

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

ALVARO ORTEGA GUZMAN,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondent.

Civil Action No. 1:25-CV-00202-H

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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I. Introduction

Petitioner Alvaro Ortego Guzman seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his recent detention by Immigration and Customs Enforcement (ICE). Petitioner alleges that he cannot be subject to mandatory immigration detention but, rather, must be released on bond as the Immigration Judge ordered. Petitioner also challenges a decision issued by the Board of Immigration Appeals (BIA) addressing whether aliens who enter the United States unlawfully (e.g., without inspection or admission) and are then placed in removal proceedings are entitled to bond or, instead, are subject to mandatory detention. Finally, Petitioner challenges the automatic stay filed by DHS staying his release on bond. As explained herein, Petitioner is not entitled to any relief on his petition.

Petitioner is lawfully detained on a mandatory basis as an alien present in the United States without inspection or parole. 8 U.S.C. § 1225(b)(2). To the extent there was ever an ambiguity regarding which statute governs detention of illegal aliens such as Petitioner, the Board of Immigration Appeals (“BIA”) resolved that ambiguity on September 5, 2025. In a precedent decision, the BIA held that aliens present in the United States without being admitted or paroled (such as Petitioner) are subject to mandatory detention under Section 1225(b)(2) as applicants for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Moreover, Petitioner is in full removal proceedings before an immigration judge, as opposed to expedited removal proceedings, which provides him with robust due process protections. Further, release on bond is not one of the protections guaranteed by statute. For these reasons, and those herein, the Court should deny the Petition.

II. Background

Petitioner is a native and citizen of Mexico. App. p. 1. He entered the United States at an unknown time, at an unknown place. *Id.* On May 27, 2025, he was arrested by police in Oklahoma for traffic violations. ERO placed a detainer, and Petitioner was transferred to DHS custody.

On May 29, 2025, Petitioner was placed into proceedings with the issuance of a Notice to Appear (“NTA”). App. pp. 1-3. Petitioner filed a motion for a bond redetermination (motion for bond), and on July 24, 2025, the immigration court held a bond hearing. App. pp. 5-6. DHS argued the Immigration Judge (“IJ”) lacked jurisdiction to grant a bond because Petitioner was an arriving alien seeking admission and was therefore detained under 8 USC 1225. The IJ disagreed and granted Petitioner a \$3500 bond. *Id.* DHS filed an appeal and sought an automatic stay of the bond. App. p. 10. Thereafter, the NTA was amended on July 29, 2025 to add allegation number 6, and a charge that at the time he applied for admission, Petitioner did not have the required documents. App. pp. 7-8.

On September 5, 2025, the BIA entered its decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA held that aliens who are seeking admission are detained under 8 USC §1225. *Id.* DHS filed a motion to reconsider the bond order in light of the BIA’s decision. App. pp. 9-11. On September 30, 2025, the IJ amended his bond order and denied Petitioner’s motion for bond citing the BIA’s *Yajure-Hurtado* decision. App. pp. 13-14.

On October 15, 2025, the BIA dismissed DHS’s appeal of the bond order, finding the IJ’s amended decision denying bond rendered the appeal moot. App. p. 27. To date, Petitioner has not appealed the BIA’s decision, but he has until November 15, 2025, to file an appeal.

III. Relevant Immigration Law

This case implicates the interplay of various statutes that govern the civil detention of illegal aliens (1) pending a decision on removal, (2) during the administration of removal orders, and (3) in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. Properly construed, these statutes provide that individuals such as Petitioner are considered applicants for admission to the United States and are therefore subject to mandatory detention.

A. Inspection and Detention Under 8 U.S.C. § 1225.

“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be deemed for purposes of this chapter an applicant for admission,” defining that term to encompass *both* an alien “present in the United States who has not been admitted *or* [one] who arrives in the United States . . .” *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those “arriving in the United States” and “certain other”¹ aliens “initially determined to be inadmissible due to fraud,

¹ “Certain other aliens” are addressed in Section 1225(b)(1)(A)(iii), which gives the Attorney General the sole discretion to apply (b)(1)’s expedited procedures to an alien who “has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility,” subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including those who have been in the country for a period of years.

misrepresentation, or lack of valid documentation.” *Id.* § 1225(b)(1)(A)(i),(iii). Aliens falling under this subsection are generally subject to expedited removal proceedings “without further hearing or review.” *See id.* § 1225(b)(1)(A)(i). But where the applicant “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” than (b)(1), “serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, “if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release on parole “any alien applying for admission” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Apprehension and Discretionary Detention under 8 U.S.C. § 1226(a).

“Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls ‘within one or more . . . classes of deportable aliens.’ §1227(a).” *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines “classes of deportable aliens” among those already “in *and admitted* to the United States”) (emphasis added)). “Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.” *Id.* “[O]n a warrant issued by the Attorney General,” it provides that an alien may be arrested and detained pending a decision” on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien during removal proceedings.² *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested” alien during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

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

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for ties to the United States and risks of flight or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) (“The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].”).

Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release an alien during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). Included within the Attorney General and DHS’s discretionary authority are limitations on the delegation of that authority to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), the immigration judge does not have authority to redetermine the conditions of custody imposed by DHS for any arriving alien.

C. Review of custody determinations at the BIA.

The BIA is an appellate body within EOIR. *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review of those administrative adjudications under the [INA] that the Attorney

General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

IV. Argument and Authorities

The Petition should be denied for multiple reasons. First, the Petition is premature. DHS appealed the IJ’s custody redetermination order, which ordered Petitioner released on \$3,500 bond. DHS’s notice of intent to appeal the order stayed its effect during the pendency of the appeal. On September 30, 2025, the IJ issued an amended decision rescinding the prior decision and denying Petitioner’s release from custody on bond. Thereafter, the BIA dismissed the appeal as moot and instructed Petitioner, if he objected to the dismissal, to the appeal the IJ amended decision. App. pp. 26-27. Given that the appeal is still pending, the Court should exercise its discretion and dismiss the case while the administrative process continues. Second, even if the administrative remedies had been exhausted, Petitioner’s argument that he is entitled to release from custody on bond is flawed because the IJ lacked jurisdiction to issue the bond order in the first instance, as the IJ noted in his amended decision. Therefore, the Petition should be denied because the IJ lacked authority to order aliens such as Petitioner released on bond. Finally, the Court lacks jurisdiction to entertain the Petition, which challenges Respondent’s efforts to remove him from the United States and discretionary release determinations.

A. Petitioner has not exhausted administrative remedies.

The BIA is the appellate body within the EOIR that is “charged with the review of those administrative adjudications that the Attorney General may by regulation assign to it,” including determinations related to bond, parole, or detention. 8 C.F.R. §§ 1003.1(d)(1); 1003.1(b)(7). The Supreme Court has “long acknowledged the general rule that parties must exhaust prescribed administrative remedies prior to seeking relief from the federal courts.” *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992). Exhaustion “serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency.” *Id.* at 145. The rationale for administrative exhaustion applies equally in the context of seeking relief of denial of a bond hearing via a writ of habeas corpus, even though the INA does not so mandate.³ *McCarthy*, 503 U.S. at 144 (“But where Congress has not clearly required exhaustion, sound judicial discretion governs.”); *see* 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal only if ... the alien has exhausted all administrative remedies.”).

Although not mandated by statute, this Court should require Petitioner exhaust his administrative remedies. Here, the administrative process has not concluded because Petitioner can still appeal the custody redetermination with the BIA. *See* 8 C.F.R. § 236.1(d)(3) (“An appeal relating to bond and custody determinations may be filed to the [BIA] ...”). “When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted administrative remedies, unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). The Fifth Circuit has held that “a petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists.” *Lee v. Gonzalez*,

³ The INA only mandates exhaustion for appeals of final orders of removal.

410 F.3d 778, 786 (5th Cir. 2005). Because the administrative process is ongoing, the Court should exercise its discretion and dismiss the Petition.

B. Petitioner is subject to mandatory detention and not entitled to bond under the plain language of 8 U.S.C. § 1225(b)(2).

If the Court reaches the merits, this case turns on which of two separate statutory detention provisions can apply to Petitioner: 8 U.S.C. § 1225(b)(2)(A) or 8 U.S.C. § 1226(a). The provision at § 1225(b)(2)(A) applies specifically to any “applicant for admission”—and calls for mandatory detention. The provision at § 1226(a), on the other hand, is more general in nature and simply says that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States”—with the Attorney General then given the discretion to either continue to detain the alien or to release the alien on bond or conditional parole. Thus, the relevant question here is who constitutes an “applicant for admission” who is potentially subject to § 1225(b)(2)(A) and its more restrictive mandatory detention provision.

1. Petitioner is considered an applicant for admission because he entered the United States without being inspected, admitted, or paroled.

The statutory text supplies the answer. “As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a)(1) deems any “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 and including an alien who is brought to the United States after having been interdicted in international or United States waters)” to be an “applicant for admission.” 8 U.S.C. § 1225(a)(1); *see also Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) (explaining that an alien who “was present in the country and had been for years,” but “whose entry into the United States was not lawful or authorized” was “not considered ‘admitted’ into the United States,” and

that such aliens are “treated as ‘applicants for admission’” and “deemed to be legally at the border”).

Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, but also (2) aliens present without admission. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”); *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . .”). Indeed, that “arriving aliens” are just one subset of the larger group of “applicants for admission” is made clear by the fact that “arriving alien” is defined as “an applicant for admission *coming or attempting to come into the United States at a port-of-entry*”—thus making clear that there are other types of applicants for admission. 8 C.F.R. §§ 1.2, 1001.1(q) (emphasis added).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a). An applicant for admission seeking admission at a port-of-entry “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see also* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry . . . is subject to the provisions of [§ 1182(a)] and to removal under

[§ 1225(b)] or [§ 1229a].” 8 C.F.R. § 235.1(f)(2).

Here, there does not appear to be any dispute that Petitioner did not present at a port-of-entry but instead entered the United States elsewhere, in an unlawful fashion and without having been admitted or paroled after inspection by an immigration officer. He is, therefore, an alien present without admission and, consequently, an applicant for admission.

2. Because Petitioner is an applicant for admission, he is subject to detention under 8 U.S.C. § 1225(b)(2).

Applicants for admission may be placed in expedited removal proceedings under § 1225 or, as has occurred here with respect to Petitioner, he may be placed in § 1229a removal proceedings (which are the more comprehensive form of removal proceedings that also generally apply to aliens other than applicants for admission who are charged with removability). But even if placed in § 1229a proceedings, applicants for admission may be subjected to mandatory detention under § 1225 such that they are ineligible for release on bond. Specifically, aliens present without admission placed in § 1229a removal proceedings are both applicants for admission as defined in § 1225(a)(1) *and* aliens “seeking admission,” as contemplated in § 1225(b)(2)(A). Such aliens are subject to detention under § 1225(b)(2)(A) and thus ineligible for release on bond.

Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see* 8 U.S.C. § 1225(b)(2)(A), (B). Under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under section 1229a” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Thus, according to the plain language of § 1225(b)(2)(A), applicants for admission in § 1229a removal proceedings “shall be detained.” *Id.* (emphasis added). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances.’ . . .” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). And as the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens—no provision within § 1225(b)(2) refers to “arriving aliens,” or limits that clause to arriving aliens, and Congress instead intended for it to apply generally “in the case of an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to “arriving aliens,” it has used that specific term of art or similar phrasing. *See, e.g., id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

The BIA’s recently issued published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is consistent with these principles. In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.* at 220.⁴

The BIA concluded that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an

⁴ Previously, as alluded to in BIA decisions, § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747–48 (BIA 2023). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 216.

immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years. *Id.*

In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original).

The decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General recognized in *Matter of M-S-* that §§ 1225 and 1226(a) describe “different classes of aliens.” 27 I&N Dec. 509, 516 (AG 2019). And in *Matter of Q. Li*, the BIA also held that an alien who illegally crossed into the United States between ports-of-entry and was apprehended without a warrant while arriving is detained under § 1225(b). 29 I&N Dec. 66, 71 (BIA 2025). These decisions make clear that all applicants for admission are subject to detention under § 1225(b). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make

little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”).

Given that § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under § 1225(b)(1) or placed directly into removal proceedings under § 1229a—and further given that both “§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 302, Petitioner has no grounds to complain that he is subject to mandatory detention. Petitioner is properly considered an applicant for admission (specifically, an alien present without admission), and he was placed into removal proceedings under § 1229a. He is therefore subject to detention pursuant to § 1225(b)(2)(A) and there is no requirement that he be eligible for bond.

3. The statutory history supports the Respondent’s understanding of who is considered an applicant for admission.

It is respectfully submitted that the statutory text, as discussed above, is dispositive of the relevant issue and the Court need go no further. But if the Court needs more, the structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, bolsters the understanding that under the current statutory scheme, all applicants for admission are subject to detention under § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at ports-of-entry. *See* 8 U.S.C. § 1225(a), (b) (1994) (discussing “aliens arriving at ports of the United States” and “the examining immigration officer at the port of arrival”). Relatedly, any alien who was “in the United States” and within certain listed classes of deportable aliens was deportable. *Id.*

§ 1251(a). One such class of deportable aliens included those “who entered the United States without inspection or at any time or place other than as designated by the Attorney General.” *Id.* § 1251(a)(1)(B). Aliens were excludable if they were “seeking admission” at a port-of-entry or had been paroled into the United States. *See id.* § 1225(a); *see also id.* § 1182(a). At the time, deportation proceedings and exclusion proceedings differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the “important distinction” between deportation and exclusion). And the placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an “entry” within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1994) (defining “entry” as “any coming of an alien into the United States, from a foreign port or place or from an outlying possession”).

Former § 1225 provided that aliens “seeking admission” at a port-of-entry who could not demonstrate entitlement to be admitted (“excludable” aliens) were subject to mandatory detention, with potential release solely by means of parole under § 1182(d)(5). *See id.* §§ 1225(a), (b), § 1182(d)(5). The concept of “seeking admission” in former § 1225 appears to have been understood to refer to aliens arriving at a port-of-entry. *See id.* And aliens who entered without inspection and were deportable were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See id.* §§ 1251(a)(1)(B), 1252(a)(1). That meant that “[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while [aliens] who actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings.” *Martinez v. Att’y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (internal quotation marks and citation omitted). “To remedy this unintended and undesirable consequence, the IIRIRA substituted ‘admission’ for ‘entry,’ and replaced deportation and

exclusion proceedings with the more general ‘removal’ proceeding.” *Id.* Consistent with this dichotomy, the INA, as amended by the IIRIRA, defines *all* those who have not been admitted to the United States as “applicants for admission.” IIRIRA § 302, 110 Stat. 3009-579.

Moreover, Congress’s use of the present participle—“seeking”—in § 1225(b)(2)(A) should not be ignored. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”). By using the present participle “seeking,” § 1225(b)(2)(A) “signal[s] present and continuing action.” *See Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). And the phrase “seeking admission” should not be understood to refer to “something in the past that has ended or something yet to come.” *See Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019). Thus, when pursuant to § 1225(b)(2)(A) an “examining immigration officer determines” that an alien “is not clearly and beyond a doubt entitled to be admitted,” the officer does so contemporaneously with the alien’s present and ongoing action of seeking admission. Indeed, interpreting the present participle “seeking” as denoting an ongoing process is also consistent with its ordinary usage. *See, e.g., Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (an inadmissible alien “seeking to remain in the country lawfully” applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th Cir. 2025) (“USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. § 1255(m) to undergo a medical examination . . .”). Accordingly, just as the alien in *Samayoa* is not only an alien present without admission but also seeking to remain in the United States, Petitioner is an alien present without admission, and therefore an applicant for admission as defined in § 1225(a)(1), but also an alien seeking admission under § 1225(b)(2)(A).

Congress's significant amendments to the immigration laws in the IIRIRA support the notion that such aliens are properly detained pursuant to § 1225(b)—specifically, § 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at ports-of-entry. A rule that treated an alien who enters the country illegally more favorably than an alien detained after arriving at a port-of-entry would “create a perverse incentive to enter at an unlawful rather than a lawful location.” *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (quoting *Thuraissigiam*, 591 U.S. at 140). Such a scenario reflects “the precise situation that Congress intended to do away with by enacting” the IIRIRA. *Id.* “Congress intended to eliminate the anomaly under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (internal quotation marks and citation omitted).

As discussed by the BIA in *Matter of Yajure Hurtado*, during the IIRIRA's legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* 29 I&N Dec. at 222–24 (discussing H.R. Rep. 104-469 (1996)). As alluded to above, one goal of the IIRIRA was to “reform the legal immigration system and facilitate legal entries into the United States.” H.R. Rep. No. 104-828, at 1. Affording bond hearings to aliens present without admission, who have evaded immigration authorities and illegally entered the United States, but not affording such hearings to arriving aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to that goal.

4. Applicants for admission may be released from detention on an 8 U.S.C. § 1182(d)(5) parole, but that is a discretionary matter.

Importantly, applicants for admission may only be released from detention if the government invokes its discretionary parole authority under § 1182(d)(5), which can be exercised with respect to “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes release from detention under § 1225(b), at the government’s discretion. *Jennings*, 583 U.S. at 300. Specifically, the Court emphasized that “[r]egardless of which of those two sections [§ 1225(b)(1) or (b)(2)] authorizes . . . detention, applicants for admission may be temporarily released on parole . . .” *Id.* at 288.

The parole authority under § 1182(d)(5), however, is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). And parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), so an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see* 8 C.F.R. § 1.2 (providing that “[a]n arriving alien remains an arriving alien even if paroled pursuant to [§ 1182(d)(5)], and even after any such parole is terminated or revoked”). Here, accepting Petitioner’s theory that applicants for admission are nonetheless eligible for bond under § 1226 would run headlong against the specific grant of parole authority as to applicants for admission, in § 1182(d)(5).

C. The Court lacks jurisdiction to review Petitioner’s claims.

The core of this Petition—a question of statutory interpretation—is not properly before the Court and must be funneled through the court of appeals. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL 2617973 (D. Minn. Sept. 9, 2025). First, 8 U.S.C. § 1252(g) and (b)(9)

preclude review of Petitioner's claims. Although the Fifth Amendment provides for due process in immigration proceedings, the Supreme Court has "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). Removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders* against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence proceedings, adjudicate cases, or execute removal orders.*'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."⁵ Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Section 1252(g) also bars district courts from hearing challenges to the *method* by which the

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

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

Here, Petitioner raises a statutory interpretation issue regarding the statute governing his detention during removal proceedings. That detention arises from the decision to commence and adjudicate such proceedings. *See, e.g., Quezada v. U.S.*, 3:24-CV-564-L (BK), 2025 WL 747263 at *6 (N.D. Tex. Jan. 29, 2025) (barring FTCA claim under § 1252(g) where ICE arrested alien on the same day the NTA was issued and served on him). Specifically, removal proceedings commence by filing a charging document, such as an NTA, with an Immigration Court. *See Pereida v. Wilkinson*, 592 U.S. 224, (2021) (“Removal proceedings begin when the government files a charge against an individual, and they occur before a hearing officer at the Department of Justice, someone the agency refers to as an immigration judge.”); *Pierre-Paul v. Barr*, 930 F.3d 684, 686 (5th Cir. 2019) (“[T]he government initiated removal proceedings [] by filing a notice to appear with the immigration court.”); *see also* 8 C.F.R. § 1003.14(a) (“Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court.”). An alien’s detention throughout this process arises, therefore, from the Attorney General’s decision to commence proceedings, and review of claims arising from such detention is barred under § 1252(g). *See Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCX), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). As such, judicial review of the claim that Petitioner is entitled to bond under § 1226(a) instead of detained on a mandatory basis under § 1225(b) is barred by § 1252(g).

Section 1252(b)(9) also deprives the Court of jurisdiction in this case. Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *See, e.g.*, 8 U.S.C. § 1252(b)(9); *see also El Gamal v. Noem*, --- F.Supp.3d---, 2025 WL 1857593 at *5 (W.D. Tex. July 2, 2025) (collecting cases and finding that any challenge to ICE’s initial decision to detain the alien during removal proceedings is protected from judicial review in district court, because the alien must appeal any order of removal to the BIA and ultimately petition for judicial review of any relevant constitutional claims by the court of appeals); *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Petitioner must present his claims before the appropriate federal court of appeals because they challenge the government’s decision or action to detain him, which cannot be raised in this Court. *See* 8 U.S.C. § 1252(b)(9). Petitioner is lawfully detained in removal proceedings as an alien charged with removability for unlawfully entering and remaining in the country without authorization. 8 U.S.C. § 1182(a)(6). Nothing in the petition provides a legal basis that obligates the government to set a bond for his release. The Court should dismiss for lack of jurisdiction.

D. The Automatic Stay does not Violate Petitioner’s Due Process under the Fifth Amendment.

1. No Procedural Due Process Violation.

Petitioner argues that habeas jurisdiction remains available for his procedural due process

claim as a “challenge[] [to] the statutory framework that permits [the alien’s] detention without bail.” *Jennings*, 583 U.S. at 295. In particular, with respect to DHS’s decision to appeal the immigration judge’s bond determination and to invoke the automatic stay to keep him in custody pending a ruling from the BIA, he argues that his procedural due process rights are being violated because he can be kept in custody for an additional 90 days by DHS making a unilateral decision with no process provided to him at all. ECF 1 at 17. But even assuming this type of argument constitutes a challenge to the regulatory “framework” so as to allow for habeas jurisdiction, it has no merit.

To begin with, Petitioner is hardly without process. On the contrary, he has had an abundance of process. In particular, he takes exception to the fact that both parties to the removal proceedings—the alien and DHS—have the procedural right to administratively appeal the immigration judge’s bond determination, and that when DHS elects this option, it may automatically stay the alien’s release for a limited period of time pending that appeal. *See* 8 C.F.R. § 1236.1(d)(3). But this does not result in any deficit of process, given that multiple opportunities exist for administrative review of immigration detention decisions.

Indeed, Petitioner has received—and currently is still receiving—ample and meaningful process in connection with his request for bond in his removal proceedings. He is represented by counsel. And after DHS made an initial bond determination in his case, he had the right—and exercised that right—to seek redetermination from an immigration judge. The immigration judge decided in his favor. DHS appealed. He also has the right to submit briefing to the BIA, and has now done so, to oppose DHS’s request to override the immigration judge’s bond determination. There is no shortage of process available to Petitioner, and he has availed himself of that process and will no doubt continue to do so. As one court has explained, “[a]liens like

Petitioner who are detained under § 1226(a) receive numerous procedural protections,” and “[a]though § 1226(a) does not grant Petitioner an automatic right to release while her immigration proceedings are pending, . . . it grants her a number of meaningful opportunities to raise arguments in support of her release.” *Atemafac*, 2021 WL 1972577, at *2. Whatever procedural requirements the due process clause imposes are satisfied here.

2. No Substantive Due Process Violation.

Petitioner argues that his substantive due process claims should somehow be cognizable in habeas, the Respondent disagrees for all the reasons previously discussed. Those claims directly challenge the discretionary decision-making of the Attorney General and DHS Secretary (and their delegees) on the issue of whether to detain or rather release Petitioner, so they are not reviewable on habeas or otherwise. *See* 8 U.S.C. §§ 1226(e), 1252(a)(2)(B).

Even so, Petitioner’s claims would also fail on the merits if they were subject to review. His allegations of substantive due process violations boil down to an argument that there is no specific justification for his detention. Importantly, though, Petitioner does not dispute that the legal and factual predicate for his placement in removal proceedings does in fact exist—he concedes that he is not lawfully in the United States, that he entered the United States without inspection and has remained here unlawfully. *See* ECF 1, ¶ 42. He is, therefore, subject to removal proceedings even under his own allegations, and “an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation.” *Reno v. America-Arab Anti-Discrimination Committee*, 525 U.S. 471, 488 (1999). Put another way, this is not a case where it is alleged, for example, that the government somehow improperly engineered the grounds for removal. Well before his arrest and detention, Petitioner illegally entered and remained in the United States, and thus his placement in removal proceedings—and

his corresponding, statutorily-authorized detention—offends nothing in the Constitution.

There is a final additional reason any substantive due process claim of Petitioner’s fails: he has not exhausted available administrative remedies. As outlined above, the administrative process is still ongoing, and Petitioner may still appeal the IJ decision. “Immigration habeas petitioners must exhaust administrative and judicial remedies available to them prior to seeking habeas relief through the district courts under 28 U.S.C. § 2241.” *Singh v. ICE*, No. H-22-3432, 2023 WL 3571958, at *2 (S.D. Tex. Apr. 26, 2023) (citing *Cardoso v. Reno*, 216 F.3d 512, 518 (5th Cir. 2000); *Wang v. Ashcroft*, 260 F.3d 448, 452–53 (5th Cir. 2001)). “In the instant case, [Petitioner] has not exhausted his available remedies for challenging [his] current detention.” *Id.* Specifically, he can—and is—arguing to the BIA that he ought to be released on bond, and administrative proceeding are ongoing and may yet result in a favorable bond outcome for Petitioner. Habeas relief is therefore “unwarranted.” *Id.*

V. Conclusion

Petitioner is lawfully detained pending removal proceedings, and he does not claim any immigration status that would entitle him to immediate release from custody. He remains in “full” removal proceedings with robust due process protections. Accordingly, the Court should deny this petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On October 24, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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