see also Jennings*, 583 U.S. at 297–303.

26. Mandatory detention of an applicant for admission during "full" removal proceedings does not violate due process, because the constitutional protections are built into those proceedings, regardless of whether the alien is detained. 8 U.S.C. § 1229a. The alien is served with a charging document (NTA) outlining the factual allegations and the charge(s) of removability against him. *Id.* § 1229a(a)(2); *see* **Bates 0012-0014; Gov't Ex. 1**, ¶ 4(d). As Petitioner exercised

his right to request a bond determination hearing in his ongoing removal proceedings, he has had an opportunity to be heard by an IJ and represented by counsel of his choosing at no expense to the government on the issue of his right to be released on a bond. *Id.* § 1229a(b)(1), (b)(4)(A). Additionally, Petitioner is entitled to reasonable continuances to prepare any applications for relief from removal, or he can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should he receive any adverse decision, he has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5).

27. While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioner here raises no such claim where he has been detained for only a brief period pending his removal proceedings. For aliens, like Petitioner, who are detained during removal proceedings as applicants for admission, what Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. The "catch all" provision at § 1225(b)(2)(A) requires two things: (1) a DHS determination that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted; and (2) detention during "full" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner is scheduled for a final merits hearing in removal proceedings before an IJ on the detained docket due to his presence without admission. *See* **Gov't Ex. 1**, ¶¶ 4(a)-(c), (i). Additionally, Petitioner may raise his challenge his continued detention in pending DHS appeal to BIA of the IJ's August 28, 2025, bond decision. *See id.*, ¶ 4(h); **Bates 0001-0009**. As applied here to Petitioner, § 1225(b)(2)(A) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

II. Habeas relief under 28 U.S.C. § 2241 is unavailable because Petitioner failed to exhaust administrative remedies under 8 C.F.R. § 1003.38.

28. In the alternative, the Court should dismiss Petitioner's habeas action for failure to

exhaust administrative remedies. It is well settled that before a prisoner can bring a habeas petition under 28 U.S.C. § 2241, administrative remedies must be exhausted. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (A federal prisoner must "exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241."); *see* 8 C.F.R. § 1003.38 (federal regulation controlling appeals to BIA of IJ bond determinations). If the petitioner does not exhaust available remedies, the petition should be dismissed. *Fuller*, 11 F.3d at 62.

29. For purposes of 28 U.S.C. § 2241 relief, exhaustion of administrative remedies is jurisdictional. *See Swain v. Pressley*, 430 U.S. 372, 383 (1977). As thoroughly explained in *McCarthy v. Madigan*: "Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency…[t]he exhaustion doctrine also acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is hauled into federal court." 503 U.S. 140, 144-45 (1992).

30. Here, Petitioner did not allege or show there has been any exhaustion of administrative remedies. *See* Dkt. No. 1, ¶¶ 39. Notably, DHS/ICE appealed the IJ's bond decision of August 28, 2025 to BIA which remains ongoing; through this administrative appeal, Petitioner may obtain the relief he seeks in this habeas action. *See* **Gov't Ex. 1**, ¶ 4(h); **Bates 0001-0009**; 8 C.F.R. § 1003.38(a)-(b). Because Petitioner has failed to exhaust administrative remedies available to him prior to filing suit, habeas relief under 28 U.S.C. § 2241 is unavailable to Petitioner. Therefore, the Court should dismiss this action for lack of subject matter jurisdiction.

CONCLUSION

In conclusion, Petitioner is not left without a remedy as Petitioner is already in "full" removal proceedings before an Immigration Judge, which includes the right to counsel at no

expense to the government, and the right to seek judicial review administratively and through the circuit court. 8 U.S.C. § 1229a. Finally, detention is not indefinite, because removal proceedings will end, either with a grant of relief or with an order of removal. For the foregoing reasons, Respondents respectfully request that the Court dismiss Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1) for lack of subject-matter jurisdiction pursuant to Federal Rules of Civil Procedure 12(b)(1). In the alternative, the Court should deny Petition in its entirety.

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney
Southern District of Texas

By: *s/ Baltazar Salazar*
BALTAZAR SALAZAR
Assistant United States Attorney
S.D. Tex. ID. No. 3135288
Texas Bar No. 24106385
600 E. Harrison, Suite 201
Brownsville, Texas 78520
Telephone: (956) 983-6057
Facsimile: (956) 548-2775
E-mail: Baltazar.Salazar@usdoj.gov
Counsel for Federal Respondents

CERTIFICATE OF SERVICE

I, Baltazar Salazar, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 22nd day of October, 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: *s/ Baltazar Salazar*
BALTAZAR SALAZAR
Assistant United States Attorney