

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

RAULDRIS CAMACHO SALINAS,

PETITIONER

v.

CIVIL ACTION NO. 4:25CV-121-DJH (*e-filed*)

JASON WOOSLEY, Jailer, Grayson
County Jail; and RUSSELL HOTT,
Field Office Director, Chicago Field Office,
U.S. Immigration and Customs Enforcement

RESPONDENTS

BRIEF IN OPPOSITION TO HABEAS PETITION

Federal Respondent Russell Hott¹ for his Brief in Opposition to Habeas Petition responds as follows.

INTRODUCTION

Rauldris Salinas is a citizen of Venezuela who was apprehended in August 2023 near the border knowingly entering the United States without the necessary papers to do so lawfully. At the time of her original apprehension, she was placed in removal proceedings before being released on her own recognizance to file an application for asylum. She is now lawfully mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2) as an applicant for admission pending her removal proceedings before an immigration judge.

¹ This response is filed on behalf of Federal Respondent, Russell Hott. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition names Jason Woosley, the Grayson County Jailer, as a respondent.

Because Salinas has not exhausted her administrative remedies, the Court should either dismiss the petition without prejudice or stay the proceedings until such remedies are exhausted, because exhaustion in this case should not be excused. To the extent that Petitioner challenges the interpretation or the constitutionality of the statute under which her removal proceedings are brought, she must raise that challenge in the 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, Salinas has not raised any colorable claim that her mandatory detention under § 1225(b)(2) is unconstitutional as applied to her. Her detention is neither indefinite, nor prolonged, as it will end upon the completion of her removal proceedings.

Finally, if this Court concludes it has jurisdiction to order a bond hearing, release before that bond hearing is not within this Court's authority to mandate, as this Court will be determining that detention pursuant to 8 U.S.C. § 1226 is appropriate, as contended by Petitioner, and release under that statute is not permitted before a bond hearing decision. The Court lacks authority to mandate the executive branch to violate federal statutes. For these reasons and those that follow, this Court should deny this habeas petition as a matter of law.

BACKGROUND

Petitioner Salinas is a 30-year-old citizen of Venezuela who entered the United States and was apprehended on or about August 20, 2023, near El Paso, Texas. Ex. A (copy of NTA). Salinas was arrested and transported to the El Paso Sector Hardened Facility for further processing. Ex. B (I-213 from 20223 encounter). At the facility, she

was advised of her administrative rights in removal proceedings. *Id.* She acknowledged understanding her rights and then she “claimed to be a citizen and national of Venezuela without the necessary legal documents to enter, pass through, or to remain in the United States.” *Id.* She also reportedly admitted to illegally crossing the border without inspection by an immigration officer at a designated port of entry. *Id.*

Because she was deemed “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” and found to be inadmissible, she was given a Notice to Appear (“NTA”) before an immigration court on June 24, 2026, in Chicago, Illinois. Ex. A; Ex. B. Documents demonstrate that Salinas was provided in-person notice of these events in Spanish by a Border Patrol Agent and was given a list of organizations and attorneys who could provide free legal services, should she desire representation. Ex. A.

After issuance of her NTA, Petitioner was released on her own recognizance. Ex. B; *see also* Form I-220A “Order of Release on Recognizance” at PageID#20 and Form I-286 “Notice of Custody Determination” at PageID#22. Overcrowding at the El Paso facility factored into how Salinas was processed in August 2023. *Id.* Within the Order of Release on Recognizance, Petitioner was informed that as a condition of her release, she “must surrender for removal from the United States if so ordered.” *See* Form I-220A “Order of Release on Recognizance” at PageID#20.

On or about September 17, 2023, the United States Citizenship and Immigration Services received Petitioner’s Form I-589 (“Application for Asylum and for Withholding

of Removal"). Ex. C (Notice of Receipt of I-589). By letter dated January 7, 2025, Salinas was informed that because she was served an NTA which was docketed with the immigration court for purposes of removal proceedings, her application for asylum was forwarded to the Executive Office for Immigration Review ("EOIR") for consideration and her asylum request would be decided as part of her removal process before the immigration court. *Id.*; *see also* Ex. D (January 7, 2025, letter). As a result of her application for asylum, Petitioner was granted a temporary employment authorization. Ex. E (Approval Notice re application for employment authorization).

On October 15, 2025, Immigration Customs Enforcement ("ICE") and Enforcement Removal Operations ("ERO") encountered Petitioner as she reported to ICE ERO Chicago Field office for a scheduled CART appointment.² Salinas was issued a Form I-200 "Warrant of Arrest of Alien" and taken into custody. Ex. F (copy of 2025 Form I-200); Ex. G (copy of 2025 I-213 Encounter Summary). She initiated the current action on October 20, 2025 [DN 1].

In her Petition, Salinas contends she is detained unlawfully in violation of her constitutional due process rights and an incorrect interpretation of immigration law,

² CART stands for "Compliance Assistance Reporting Terminal". "The CART kiosk is a self-service kiosk used by selected aliens on the non-detained docket during the automated check-in process. The kiosk contains several features, such as a touchscreen display, camera for photo capture and testing of facial verification, fingerprint scanner, printer, and the capability to support multiple languages. These kiosks will be located inside ICE ERO field offices, such as a waiting room. CART will enable eligible aliens on the non-detained docket with Orders of Supervision (OSUP) or Orders of Recognizance to check in with ERO using the kiosk rather than meeting with an ERO officer in person." *See* Privacy Impact Assessment Update for the Enforcement Integrated Database (EID) dated December 3, 2018, at p. 8 located at <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-december2018.pdf>.

seeking for this Court to release her and direct an immigration judge to conduct a bond hearing. Pet. at PageID#2. She claims that because she was released on her own recognizance to await her immigration court proceeding scheduled for 2026 and has been in the United States for over two years, she cannot be detained pursuant to 8 U.S.C. § 1225(b), but must be detained pursuant to 8 U.S.C. § 1226, which would permit her to request release on bond before an immigration judge. *Id.* at PageID#4-10. She argues that she can no longer be viewed as statutorily “seeking admission” for purposes of mandatory detention under § 1225(b) because that identifying language only applies to immigrants at the nation’s border or some other point of entry, rather than a noncitizen already present in the United States.” *Id.* at PageID#10. Finally, Salinas contends her due process rights have been violated. *Id.* at PageID#14-16.

ARGUMENT

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232-37 (1960). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. “The rule has been clear for decades: “[d]etention during deportation proceedings [i]s . . . constitutionally valid.” *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)); *see Demore*, 538 U.S. at 523 n.7 (“In fact, prior to 1907 there was no provision permitting

bail for *any* aliens during the pendency of their deportation proceedings.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”).

Petitioner bears the burden to show that her detention is unlawful. *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)). She has not met her burden.

I. Petitioner is Lawfully Detained Under 8 U.S.C. § 1225(b)(2)(A)

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 mandated detention under § 1225(b)(2)(A) for inadmissible aliens, while 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 Defines an Applicant for Admission as an Alien Present in the United States Without Having Been Admitted*

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); *Barrera v. Tindall*, 2025 WL 2690565 at *3 (W.D. Ky. Sept. 19, 2025); *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 most recently encountered Petitioner within the interior of the United States, she is nonetheless an applicant for admission who, by definition, is “seeking admission,” and she 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. In other words, the Immigration and Nationality Act (“INA”) mandates that she “shall be detained for a proceeding under section 1229a [“full” removal proceedings]” 8 U.S.C. § 1225(b)(2)(A).

Within her petition, Salinas merely addresses § 1225 without making any distinction for the Court between § 1225(b)(1) and § 1225(b)(2). She appears to contend that § 1226(a) is the only detention statutorily afforded when noncitizens are placed in “regular, non-expedited removal proceedings” pursuant to § 1229a. Pet. at PageID#6. That conclusion is wrong. The Supreme Court’s decision in *Jennings* provides the clarity her petition lacks.

As the *Jennings* Court explained, “the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287. An “alien”

(such as Petitioner) “who arrives in the United States, or is present in this country but has not been admitted, is treated as an applicant for admission.” *Id.* (cleaned up). “Admission” is further defined as “the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Read in tandem with the statute’s plain terms, all unadmitted noncitizens are “applicants for admission,” regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. While this may seem counterintuitive, “[w]hen a statute includes an explicit definition, [courts] must follow that definition.” *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Therefore, Petitioner must “be inspected by immigration officers” to ensure that she may be admitted into the country consistent with U.S. immigration law. 8 U.S.C. § 1225(a)(3). Moreover, as an “applicant for admission,” Petitioner may be required to state under oath her “purposes and intentions . . . in seeking admission.” 8 U.S.C. § 1225(a)(5).³

As an applicant for admission, Salinas must “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), also known as Expedited Removal Proceedings, addresses both the detention and removal of “aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.* (cleaned up). They “are

³ As this statute requires “applicants for admission” to testify as to their “purposes and intentions . . . in seeking admission,” it follows that an “applicant for admission” and a person “seeking admission” are one and the same. See *Matter of Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). To conclude otherwise would be patently absurd.

normally ordered removed without further hearing or review . . . [unless the alien] indicates either an intention to apply for asylum . . . or a fear of persecution, then that alien is referred for an asylum interview." *Id.*

Section 1225(b)(2), however, "is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* As an alien mandatorily detained under Section 1225(b)(2), Petitioner is subject to the 8 U.S.C. § 1229a removal statute and referred "for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country." *See Jennings*, 583 U.S. at 288 (cleaned up);⁴ *see also Kasneci v. Dir., Bur. of Immigration and Customs Enforcement*, No. 1212349, 2012 WL 3639112 at *4 (E.D. Mich. Aug. 23, 2012) ("Mandatory detention is prescribed for certain noncitizens seeking admission into the United States, *see* 8 U.S.C. § 1225(b)(2), and noncitizens apprehended in the United States, *see* 8 U.S.C. § 1226(c)."); *Bautista v. Sabol*, 862 F.Supp.2d 375, 379 (M.D. Penn. 2012) (explaining that the mandatory detention of Section 1225(b)(2)(A) applies where "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted").

The unambiguous language of the controlling INA provisions of this case, which clearly define the various terms in proper context, lead to the following conclusions:

⁴ Notably, the *Jennings* Court ignored the "seeking admission" portion of § 1225(b)(2)(A) instead interpreting the relevant portion of this provision to be whether an official determined they were "not clearly and beyond a doubt entitled to be admitted."

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));⁵ and (3) is subject to detention during “full” removal proceedings as a noncitizen 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 following § 1225(b)’s mandate, properly detaining Petitioner during her formal § 1229a removal proceedings.

B. Congress Intended to Mandate Detention of All Applicants for Admission

Congress, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), 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)). Prior to the IIRIRA, federal law “established two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings.” *Vartelas v. Holder*, 566 U.S. 257, 261 (2012) (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). 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. *Chavez* at *4. Under this setup, “non-citizens who had entered without

⁵ Nothing in 8 U.S.C. § 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.

inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Congress passed the “IIRIRA [to] address[] this anomaly by,” eliminating the concept of “entry” and exclusion and deportation proceedings, while creating instead a uniform “removal” procedure. *Id.*; see also *Vartelas*, 566 U.S. at 261–62. Removability now turns on whether a foreign national is admissible or has been “admitted” at a port of entry. Foreign nationals arriving in the United States or present in the United States without having been admitted are now “applicants for admission.” 8 U.S.C. § 1225(a)(1). DHS’s current interpretation of the mandatory nature of detention for aliens subjected to the “catchall” provision of § 1225 furthers that Congressional intent.

1. *Section 1226(a) Is Not Superfluous, Nor Does It Entitle Release or Provide a Bond Hearing Where DHS Bears the Burden of Proof by Clear and Convincing Evidence.*

That does not leave § 1226(a) meaningless. Section 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. Section 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 a bond hearing.

2. *Neither is the Laken Riley Act Superfluous.*

Petitioner contends that the Laken Riley Act passed by Congress in January 2025 is rendered redundant by the fact that Salinas can be detained under § 1225(b)(2) while proceeding with formal removal proceedings. Pet. at PageID#11. Unlike Section 1225(b)(1), which is a removal and detention statute, § 1226 is solely a detention statute. And § 1226(c)(1) pertains to the mandatory detention of certain aliens who generally have had interactions with the criminal justice system, and importantly here, does not *solely* apply to those who have not been admitted to the United States. See 8 U.S.C. § 1226(c). To this end, lawful permanent residents who have been admitted to the United States may be subject to mandatory detention under the Laken Riley Act. See 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Azumah v. USCIS*, 107 F.4th 272, 273 (4th Cir. 2024). It also reaches those who were admitted erroneously and are deportable for being inadmissible at the time of admission. See 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i). Because the Laken Riley Act is not redundant, that argument is meritless.⁶

3. *The title of 8 U.S.C. § 1225 does not determine whether Petitioner is an applicant for admission and subject to detention under § 1225(b)(2).*

8 U.S.C. § 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Other courts have held that because of the title of § 1225, it can only apply to "arriving aliens," not those already

⁶ Even if the Laken Riley Act is redundant, that doesn't mean that Petitioner is detained under § 1226: "[r]edundancies are common in statutory drafting – sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020).

present in the country. *Barrera v. Tindall*, 2025 U.S. Dist. LEXIS 184356, at *8 (W.D. Ky. Sept. 19, 2025). That argument is wrong, first, because an “arriving alien” is a defined term in 8 C.F.R. § 1.2 that applies to a noncitizen based on their method of arriving in the United States and whether she has documents permitting entry, not based on her location after entry. Second, the title of the statute does not encompass all aspects of the statute. For example, § 1225 defines “applicant for admission,” but that is not in the title. Further, “arriving alien” is in the title in the context of a noncitizen who is in expedited removal. Petitioner is not subjected to expedited removal. But that does not mean the statute does not apply to her.

II. Petitioner should be ordered to exhaust her administrative remedies.

Petitioner was issued a warrant of arrest on October 15, 2025, and claims that she should be detained in accordance with § 1226, rather than § 1225, and afforded a bond hearing; however, she does not allege that she has moved for a bond hearing.⁷ The doctrine of prudential exhaustion supports requiring Petitioner to exhaust the process for seeking bond from the immigration judge prior to requesting relief from this Court.

8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d) provide for an immigration judge to consider Petitioner’s request for bond. Upon Petitioner’s motion, the immigration judge will consider the bond request and decide whether the judge has jurisdiction and, if so, whether she should be released. Petitioner has not alleged that she has filed a motion

⁷ The template warrant for arrest cites § 1226—and 8 U.S.C. § 1357—in the context of identifying officers who can execute the warrant. The warrant does not state that anyone detained under a warrant is detained under § 1226. Indeed, § 1357(a) describes the powers immigration officers and employees possess, including arrest without a warrant, § 1357(a)(2).

for bond. Pet., *generally*. Petitioner claims that detention under § 1226 is lawful and that a bond hearing is the proper resolution of this matter but has not yet moved the immigration court for bond. The Court should find that is the optimal first step towards resolving this matter.

The doctrine of prudential exhaustion supports requiring Petitioner to exhaust the process for seeking bond from the immigration judge. The Northern District of Ohio recently imposed a prudential exhaustion requirement on a habeas petitioner by utilizing a test the Sixth Circuit has tacitly endorsed. *Torrealba v. U.S. Dep't of Homeland Sec.*, 2025 WL 2444114 at *8-10, n.16 (N.D. Ohio Aug. 25, 2025) (citing *Rabi v. Sessions*, 2018 U.S. App. LEXIS 19661 (July 16, 2018)). Prudential exhaustion should be ordered when:

- (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
- (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
- (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Id. at *9 (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

In consideration of the foregoing factors, the Court should find, just like the *Torrealba* court, that administrative exhaustion is required. *Id.* at * 10; *see also Villalta v. Greene*, 2025 WL 2472886, 2025 U.S. Dist. LEXIS 169688 (N.D. Ohio Aug. 5, 2025); *Castillo Lachapel v. Joyce*, 2025 WL 1685576, 2025 U.S. Dist. LEXIS 115808 (S.D.N.Y. June 16, 2025) (citing other cases). Regarding the first element, immigration judges routinely adjudicate bond motions and are familiar with the relevant statutory and regulatory

framework. An immigration judge should be allowed to apply his/her expertise to Petitioner's request for release on bond.

The second factor also favors exhaustion. *Torrealba*, 2025 WL 2444114 at *10. Habeas should not be a substitute for the prescribed process for seeking release from custody. Permitting Petitioner to obtain release without first adjudicating her detention before the immigration judge will encourage others to do likewise. Furthermore, this case is not like the other matters in which the Court has granted a habeas petition. Among the differences, in *Beltran Barrera v. Tindall*, 3:25-cv-541 (W.D. Ky.), and *Singh v. Lewis*, 4:25-cv-96 (W.D. Ky.), immigration judges had already granted bond motions and set bond amounts. The petitioners were not then released because ICE was appealing those bond decisions. Petitioner in this case is not similarly situated because she has not already obtained a favorable bond determination.

This case also involves different facts than *Matter of Q. Li*, 29 I. & N. Dec. 66, 67 (BIA 2025). In *Q. Li*, the petitioner was subject to a notice to appear, but the petitioner in *Q. Li* was paroled under 8 U.S.C. § 1182(d)(5)(A), meaning his detention is under 8 U.S.C. § 1225. Petitioner here was released on her own recognizance. Petitioner's situation is also different than that of the petitioner in *Yajure Hurtado*, 29 I&N Dec. 216. Petitioner here was originally detained shortly after she entered the United States illegally and was identified as subject to removal under 8 U.S.C. § 1182(a)(6)(A)(i). The petitioner in *Yajure Hurtado*, in contrast, entered the United States in November 2022 undetected. 29 I&N Dec. 216. He then obtained Temporary Protected Status for several months during 2024 and 2025. *Id.* at 216-17. Several days after that status expired in

April 2025, the petitioner was apprehended by immigration officials. *Id.* at 217. Here, the immigration judge may conclude that one or both of those cases suggest Petitioner is ineligible for bond because she is detained under 8 U.S.C. § 1225, but neither case necessarily compels that conclusion. Consequently, Petitioner is not being ordered to go through a futile effort.

The third factor is closely related. Allowing the immigration judge to determine whether Petitioner is eligible for bond may preclude the need for judicial review.

Torrealba, 2025 WL 2444114 at *10.

Those factors favor requiring exhaustion, but a court can override the balance tipping in favor of exhaustion if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Id.* at *9 (quotation omitted). The remedy the immigration judge can provide is the same requested by Petitioner herein, and as discussed above, the pursuit isn’t futile. Finally, although Petitioner obviously wants to be released from detention, “continued imprisonment does not constitute irreparable harm.” *Martin v. Puzio*, 2025 WL 1678472 at *3 (D. Conn. June 13, 2025) (citing cases). “If incarceration alone were the irreparable injury complained of, then the exception would swallow the rule that the INS administrative remedies must be exhausted before resorting to the federal courts.” *Givah v. McElroy*, 1997 WL 782078, at *4 (S.D.N.Y. Dec. 19, 1997).

The Court should conclude that Petitioner has available to her an expeditious and effective means to challenge her detention and order her to pursue a bond determination from an immigration judge once this matter is docketed by the EOIR.⁸

III. As Applied to Petitioner, § 1225(b) Comports with Due Process

Section 1225 does not provide for a bond hearing, regardless of whether the applicant for admission is placed into expedited or 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).

That the noncitizen 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-Arevalo v. Ripa*, No. 25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025). The noncitizen 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

⁸ A § 1229a removal proceeding was opened for Petitioner since the NTA was issued to her on August 30, 2023. Since she was apprehended October 15, 2025, ICE filed a form I-830 to notify EOIR that Salinas is detained at Grayson County Detention Center and awaits the immigration court providing her a court date. Ex. H (Form I-830). It is anticipated that EOIR in Cleveland will set a date soon. Once the immigration court sets this matter for a court date, Petitioner may file a motion for bond.

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.

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 noncitizen is detained. 8 U.S.C. § 1229a. The noncitizen is served with a charging document (NTA) outlining the factual allegations and the charge(s) of removability against him. *Id.* § 1229a(a)(2). She has an opportunity to be heard by an immigration judge and represented by counsel of her choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). She can seek reasonable continuances to prepare any applications for relief from removal, or she can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should she receive any adverse decision, she 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).

Moreover, relief applications are heard more expeditiously on the detained docket than the non-detained docket. *See* Section 9.1(e), Detention, <https://prod.justice.gov/eoir/reference-materials/ic/chapter-9/1> (last accessed Oct. 25, 2025). Some relief applications are subject to an annual cap, requiring immigration judges to “reserve” decisions to grant the application. *See* 8 C.F.R. § 1240.21(c). Judges are not required to reserve decisions in detained cases, however. *Id.*

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 she has been detained for only a brief period pending her removal proceedings. For noncitizens, 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 will soon be scheduled for a hearing in removal proceedings before an immigration judge on the detained docket due to her presence without admission. As applied here to Petitioner, § 1225(b)(2)(A) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

IV. This Court Cannot Release Petitioner Prior to the Immigration Judge Entertaining a Bond Hearing

Petitioner incorrectly asserts a right to detention pursuant to § 1226, even though she is clearly an applicant for admission under the INA. Section 1226 is a detention statute that pertains to individuals factually dissimilar to Petitioner. Nevertheless, Petitioner requests that this Court find she should be detained under § 1226 but then requests as relief that the Court immediately release her. *Pet.* at PageID#18. That is a legal oxymoron. Her request denies the very process statutorily mandated by the detention statute she claims as applicable.

Section 1226 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings*, 583 U.S. at 288. Section 1226(a) provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). “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*, 141 S. Ct. 2271, 2280–81 (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 the noncitizen, it may set a bond and/or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of her removal proceedings, the noncitizen 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 then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen’s ties to the United States and evaluate whether the noncitizen poses a flight risk or danger to the community, and on what terms. *See Guerra*, 24 I.&N. Dec. 37, 40 (BIA 2006);⁹ *see also* 8 C.F.R. § 1003.19(d).

⁹ The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien’s history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien’s manner of entry to the United States.” *Guerra*, 24 I. & N. Dec. at 40.

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factor that must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen 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).

The right to a bond hearing for noncitizens under § 1226 only occurs when the noncitizen is detained under § 1226. When a court concludes that § 1226 is the appropriate detention statute for a habeas petitioner, it is not concluding that release is appropriate, but rather that detention is appropriate under § 1226. Section 1226 release under bond occurs when the detained noncitizen moves for a bond hearing and bond, and circumstances forming bond and release, are determined by an immigration judge, not by a district court.

The idea that § 1226 simply permits release is antithetical to its language and its statutory purpose of detention. A finding that a detained noncitizen should be detained under § 1226, rather than § 1225(b)(2), is not a finding for release, but rather a finding that the noncitizen should be detained, unless she moves the immigration court for a bond and is so granted. If a district court finds it has the authority to direct which detention statute is appropriate for Petitioner and concludes DHS is incorrect in its interpretation and application of the statutes, ordering an immediate release and a

future bond hearing violates the very detention statute that the court purports to enforce and usurps the discretion of the immigration judge who must conclude jurisdiction is proper before considering any request for bond. Ordering release rather than a bond hearing invades the adjudication of the removal proceeding and usurps the Attorney General's statutory authority to determine whether an alien detained pending removal proceedings should be released on bond.

CONCLUSION

For the reasons stated herein, the Court should deny the petition for a writ of habeas corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

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