

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Antonio Adrian CASTILLO and Juan Jose
LEON LOZA on behalf of themselves as
individuals and on behalf of others similarly
situated,

Plaintiffs,

v.

Mary DE ANDRA-YBARRA, Field Office
Director, El Paso Field Office, Dora
CASTRO, Warden of Otero Processing
Center; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; Pamela
BONDI, U.S. Attorney General; Sirce
OWEN, Acting Director, EOIR; OTERO
IMMIGRATION COURT; EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW
(EOIR);

Defendants.

Case No. **2:25-cv-01074-JB-JFR**

**NAMED PLAINTIFFS' EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs (or Petitioners), Antonio Adrian Castillo (individually as “Mr. Castillo”) and Juan Jose Leon Loza (individually as “Mr. Leon Loza”), have filed the instant lawsuit and petition for Habeas Corpus against Defendants alleging violations of the Due Process Clause, the Administrative Procedure Act, and the Immigration and Nationality Act (“INA”). Because Defendants (or Respondents) have assigned a new Immigration Judge to Mr. Castillo’s case and, subsequently rescheduled it to an earlier hearing, Plaintiffs have filed a Motion for Temporary Restraining Order.

I. FACTUAL BACKGROUND

i. Mr. Castillo's Bond Stay

Mr. Castillo has been in immigration detention since December 2024. Mr. Castillo was detained under 8 U.S.C. § 1226(a) and was entitled to a bond hearing despite entering without inspection. On April 28, 2025, an Immigration Judge (“IJ”), nonetheless, denied Mr. Castillo’s bond redetermination request on the basis that Mr. Castillo was a danger to the community. On April 30, 2025, Mr. Castillo appealed the decision to the Board of Immigration Appeals (“Board”).

On July 8, 2025, DHS issued *Interim Guidance Regarding Detention Authority for Applicants for Admission*. See Tab A. This guidance declared that all people who entered the United States without inspection were deemed “applicants for admission” under 8 U.S.C. § 1225(b)(2)(A), and were therefore subject to mandatory detention.

On August 20, 2025, the Board remanded Mr. Castillo’s bond matter for further proceedings and issuance of a new decision on the ground that the IJ’s finding was clearly erroneous. On August 28, 2025, the IJ granted Mr. Castillo bond after Mr. Castillo demonstrated that he was neither a flight risk nor a danger to the community. The IJ ordered bond in the amount of \$20,000. On August 29, 2025, the Department of Homeland Security (“DHS”) filed a form EOIR-43, Notice of ICE intent to Appeal Custody Redetermination. This triggered an automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2) until DHS filed a Notice of Appeal. See Tab B. Mr. Castillo’s family could not pay a bond.

On September 5, 2025, the Board decided *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board adopted the argument presented in the July 8, 2025, issuance and held that IJs

lacked authority to hear bond requests for noncitizens who are present in the United States without admissions. On September 10, 2025, before the DHS stay lapsed, DHS filed form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge. *See* Tab B. DHS attached a memorandum of law that only argued the IJ lacked jurisdiction to hear the bond matter because Mr. Castillo was classified as an “applicant for admission”. This argument was consistent with the July 8, 2025, issuance. DHS did not argue whether Mr. Castillo was a flight risk or a danger to the community, contrary to the IJ’s findings which are factors that determine immigration bonds.

During the pendency of the second appeal, Mr. Castillo was previously scheduled for his final immigration hearing on November 12, 2025, at the Otero Immigration Court in Chaparral, New Mexico. *See* Tab C (Hearing Notice). On October 29, 2025, Mr. Castillo’s removal case was assigned to a new Immigration Judge. *See* Tab C (ECAS Screen Shot). Mr. Castillo’s case was also rescheduled to an early date. *See* Tab C (Case Notice). Mr. Castillo’s new hearing now shows he is scheduled for a hearing on November 5, 2025, starting at 8:30 AM and ending at 9:00 AM. *See* Tab C. Mr. Castillo’s bond appeal is pending.

ii. Mr. Leon Loza’s bond ineligibility

Mr. Leon Loza has been detained since August 16, 2025. Despite entering without inspection, Mr. Leon Loza was released from immigration custody in 2019 pursuant to a bond under 8 U.S.C. § 1226(a). Mr. Leon Loza would show this paperwork every time he passed through an immigration checkpoint. However, on August 16, 2025, he was informed by immigration officials at an immigration checkpoint that his paper was no longer valid and he was subsequently detained. Mr. Leon Loza is scheduled for a hearing on November 13, 2025 at the Otero Immigration Court in Chaparral, New Mexico.

Mr. Leon Loza has built a life in the United States since he first arrived around 1999. He has three United States Citizen children. He has two restaurants and employs about 25 people. He has even had the opportunity to host the U.S. Border Patrol at his restaurant. His restaurant is located six blocks from the Federal Law Enforcement Training Center in Artesia, New Mexico. While his first arrival was around August 1999, Mr. Leon Loza entered without inspection. Thus, Mr. Leon Loza cannot seek bond during his removal proceedings. Mr. Leon Loza would be considered by DHS an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and is therefore subject to mandatory detention.

II. ARGUMENT

To obtain a temporary restraining order, Petitioners must establish: (1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest. *See Diné Citizens Against Ruining Our Environment v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). The Petitioners’ right to relief must be clear and unequivocal. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005). The purpose of a preliminary injunction “is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

A district court’s habeas jurisdiction includes challenges to immigration-related detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). A writ of habeas corpus may be granted to a petitioner who is in custody in violation of the Constitution or federal law. *See* 28 U.S.C. § 2241(c)(3).

Petitioners’ assert the merits of their claims satisfy the requirements for a temporary restraining order relief. Further, they are likely to succeed on the merits of their Petition for Writ of Habeas Corpus on the basis that their continued detention is unlawful and preliminary injunction relief is warranted.

A. Likelihood of Success on the Merits

Petitioners assert that they are likely to succeed on the merits of their Petition for Writ of Habeas Corpus because (1) Petitioners are eligible for bond under 8 U.S.C. § 1226(a) and being detained without bond violates the INA, and (2) continued detention after an IJ has granted bond, based on the unilateral automatic stay under 8 C.F.R. § 1003.19(i)(2), violates an applicant’s procedural and substantive due process rights.

1. Plaintiffs are eligible for bond under 8 U.S.C. § 1226(a) and cannot be considered “applicants for admission” under 8 U.S.C. § 1225.

Respondents’ policy subjects anyone who entered without inspection to mandatory detention. Respondents justify this policy by asserting that individuals who entered without inspection are deemed “applicants for admission” under § 1225 and are therefore ineligible for bond under that provision. This interpretation rests solely on the manner of entry and disregards the noncitizen’s length of residence in the United States, as well as the fact that the apprehension occurred in the interior, far from any international border.

Respondents’ policy, however, has improperly extended § 1225. The reinterpretation of “applicant for admission” violates the Constitution and federal law. Section 1225 is titled the “Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing”. So, it is only natural to apply the term “applicants for admission” in the context of the statute. *See* 8 U.S.C. § 1225(a)(1). Petitioners’ position is that the definition cannot

be applied to every single noncitizen in the United States when § 1225 clearly, and plainly, applies to “application for admission” in the context of inspections.

The INA defines “admission” and “admitted” with respect to the noncitizen as the lawful entry of the noncitizen into the United States *after* inspection and authorization by an immigration officer. *See* 8 U.S.C. § 1101(a)(13)(A). Section 1225(a) dictates who is subject to inspection upon a border encounter. Accordingly, during inspection an admission into the United States takes place only when the inspecting officers communicate to the applicant that he or she has been determined not to be inadmissible. *See Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). This communication takes place when the inspecting officer permits the applicant to pass through the port of entry. *Id.*

Section § 1225 explains the inspection process for both applicants for admission and “other” noncitizens. *See* 8 U.S.C. §§ 1225(b) (Inspection of applicants for admissions); 1225(b)(2) (Inspection of other aliens). But even the language of § 1225(b)(2) demonstrates that the definition of “applicant for admission” is limited to the inspection context. By its plain text, § 1225(b)(2) states that a noncitizen seeking admission shall be detained for full removal proceedings if the examining immigration office determines that the noncitizen is not clearly and beyond doubt entitled to admission. For the statute to apply it requires (1) a noncitizen seeking admission/entry, and (2) an examining immigration officer inspecting a noncitizen for admission. *See* 8 U.S.C. § 1225(b)(2). This is consistent with the Supreme Court’s interpretation of § 1225(b) finding that it “applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). “It is inconsistent with the plain, ordinary meaning of the phrase “seeking admission” to apply this section to all noncitizens already present and residing in the U.S., regardless of whether they are taking any

affirmative acts that constitute “seeking admission.” *See Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *13 (D. Nev. Sept. 17, 2025).

Petitioners cannot be deemed to be “arriving” as defined by section 1225. Petitioners previously entered the United States without inspection, which places them within the detention framework of 8 U.S.C. §§ 1226(a) and (c). *See Jennings v. Rodriguez*, 583 U.S. at 287 (2018) (“In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already* in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).”). Other district courts have recognized that noncitizens who entered without inspection and were placed in removal proceedings traditionally received bond hearings unless they were ineligible under § 1226(c) due to their criminal histories. *See Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *15 (D. Nev. Sept. 17, 2025).

This agency practice is not only well-established, but it was also evident in Petitioners’ cases. Without a doubt Mr. Castillo was given two bond hearings on the same matter. Most importantly, the Board remanded the Mr. Castillo’s case to the IJ with explicit instructions to issue a new bond determination. In doing so, a three-member appellate panel confirmed that the Immigration Court must continue exercising jurisdiction to make a new bond decision. Additionally, in Mr. Castillo’s first bond the question of jurisdiction was not raised nor was it raised when DHS filed its brief. It wasn’t until the second bond, after the issuance of the policy, that DHS raised jurisdiction questions for the first time. Mr. Leon Loza’s circumstances are quite similar in that he was already granted bond in 2019. However, given that there was a policy change, section 1225 was reinterpreted after years of agency practice.

Petitioners assert that they are bond eligible under 8 U.S.C. § 1226(a). Denying Petitioners bond is a violation of Constitutional law and federal law.

2. DHS’s invocation of the automatic stay under 8 C.F.R. § 1003.19(i)(2) is a violation of Petitioners’ Due Process rights.

As other district courts have recognized, the unilateral automatic stay under 8 C.F.R. § 1003.19(i)(2) is a violation of Petitioners’ Due Process.¹ Petitioners’ assert that the application of a unilateral automatic stay is a violation of Due Process where the IJ has already granted a bond order and DHS’s contention on appeal is solely based on jurisdictional arguments.

The Due Process clause prohibits deprivations of life, liberty, and property without due process of law. *See* U.S. Const. amend. V. To determine whether detention violates procedural due process courts apply the three-part test outlined in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts weigh: (1) “the private interest that will be affected by the official action”, (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”, and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”. *See Mathews v. Eldridge*, 424 U.S. at 335.

Substantive due process protects individuals from government action that interferes with fundamental rights. *See Abdi v. Wray*, 942 F.3d 1019, 1027 (10th Cir. 2019). A government action

¹ *See e.g. Puerto-Hernandez v. Lynch, et al.*, No. 1:25-CV-1097, 2025 WL 3012033, at *11 (W.D. Mich. Oct. 28, 2025); *Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, 2025 WL 3006772, at *12 (W.D. Ky. Oct. 27, 2025), *Garcia Picazo v. Sheehan, et al.*, No. C25-4057-LTS-MAR, 2025 WL 3006188, at *5 (N.D. Iowa Oct. 27, 2025); *Cesario Souza v. Hyde, et al.*, No. 25-CV-12461-DJC, 2025 WL 2997670, at *2 (D. Mass. Oct. 24, 2025).

violates substantive due process where a government action has infringed on a fundamental right without a compelling government purpose. *See Id.*

Petitioners' procedural due process rights have been violated, and the *Matthew* factors weigh in their favor. First, the invocation of DHS's unilateral automatic stay affects the private interest of Petitioners. That interest is being free from imprisonment which is "the most elemental of liberty interests". *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The automatic stay infringes on this fundamental right by preventing individuals from earning income, disrupting their ability to operate businesses, imposing severe financial and emotional distress on both the individual and the family, hindering reunification with family members, and impairing meaningful access to counsel. The first factor weighs in Petitioner's favor.

Second, the unilateral automatic stay creates a risk of erroneous and arbitrary confinement. The automatic stay is a unilateral decision that is applied *after* an IJ has already granted an order for bond. This is crucial because in order to be granted bond, the noncitizen must demonstrate to the satisfaction of the court that their release would not pose a danger to property or persons and that he is likely to appear for future proceedings. *See* 8 C.F.R. § 1236.1(c)(8); *see also Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112-13 (BIA 1999). Mr. Castillo has already satisfied these requirements. In fact, DHS does not challenge the IJ's findings regarding danger and flight risk on the second appeal. Instead, DHS only argues jurisdiction.

The automatic stay also creates a risk of erroneous and arbitrary confinement because there are no procedural standards nor safeguards for the application of the automatic stay. Despite an exciting IJ's bond order, "the automatic stay permits the United States to "usurp" the IJ's role and

unilaterally decide to nevertheless detain Petitioner[s], in contrast with the IJ's express ruling. *See Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, 2025 WL 3006772, at *12 (W.D. Ky. Oct. 27, 2025).

Lastly, the last factor weighs against the government because there is already a procedural mechanism to determine bonds in immigration detention. As mentioned above, it is the burden of noncitizen to demonstrate to the satisfaction of the IJ that they are not a danger to the community nor a flight risk. *See* 8 C.F.R. § 1236.1(c)(8); *see also Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112-13 (BIA 1999). Imposing the automatic stay after an IJ has granted bond nullifies the IJ's authority to make meaningful custody determinations. As the designated fact-finder, the IJ is uniquely positioned to evaluate flight risk and danger to the community. As the Attorney General has long established, IJ have "extensive discretion" to determine whether to release a noncitizen on bond. *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003). This discretion is particularly critical where the government's appeal challenges only the court's jurisdiction, not the IJ's individualized assessment of flight risk or dangerousness. Thus, the third *Matthew* factor should weigh in Petitioners' favor.

B. Irreparable Harm

The second factor for a temporary restraining order requires a showing that irreparable harm will occur unless the injunction is issued. *See Diné Citizens Against Ruining Our Environment v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). It is long established that the deprivation of a Constitutional right constitutes an irreparable injury. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *9 (D. Colo. Aug. 8, 2025). Here, Petitioners' both demonstrated that they are being denied a bond hearing because they are subject to mandatory detention under section 1225.

However, Petitioners are in fact eligible for bond as previously demonstrated. Additionally, the application of the automatic stay is also a violation of due process as it is applied. Where an IJ has already ordered bond release and the government does not challenge the individual favors in meriting a bond, Petitioners' due process rights are violated.

C. Balance of Harm

The last factors for a temporary restraining order require showing that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party and that the injunction will not adversely affect the public interest. *See Diné Citizens Against Ruining Our Environment v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016).

As other district courts have found, the harm to the government is minimal. *See Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *22 (D. Nev. Sept. 17, 2025). The Respondents' new policy is already against their interest as mass detention is expensive. Subjecting millions of noncitizens to detention only guarantees a cost on the government through housing and other infrastructure. Additionally, the enforcement of immigration law continues whether the noncitizen is detained or not. Respondents' have policies and mechanisms in place to determine who absolutely needs to be detained and who does not. Petitioners' do not meet the criteria.

Lastly, in the balance of equities, the hardships faced by Petitioners and the public interest weigh strongly in favor of granting a temporary restraining order. The hardships faced by Petitioners are only exacerbated by the hardships their families must endure. Additionally, the issuance of a temporary restraining order serves the public interest because it prevents the unconstitutional detention of Petitioners. As for Mr. Castillo, the issuance of a temporary restraining order is vital to hearing his claim. If ordered removed, he will be detained under a different statute of the INA.

D. No Bond Should be Required

Under FRCP 65(c), the Court may issue a preliminary injunction only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to be wrongfully enjoined or restrained. *See* Fed.R.Civ.P 65(c); *see also RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1215 (10th Cir. 2009) (finding trial courts have “wide discretion” under Rule 65(c)). As such, Petitioners respectfully request that no bond be issued in the matter. The government will not experience meaningful harm prior to the preliminary hearing. Preserving the *status quo* during that period is functionally equivalent to a continuance in immigration court, a procedural event the government routinely accommodates without prejudice.

III. CONCLUSION

For the above-mentioned reasons, the Plaintiffs respectfully request that Temporary Injunction Order be filed for purposes of preserving the *status quo*.

/S/ FELIPE D.J. MILLAN

FELIPE D.J. MILLAN

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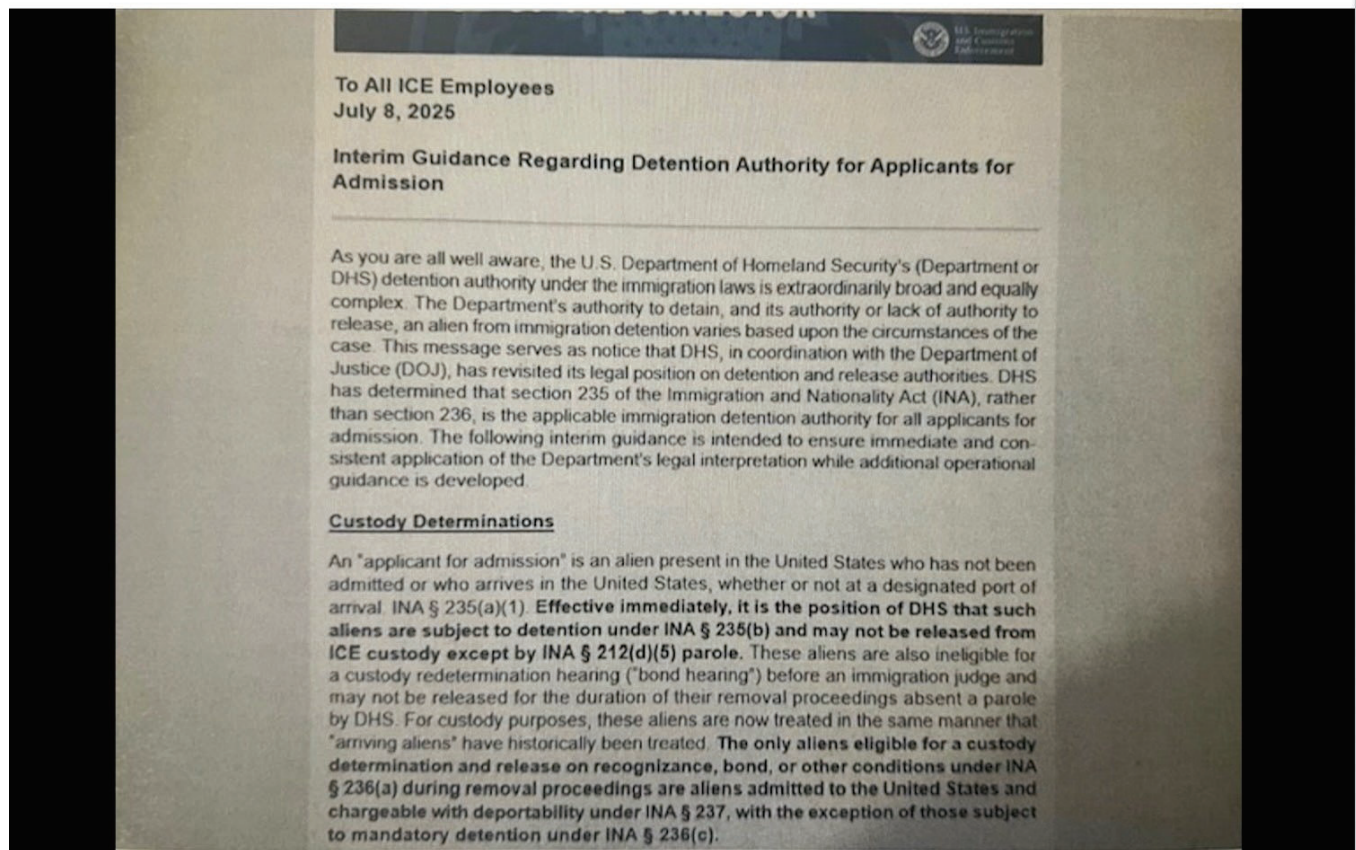
TAB

A

ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission

7/8/25 | AILA Doc. No. 25071607. | [Detention & Bond](#), [Removal & Relief](#)

On July 8, 2025, ICE issued interim guidance regarding detention authority for applicants for admission.



Moving forward, ICE will not issue Form I-286, *Notice of Custody Determination*, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(ii), (iii)(V), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to rearresting an alien on this basis.

Parole Requests by Previously Released Aliens

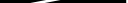
It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by issuing INA § 212(d)(5) parole paperwork.

TAB

B

Notice of ICE Intent to Appeal Custody Redetermination

Date: August 29, 2025

Alien Number: 

Alien Name: Antonio Adrian CASTILLO, AKA: OSCAR BARROZO

1. Immigration and Customs Enforcement (ICE) has:
 - ☒ a. Held the respondent without bond.
 - ☐ b. Set the respondent's bond at \$ _____ .
2. The Immigration Judge on _____ August 28, 2025
(Date)
 - ☐ a. Authorized the respondent's release.
 - ☒ b. Redetermined the ICE bond to \$ _____ 20,000.00 .
3. Filing this form on _____ August 29, 2025
(Date) automatically stays the Immigration Judge's custody redetermination decision. See 8 C.F.R. §1003.19(i)(2).
4. The stay shall lapse if ICE does not file a notice of appeal along with appropriate certification within ten business days of the issuance of the order of the Immigration Judge, or upon ICE's withdrawal of this notice, or as set forth in 8 C.F.R. §1003.6(c)(4) and (5).
See 8 C.F.R. §1003.6(c)(1).

ICE Counsel

I, Michele Renteria, served the Notice of ICE Intent to Appeal Custody Redetermination on
(Name)
Respondent's counsel, Felipe Millan, via ECAS
_____, on August 29, 2025.
(Respondent or Respondent's Representative) (Date)

Signature _____

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB# 1125-0002
**Notice of Appeal from a Decision of an
Immigration Judge**

Staple Check or Money Order Here. Include Name(s) and "A" Number(s) on the face of the check or money order.

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

CASTILLO, Antonio Adrian

A [REDACTED]

APPEAL BY THE U.S. DEPARTMENT OF HOMELAND SECURITY

Michele M. Renteria
Assistant Chief Counsel
DHS-ICE, Office of the Principal Legal Advisor
26 McGregor Range Road
Chaparral, NM 88081

For Official Use Only



WARNING: Names and "A" Numbers of **everyone** appealing the Immigration Judge's decision must be written in item #1. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am ☐ the Respondent/Applicant ☒ DHS-ICE (Mark only one box.)

3. I am ☒ DETAINED ☐ NOT DETAINED (Mark only one box.)

4. My last hearing was at Otero Immigration Court, Chaparral, New Mexico (Location, City, State)

5. **What decision are you appealing?**

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

☐ I am filing an appeal from the Immigration Judge's decision in **merits proceedings** (example: removal, deportation, exclusion, asylum, etc.) dated _____.

☒ I am filing an appeal from the Immigration Judge's decision in **bond proceedings** dated August 28, 2025. (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? ☒ Yes. ☐ No.)

☐ I am filing an appeal from the Immigration Judge's decision **denying a motion to reopen or a motion to reconsider** dated _____.

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

6. State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.

See attached statement.

(Attach additional sheets if necessary)



WARNING: You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? ☐ Yes ☒ No
8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? ☐ Yes ☒ No
9. If you are unrepresented, do you give consent to the BIA Pro Bono Project to have your case screened by the Project for potential placement with a free attorney or accredited representative, which may include sharing a summary of your case with potential attorneys and accredited representatives? (There is no guarantee that your case will be accepted for placement or that an attorney or accredited representative will accept your case for representation) ☐ Yes ☐ No



WARNING: If you mark "Yes" in item #7, you should also include in your statement above why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule.

10. **Print Name:** Michele Renteria

11. **Sign Here:** X

Signature of Person Appealing
(or attorney or representative)

Date

12.

Mailing Address of Respondent(s)/Applicant(s)	Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)
CASTILLO, Antonio Adrian	Felipe Millan
(Name)	(Name)
26 McGregor Range Road	1147 Montana Ave.
(Street Address)	(Street Address)
(Apartment or Room Number)	(Suite or Room Number)
Chaparral, NM 88081	El Paso, TX 79902
(City, State, Zip Code)	(City, State, Zip Code)
(Telephone Number)	(Telephone Number)

NOTE: You must notify the Board within five (5) working days if you move to a new address or change your telephone number. You must use the Change of Address Form/Board of Immigration Appeals (Form EOIR-33/BIA).

NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

13.

PROOF OF SERVICE (You Must Complete This)

I _____ mailed or delivered a copy of this Notice of Appeal
(Name)

on _____ to _____
(Date) (Opposing Party)

at _____
(Number and Street, City, State, Zip Code)

☒ No service needed. I electronically filed this document, and the opposing party is participating in ECAS.

**SIGN
HERE**

☒ _____
Signature

NOTE: If you are the Respondent or Applicant, the “Opposing Party” is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee payment receipt, fee, or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- | | |
|--|--|
| ☐ Read all of the General Instructions.
☐ Provided all of the requested information.
☐ Completed this form in English.
☐ Provided a certified English translation for all non-English attachments.
☐ Signed the form. | ☐ Served a copy of this form and all attachments on the opposing party, if applicable.
☐ Completed and signed the Proof of Service
☐ Attached the required fee payment receipt, fee, or Fee Waiver Request.
☐ If represented by attorney or representative, attach a completed and signed EOIR-27 for each respondent or applicant. |
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CASTILLO, Antonio Adrian

A 

ATTACHMENT TO FORM EOIR-26 AND MEMORANDUM OF LAW

The Immigration Judge erred in ordering the respondent released from the custody of the Department of Homeland Security (DHS) pursuant to section 236(a) of the Immigration and Nationality Act (INA). Section 235 of the INA is the applicable immigration detention authority for all applicants for admission. Section 236 of the INA is the applicable detention authority for aliens who are already present in the United States after an admission and are deportable. *Id.* §§ 236, 237(a). The respondent, who is present in the United States without admission or parole (PWAP), is an applicant for admission in INA § 240 removal proceedings and is therefore detained pursuant to INA § 235(b)(2)(A). DHS requests that the Board of Immigration Appeals (Board) reverse the decision of the Immigration Judge in a precedent decision, as this case presents an issue that “arise[s] frequently in immigration cases,” and given the “need to achieve, maintain, or restore national uniformity of interpretation of issues under the immigration laws or regulations.” 8 C.F.R. § 1003.1(g)(3)(ii), (v).¹

¹ This case presents substantive issues that would benefit from clarification from the Board in a precedential decision. Notably, the Executive Office for Immigration Review (EOIR) recently issued a policy memorandum acknowledging that “when conflicting Board precedents exist, Immigration Judges are uncertain as to which line of precedent they are obligated to follow.” EOIR PM 25-34, *Conflicting Precedents of the Board of Immigration Appeals* § I, at 2 (July 3, 2025). That EOIR recognizes there are situations in which multiple lines of precedent may be in tension or conflict with one another underscores the need for Board precedent on this issue.

ISSUE PRESENTED

1. The Immigration Judge erred in ordering the respondent released from DHS custody pursuant to INA § 236(a), where the respondent is an applicant for admission and is thus subject to detention pursuant to INA § 235(b)(2)(A) and ineligible for release but for a release on parole by DHS pursuant to INA § 212(d)(5).

STANDARD OF REVIEW

The Board reviews questions of fact for clear error, 8 C.F.R. § 1003.1(d)(3)(i), and “questions of law, discretion, and judgment and all other issues in appeals from decisions of [I]mmigration [J]udges *de novo*,” *id.* § 1003.1(d)(3)(ii). The statutory authority governing an alien PWAP’s detention and whether such an alien is eligible for a custody redetermination hearing before an Immigration Judge is a question of law reviewed *de novo*. *See id.*

SUMMARY OF THE ARGUMENT

Section 235 of the INA is the applicable detention authority for all applicants for admission; specifically, INA § 235(b)(2)(A) provides the detention authority for aliens PWAP² placed in INA § 240 removal proceedings given such aliens are both applicants for admission under INA § 235(a)(1) and aliens seeking admission under INA § 235(b)(2)(A). Section 236 of the INA is the applicable detention authority for those aliens who have been admitted and are deportable. The respondent, who is an alien PWAP, is properly detained pursuant to INA

² The respondent in this case has not been granted parole. Nonetheless, it bears emphasis that as explained in Argument I.C. below, an alien granted parole remains an applicant for admission and therefore subject to detention under INA § 235. INA § 212(d)(5)(A) (permitting parole only for aliens “applying for admission” and requiring that the alien “continue to be dealt with in the same manner as that of any other applicant for admission to the United States” following parole); *see* 8 C.F.R. §§ 1.2 (providing that “[a]n arriving alien remains an arriving alien even if paroled pursuant to [INA §] 212(d)(5)”), 1001.1(q) (same). The Supreme Court and the Board have long recognized that aliens paroled into the United States are legally in the position of aliens standing at the border, regardless of the duration of their parole. *See Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958); *Matter of Abebe*, 16 I&N Dec. 171, 173 (BIA 1976) (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan v. Tod*, 267 U.S. 228 (1925)); *Matter of L-Y-Y-*, 9 I&N Dec. 70 (BIA; A.G. 1960); *see also, e.g., Duarte v. Mayorkas*, 27 F.4th 1044, 1059-60 (5th Cir. 2022); *Ibragimov v. Gonzales*, 476 F.3d 125, 134 (2d Cir. 2007). Accordingly, although this brief refers as shorthand to aliens PWAP, aliens who are present without admission but have been paroled likewise remain applicants for admission subject to detention under INA § 235.

§ 235(b)(2)(A) such that the Immigration Judge lacked authority to redetermine the respondent’s custody.

STATEMENT OF THE CASE

The respondent is a native and citizen of Mexico who entered the United States on or about July 1, 2023, between POEs and without having been admitted or paroled after inspection by an immigration officer. A Notice to Appear was issued on January 2, 2025, which charged the respondent with being inadmissible pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. On April 28, 2025, a bond hearing was held, and the Immigration Judge denied bond and found the respondent to be a danger and a flight risk. On August 20, 2025, the Board of Appeals remanded the case for the Immigration Judge to reassess dangerousness and flight risk and other relevant factors for bond redetermination. A subsequent bond hearing was held on August 28, 2025, and the Immigration Judge granted bond in the amount of \$20,000.

ARGUMENT

APPLICANTS FOR ADMISSION ARE SUBJECT TO DETENTION UNDER INA § 235 AND ARE INELIGIBLE FOR RELEASE BY AN IMMIGRATION JUDGE

The Immigration Judge erred in ordering the respondent released pursuant to INA § 236(a), where the respondent is an applicant for admission in INA § 240 removal proceedings and is thus subject to detention under INA § 235(b)(2)(A). Section 235 of the INA is the applicable detention authority for all applicants for admission—both arriving aliens and PWAPs alike—regardless of whether the alien was initially processed for expedited removal proceedings under INA § 235 or placed directly into removal proceedings under INA § 240. “Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond



to aliens who are present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

“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) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 235 of the INA defines an “applicant for admission” as an “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 . . .)” INA § 235(a)(1); see *Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”). Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens and (2) aliens PWAP. See *Dep’t of Homeland Sec. 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’” (citing INA § 235(a)(1)); *Matter of Lemus*, 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”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted” (citing INA § 235(a)(1))). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or attempting to come into the United States at a [POE]” 8 C.F.R. §§ 1.2, 1001.1(q). Section 212(a) of the INA describes certain classes of aliens who are



inadmissible, including aliens “present in the United States without being admitted or paroled[.]” INA § 212(a)(6)(A)(i).

All aliens who are applicants for admission “shall be inspected by immigration officers.” *Id.* § 235(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . .”). An applicant for admission seeking admission at a United States POE “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* INA § 240(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 [POE] . . . is subject to the provisions of [INA § 212(a)] and to removal under [INA §] 235(b) or [INA §] 240.” 8 C.F.R. § 235.1(f)(2).

Here, the respondent did not present himself at a POE but instead entered the United States on or about July 1, 2023, between POEs and without having been admitted or paroled after inspection by an immigration officer. The respondent is therefore an alien PWAP and, consequently, an applicant for admission.

Both arriving aliens and aliens PWAP, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal under INA § 235(b)(1)³ or removal

³ Section 235(b)(1) of the INA authorizes immigration officers to order certain inadmissible aliens “removed from the United States without further hearing or review” if the immigration officer finds that the alien, “who is arriving in the United States or is described in [INA § 235(b)(1)(A)(iii)] is inadmissible under section 212(a)(6)(C) or 212(a)(7).” INA § 235(b)(1)(A)(i); *see* 8 C.F.R. § 235.3(b)(2)(i). If DHS wishes to pursue inadmissibility charges other than INA § 212(a)(6)(C) or (a)(7), DHS must place the alien in removal proceedings under INA § 240. 8 C.F.R. § 235.3(b)(3). Additionally, an alien PWAP “who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with [INA § 235(b)(2)] for a proceeding under [INA § 240].” *Id.* § 235.3(b)(1)(ii);



proceedings before an Immigration Judge under INA § 240. INA §§ 235(b)(1), (b)(2)(A), 240; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how “applicants for admission fall into one of two categories, those covered by [INA § 235(b)(1)] and those covered by [INA § 235(b)(2)]”). Immigration officers have discretion to apply expedited removal under INA § 235 or to initiate removal proceedings before an Immigration Judge under INA § 240. *E-R-M- & L-R-M-*, 25 I&N Dec. at 524; *see also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(1) of the INA, or full removal proceedings under section 240 of the INA” (citations omitted))

A. Immigration Judges Do Not Have Authority to Redetermine the Custody Status of Applicants for Admission in Expedited Removal Proceedings Given They Are Detained Pursuant to INA § 235(b)(1).

Applicants for admission whom DHS places into expedited removal under INA § 235 are subject to detention under INA § 235(b)(1); such aliens (including those referred for INA § 240 removal proceedings after establishing a credible fear of persecution or torture) are ineligible for a bond hearing before an Immigration Judge. INA § 235(b)(1)(B)(ii) (providing for detention of any alien who is found to have established a credible fear of persecution in expedited removal proceedings for further consideration of their asylum application), (iii)(IV) (“Any alien subject to the procedures under [INA § 235(b)(1)(B)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); *see also* 8 C.F.R. § 235.3(b)(2)(iii) (“An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending

id. § 1235.6(a)(1)(i) (providing that an immigration officer will issue and serve an NTA to an alien “[i]f, in accordance with the provisions of [INA § 235(b)(2)(A)], the examining immigration officer detains an alien for a proceeding before an immigration judge under [INA § 240]”).



determination and removal.”), (b)(4)(ii) (“Pending the credible fear determination by an asylum officer and any review of that determination by an [I]mmigration [J]udge, the alien shall be detained.”); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that aliens PWAP placed in expedited removal and later transferred to INA § 240 removal proceedings after establishing a credible fear of persecution or torture are subject to detention under INA § 235(b)(1) and are ineligible for release under INA § 236).

The respondent, an applicant for admission, has never been subject to expedited removal proceedings and is therefore not subject to detention under INA § 235(b)(1). However, the respondent is an alien PWAP in INA § 240 removal proceedings and is therefore subject to detention under INA § 235(b)(2)(A).

B. Immigration Judges Do Not Have Authority to Redetermine the Custody Status of Applicants for Admission in INA § 240 Removal Proceedings Given They Are Detained Pursuant to INA § 235(b)(2)(A).

Applicants for admission whom DHS places in removal proceedings before an Immigration Judge under INA § 240 are similarly subject to detention and ineligible for a custody redetermination hearing before an Immigration Judge. Specifically, aliens PWAP placed in INA § 240 removal proceedings are both applicants for admission as defined in INA § 235(a)(1) *and* aliens “seeking admission,” as contemplated in INA § 235(b)(2)(A). Such aliens are subject to detention under INA § 235(b)(2)(A) and thus ineligible for a bond redetermination hearing before the Immigration Judge.

- i. Aliens PWAP whom DHS places in INA § 240 removal proceedings are subject to detention under INA § 235(b)(2)(A) and ineligible for a bond hearing before an Immigration Judge.

Section 235(b)(2)(A) of the INA “serves as a catchall provision that applies to all applicants for admission not covered by [INA § 235(b)(1)].” *Jennings*, 583 U.S. at 287; *see* INA § 235(b)(2)(A), (B). Under INA § 235(b)(2)(A), “an alien who is an applicant for admission”

“*shall be detained* for a proceeding under [INA §] 240” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” INA § 235(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into INA § 240 removal proceedings in lieu of expedited removal proceedings under INA § 235 “shall be detained” pursuant to INA § 235(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to section 240 of the [INA] shall be detained in accordance with section 235(b) of the [INA]” unless paroled pursuant to INA § 212(d)(5)).

Thus, according to the plain language of INA § 235(b)(2)(A), applicants for admission in INA § 240 removal proceedings “*shall be detained*.” INA § 235(b)(2)(A) (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)); see *Lamie*, 540 U.S. at 534 (“It is well established that when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” (quotation marks omitted)). As the Supreme Court observed in *Jennings*, nothing in INA § 235(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that INA § 235(b)(2)(A) applies only to arriving aliens. The distinction the Attorney General drew in the 1997 Interim Rule (addressed in detail below) between “arriving aliens,” see 8 C.F.R. §§ 1.2, 1001.1(q), and “aliens who are present without being admitted or paroled,” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62



Fed. Reg. 10,312, 10,323 (Mar. 6, 1997),⁴ finds no purchase in the statutory text. No provision within INA § 235(b)(2) refers to “arriving aliens,” or limits that paragraph to arriving aliens, as Congress intended for it to apply generally “in the case of an alien who is an applicant for admission.” INA § 235(b)(2)(A). Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. *See, e.g., id.* §§ 212(a)(9)(A)(i), 235(c)(1).

Until recently, DHS and the Department of Justice (DOJ) interpreted INA § 236(a) to be an available detention authority for aliens PWAP placed directly in INA § 240 removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, legal developments have made clear that INA § 235 is the sole applicable immigration detention authority for *all* applicants for admission. In *Jennings*, the Supreme Court explained that INA § 235(b) applies to all applicants for admission, noting that the language of INA § 235(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))). Similarly, the Attorney General, in *Matter of M-S-*, unequivocally recognized that INA § 235 and INA § 236(a) do not overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that

⁴ As discussed more below, the preamble language of the 1997 Interim Rule states that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10,323. However, preambular language is not binding and “should not be considered unless the regulation itself is ambiguous.” *El Comite Para El Bienestar de Earlimart v. Warmerdam*, 539 F.3d 1062, 1070 (9th Cir. 2008); *see also Wards Cove Packing Corp. v. Nat'l Marine Fisheries Serv.*, 307 F.3d 1214, 1219 (9th Cir. 2002) (“[T]he plain meaning of a regulation governs and deference to an agency’s interpretation of its regulation is warranted only when the regulation’s language is ambiguous.” (citing *Christensen v. Harris County*, 529 U.S. 576, 588 (2000))).

aliens PWAP placed into expedited removal proceedings are detained under INA § 235 even if later placed in INA § 240 removal proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the Board held that an alien who illegally crossed into the United States between POEs and was apprehended without a warrant while arriving is detained under INA § 235(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are subject to detention under INA § 235(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of [INA § 235(b)] to include illegal border crossers would make little sense if DHS retained discretion to apply [INA § 236(a)] and release illegal border crossers whenever the agency saw fit”).⁵ *Florida*’s conclusion “that [INA § 235(b)]’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

Given INA § 235 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens PWAP alike, regardless of whether the alien was initially processed for expedited removal proceedings under INA § 235 or placed directly into removal proceedings under INA § 240—and “[b]oth [INA § 235(b)(1) and (b)(2)] mandate detention” “throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 301–03, Immigration Judges do not have authority to redetermine the custody status of an alien PWAP.

⁵ Though not binding on the Board, *see Matter of Duarte-Gonzalez*, 28 I&N Dec. 688, 690 n.2 (BIA 2023); *Matter of K-S-*, 20 I&N Dec. 715, 718-19 (BIA 1993), the U.S. District Court for the Northern District of Florida’s decision is instructive here. *Florida* held that INA § 235(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either INA §§ 235(b) or 236(a). 660 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention under [INA § 235(b)] meaningless.” *Id.*

Here, the respondent is an applicant for admission (specifically, an alien PWAP), placed directly into removal proceedings under INA § 240. He is therefore subject to detention pursuant to INA § 235(b)(2)(A) and ineligible for a custody redetermination hearing before an Immigration Judge. “It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA].” *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). “In the context of custody proceedings, an Immigration Judge’s authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d)” *Id.* at 46. The regulation clearly states that “the [I]mmigration [J]udge is authorized to exercise the authority in section 236 of the [INA].” 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing Immigration Judges to review “[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236”); *see id.* § 1003.19(h)(2)(i)(B) (“[A]n [I]mmigration [J]udge may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [INA §] 212(d)(5)[.]”). “An Immigration Judge is without authority to disregard the regulations, which have the force and effect of law.” *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018). Thus, the Immigration Judge erred in ordering the respondent released from custody pursuant to INA § 236(a) given he is an applicant for admission and is therefore subject to detention under INA § 235(b)(2)(A).

- ii. Aliens PWAP in INA § 240 removal proceedings are both applicants for admission under INA § 235(a)(1) and aliens seeking admission under INA § 235(b)(2)(A).

As discussed above, aliens PWAP placed in removal proceedings under INA § 240 are applicants for admission as defined in INA § 235(a)(1), subject to detention under INA § 235(b)(2)(A), and thus ineligible for a bond redetermination hearing before the Immigration Judge. Such aliens are also considered “seeking admission,” as contemplated in INA

§ 235(b)(2)(A). To be sure, “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Lemus*, 25 I&N Dec. at 743; *see Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that “an application for admission [i]s a continuing one”).

In analyzing INA § 235(b)(2)(A), the Supreme Court in *Jennings* equated “applicants for admission” with aliens “seeking admission.” *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that INA § 235(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by [INA § 235(b)(1)].” *Id.* at 287. In doing so, it specifically cited INA § 235(b)(2)(A)—and thus did not appear to consider aliens “seeking admission” to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that “[a]liens who are instead covered by [INA § 235(b)(2)] are detained pursuant to a different process . . . [and] ‘shall be detained for a [removal] proceeding’” *Id.* at 288 (quoting INA § 235(b)(2)(A)). The Supreme Court considered all aliens covered by INA § 235(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that INA § 235(b) “applies primarily to aliens *seeking entry* into the United States (‘*applicants for admission*’ in the language of the statute).” *Id.* at 297 (emphases added). The Court therefore considered aliens seeking admission/entry and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission.

Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to INA § 235(b) detention: “In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under [INA §§ 235(b)(1) and (b)(2)].” *Id.* at



289. This was recently reiterated by the Board in *Matter of Q. Li*, which held that for aliens “seeking admission into the United States who are placed directly in full removal proceedings, [INA §] 235(b)(2)(A) . . . mandates detention ‘until removal proceedings have concluded.’” 29 I&N Dec. at 68 (quoting *Jennings*, 583 U.S. at 299).

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 (1996) bolsters the understanding that under the current statutory scheme, all applicants for admission are subject to detention under INA § 235(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 POEs. *See* INA § 235(a) (1995) (discussing “aliens arriving at ports of the United States”); *id.* § 235(b) (1995) (discussing “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.* § 241(a) (1995). 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.* § 241(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were “seeking admission” at a POE or had been paroled into the United States. *See id.* §§ 212(a), 235(a) (1995). Deportation proceedings (conducted pursuant to former INA § 242(b) (1995)) and exclusion proceedings (conducted pursuant to former INA § 236(a) (1995)) 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); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms commencing deportation, exclusion, or removal proceedings). 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* INA § 101(a)(13) (1995) (defining “entry” as “any coming of an alien into the United States, from a foreign port or place or from an outlying possession”); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has made an “entry” into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a “meaningfully interruptive” departure).

Former INA § 235 provided that aliens “seeking admission” at a POE who could not demonstrate entitlement to be admitted (“excludable” aliens) were subject to mandatory detention, with potential release solely by means of parole under INA § 212(d)(5) (1995). INA § 235(a)-(b) (1995). “Seeking admission” in former INA § 235 appears to have been understood to refer to aliens arriving at a POE.⁶ *See id.* The INS regulations implementing former INA § 235(b) provided that such arriving aliens had to be detained without parole if they had “no documentation or false documentation,” 8 C.F.R. § 235.3(b) (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c) (1995). With regard to aliens who entered without inspection and were deportable under former INA § 241, such aliens were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* INA §§ 241(a)(1)(B), 242(a)(1) (1995); 8 C.F.R. § 242.2(c)(1) (1995).

⁶ Given Congress’s overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, Congress clearly did not intend for the former understanding of “seeking admission” to be retained in the new removal scheme. Generally, “[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative and judicial interpretations as well.” *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior construction canon of statutory interpretation “is of little assistance here because, . . . this is not a case in which ‘Congress re-enact[ed] a statute without change.’” *Public Citizen Inc. v. U.S. Dep’t of Health and Human Servs.*, 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption “of congressional ratification” of a prior statutory interpretation “applies only when Congress reenacts a statute without relevant change.” *Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 349 (2005)).

As a result, “[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.” 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.

Martinez v. Att’y Gen., 693 F.3d 408, 413 n.5 (3d Cir. 2012) (citation omitted) (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). Consistent with this dichotomy, the INA, as amended by IIRIRA, defines *all* those who have not been admitted to the United States as “applicants for admission.” IIRIRA § 302.

Moreover, Congress’s use of the present participle—seeking—in INA § 235(b)(2)(A) should not be ignored. *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,” INA § 235(b)(2)(A) “signal[s] present and continuing action.” *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase “seeking admission” “does not include something in the past that has ended or something yet to come.” *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that “having” is a present participle, which is “used to form a progressive tense” that “means presently and continuously” (citing Bryan A. Garner, *Garner’s Modern American Usage* 1020 (4th ed. 2016))). The present participle “expresses present action in relation to the time expressed by the finite verb in its clause,” *Present Participle*, Merriam-Webster, <http://www.merriam-webster.com/dictionary/present%20participle> (last visited Aug. 7, 2025), with the finite verb in the same clause of INA § 235(b)(2)(A) being “determines.” Thus, when pursuant to INA § 235(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. Interpreting the present participle “seeking” as denoting an ongoing process is consistent with its ordinary usage. *See, e.g., Samayoa v. Bondi*, No. 24-1432, 2025 WL 2104102, at *2 (1st Cir. July 28, 2025) (alien inadmissible under INA § 212(a)(6)(A)(i) but “seeking to remain in the country lawfully” applied for relief in removal proceedings); *Garcia v. USCIS*, No. 23-35267, 2025 WL 2046176, at *2 (9th Cir. July 22, 2025) (“USCIS requires all U visa holders seeking permanent resident status under [INA § 245(m)] to undergo a medical examination . . .”).

Accordingly, just as the respondent in *Samayoa* is not only an alien PWAP but also seeking to remain in the United States, the respondent in this case is not only an alien PWAP, and therefore an applicant for admission as defined in INA § 235(a)(1), *but also* an alien seeking admission under INA § 235(b)(2)(A).

Lastly, Congress’s significant amendments to the immigration laws in IIRIRA supports DHS’s position that such aliens are properly detained pursuant to INA § 235(b)—specifically, INA § 235(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at POEs. A rule that treated an alien who enters the country illegally, such as the respondent, more favorably than an alien detained after arriving at a POE would “create a perverse incentive to enter at an unlawful rather than a lawful location.” *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Thuraissigiam*, 591 U.S. at 140) (rejecting such a rule as propounded by the defendant). Such a rule reflects “the precise situation that Congress intended to do away with by enacting” 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 [POE]’” by enacting IIRIRA. *Ortega-Lopez v. Barr*,



978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

During IIRIRA’s legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* H.R. Rep. 104-469, pt. 1, at 107 (noting a “crisis at the land border” allowing aliens to illegally enter the United States). As alluded to above, one goal of IIRIRA was to “reform the legal immigration system and facilitate legal entries into the United States” H.R. Rep. No. 104-828, at 1 (1996). Nevertheless, after the enactment of IIRIRA, the DOJ took the position—consistent with pre-IIRIRA law—that “despite being applicants for admission, aliens who are present without being admitted or paroled . . . will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10,323. Affording aliens PWAP, who have evaded immigration authorities and illegally entered the United States bond hearings before an Immigration Judge, 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. *Cf.* H.R. Rep. No. 104-469, pt. 1, at 225 (noting that IIRIRA replaced the concept of “entry” with “admission,” as aliens who illegally enter the United States “gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]”).

Accordingly, for the reasons discussed above, the respondent, as an alien PWAP in INA § 240 removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under INA § 235(b)(2)(A) and ineligible for a bond redetermination hearing before an Immigration Judge.

C. Applicants for Admission May Only Be Released from Detention On an INA § 212(d)(5) Parole.

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under INA § 212(d)(5). DHS has the exclusive authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” INA § 212(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that INA § 212(d)(5) is the specific provision that authorizes release from detention under INA § 235(b), at DHS’s discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized that “[r]egardless of which of those two sections authorizes . . . detention, [INA § 235(b)(1) or INA § 235(b)(2)(A)], applicants for admission may be temporarily released on parole” *Id.* at 288.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under INA § 212(d)(5) 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). Thus, neither the Board nor Immigration Judges have authority to parole an alien into the United States under INA § 212(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that “parole authority [under INA § 212(d)(5)] is now exercised exclusively by the DHS” and “reference to the Attorney General in [INA § 212(d)(5)(A)] is thus deemed to refer to the Secretary of Homeland Security”); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that “neither the Immigration Judge nor th[e] Board has jurisdiction to exercise parole power”). Further, because DHS has exclusive jurisdiction to parole an alien into the United



States, the manner in which DHS exercises its parole authority may not be reviewed by an Immigration Judge or the Board. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the Board does not have authority to review the way DHS exercises its parole authority).

Importantly, parole does not constitute a lawful admission or a determination of admissibility, INA §§ 101(a)(13)(B), 212(d)(5)(A), and an alien granted parole remains an applicant for admission, *id.* § 212(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 [INA § 212(d)(5)], and even after any such parole is terminated or revoked”), 1001.1(q) (same). Parole does not place the alien “within the United States.” *Leng May Ma*, 357 U.S. at 190. An alien who has been paroled into the United States under INA § 212(d)(5) “is not . . . ‘in’ this country for purposes of immigration law” *Abebe*, 16 I&N Dec. at 173 (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan*, 267 U.S. at 228). Following parole, the alien “shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States,” INA § 212(d)(5)(A), including that they remain subject to detention pursuant to INA § 235(b)(2).

D. Section 236 of the INA Does Not Impact the Detention Authority for Applicants for Admission.

Section 236(a) of the INA is the applicable detention authority for aliens who have been admitted and are deportable who are subject to removal proceedings under INA § 240, INA §§ 236, 237(a), 240, and does not impact the directive in INA § 235(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [INA

§ 240],” *id.* § 235(b)(2)(A).⁷ As the Supreme Court explained, INA § 236(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing INA § 236(a) as a “permissive” detention authority separate from the “mandatory” detention authority under INA § 235).⁸

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” INA § 236(a); *Jennings*, 583 U.S. at 303, 306. Section 236(a) of the INA does not, however, confer the *right* to release on bond; rather, both DHS and Immigration Judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of*

⁷ The specific mandatory language of INA § 235(b)(2)(A) governs over the general permissive language of INA § 236(a). “[I]t is a commonplace of statutory construction that the specific governs the general . . .” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is “most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission” and in order to “eliminate the contradiction, the specific provision is construed as an exception to the general one”); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that “[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones”). Here, INA § 235(b)(2)(A) “does not negate [INA § 236(a)] entirely,” which still applies to admitted aliens who are deportable, “but only in its application to the situation that [INA § 235(b)(2)(A)] covers.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

⁸ Importantly, a warrant of arrest is not required in all cases. INA § 287(a). For example, an immigration officer has the authority “to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation” or “to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest . . .” *Id.* § 287(a)(2); 8 C.F.R. § 287.3(a), (b) (recognizing the availability of warrantless arrests); *see Q. Li*, 29 I&N Dec. at 70 n.5. Moreover, DHS may issue a warrant of arrest within 48 hours (or an “additional reasonable period of time” given any emergency or other extraordinary circumstances), 8 C.F.R. § 287.3(d); doing so does not constitute “post-hoc issuance of a warrant,” *Q. Li*, 29 I&N Dec. at 69 n.4. While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to INA § 236(a) detention authority under a plain reading of INA § 236(a), there is nothing in *Jennings* that stands for the assertion that aliens processed for arrest under INA § 235 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.



Adeniji, 22 I&N Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns under INA § 236(c). *See* INA § 236(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i); *see also id.* § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* INA § 236(c)(2).

Notably, INA § 236(c) references certain grounds of inadmissibility, INA § 236(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to INA § 236. 590 U.S. 222, 235 (2020); *see also Nielsen v. Preap*, 586 U.S. 392, 416-19 (2019) (recognizing that aliens who are inadmissible for engaging in terrorist activity are subject to INA § 236(c)). However, in interpreting provisions of the INA, the Board does not view the language of statutory provisions in isolation but instead “interpret[s] the statute as a symmetrical and coherent regulatory scheme and fit[s], if possible, all parts into an harmonious whole.” *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010) (internal quotation marks omitted) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). As the Supreme Court in *Barton* also noted, “redundancies 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*, 590 U.S. at 239. “Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text” *Id.* The statutory language of INA § 236(c)—including the most recent amendment pursuant to the Laken Riley Act, *see* INA § 236(c)(1)(E), merely reflects a “congressional effort to be doubly sure” that certain aliens are detained, *Barton*, 590 U.S. at 239.



To reiterate, to interpret INA § 235(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded INA § 235(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if INA § 236 was meant to apply to aliens PWAP. Thus, INA § 236 does not have any controlling impact on the directive in INA § 235(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [INA § 240].” INA § 235(b)(2)(A).

CONCLUSION

In sum, the respondent is subject to detention under INA § 235(b)(2)(A), and the Immigration Judge erred in ordering the respondent released from DHS custody pursuant to INA § 236(a). DHS requests that the Board reverse the Immigration Judge’s decision and vacate the order releasing the respondent from DHS custody.



A 

EOIR-43 Senior Legal Official Certification

I certify that I have approved the filing of the Notice of Appeal in this case according to review procedures established by U.S. Immigration and Customs Enforcement, Department of Homeland Security.

I further certify that I am satisfied that the evidentiary record supports the contentions justifying the continued detention of the alien and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent.

September 10, 2025

Date

**ELIAS S
GASTELO**

Elias Gastelo
Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement

Digitally signed by ELIAS S
GASTELO
Date: 2025.09.10 15:59:10
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**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTERO IMMIGRATION COURT**

Respondent Name:

CASTILLO, ANTONIO ADRIAN

To:

Millan, Felipe D.J.
1147 Montana Ave.
El Paso, TX 79902

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

08/28/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☐

Denied, because

☒

Granted. It is ordered that Respondent be:

☐

released from custody on his own recognizance.

☒

released from custody under bond of \$ 20,000.00

☒

other:

ATD at DHS discretion

☐

Other:



Immigration Judge: Palomino, Jacinto 08/28/2025

Appeal: Department of Homeland Security: ☐ waived ☒ reserved
Respondent: ☒ waived ☐ reserved

Appeal Due: 09/29/2025

Certificate of Service

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Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [P] Alien c/o custodial officer | [E] Alien atty/rep. | [P] DHS

Respondent Name : CASTILLO, ANTONIO ADRIAN | A-Number :



Riders:

Date: 08/28/2025 By: RAMOS, PRESTON, Court Staff

TAB

C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTERO IMMIGRATION COURT

LEAD FILE: [REDACTED]
IN REMOVAL PROCEEDINGS
DATE: Sep 30, 2025

TO: Felipe D.J. Millan P.C.
Millan, Felipe D.J.
1147 Montana Ave.
El Paso, TX 79902

RE: [REDACTED] CASTILLO, ANTONIO ADRIAN

Notice of In-Person Hearing

Your case has been scheduled for a INDIVIDUAL hearing before the immigration court on:

Date: Nov 12, 2025
Time: 2:30 P.M. MT

Court Address: 26 MCGREGOR RANGE ROAD, CHAPARRAL, NM 88081

Representation: You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> is a list of free legal service providers who may be able to assist you.

Failure to Appear: If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

Change of Address: The court will send all correspondence, including hearing notices, to you based on the most recent contact information you have provided, and your immigration proceedings can go forward in your absence if you do not appear before the court. If your contact information is missing or is incorrect on the Notice to Appear, you must provide the immigration court with your updated contact information within five days of receipt of that notice so you do not miss important information. Each time your address, telephone number, or email address changes, you must inform the immigration court within five days. To update your contact information with the immigration court, you must complete a Form EOIR-33 either online at <https://respondentaccess.eoir.justice.gov/en/> or by [completing the enclosed paper form](#) and mailing it to the immigration court listed above.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTERO IMMIGRATION COURT

LEAD FILE: 
IN REMOVAL PROCEEDINGS
DATE: Oct 29, 2025
EAD Clock:

TO: Felipe D.J. Millan P.C.
Millan, Felipe D.J.
1147 Montana Ave.
El Paso, TX 79902

RE:  CASTILLO, ANTONIO ADRIAN

Notice of Internet-Based Hearing

Your case has been **rescheduled** for a INDIVIDUAL hearing before the immigration court on:

Your hearing is not in person. You will access
your hearing by using the web page below.
URL: <https://eoir.webex.com/meet/IJ.Hugo.Martinez>

Date: Nov 5, 2025
Time: 08:30 A.M. MT
Court Address: 26 MCGREGOR RANGE ROAD, CHAPARRAL, NM 88081

Representation: You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> is a list of free legal service providers who may be able to assist you.

Failure to Appear: If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

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A-Number:  CASTILLO, ANTONIO ADRIAN

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Removal	Charging Doc. Date: 01/03/2025	Case Pending
Bond	Charging Doc. Date: 01/03/2025 Bond Request Date: 08/25/2025	Case Completed
Bond	Charging Doc. Date: 01/03/2025 Bond Request Date: 04/19/2025	Case Completed
Bond	Charging Doc. Date: 01/03/2025 Bond Request Date: 04/14/2025	Case Completed
Bond	Charging Doc. Date: 01/03/2025 Bond Request Date: 01/27/2025	Case Completed

End of list. Please file a Form EOIR-27 or EOIR-28 using "Appearances" link in the header to view additional cases.

Court Information

Case Type: Removal

Charging Doc. Date: 01/03/2025

Alien Name: CASTILLO, ANTONIO ADRIAN

Hearing Location: 26 MCGREGOR RANGE ROAD
CHAPARRAL, NM 88081

Immigration Court: 26 MCGREGOR RANGE RD – DOOR 1
OTERO, NM 88081

Next Case Hearing: 11/05/2025 08:30 AM - 09:00 AM

Hearing Medium: INDIVIDUAL HEARING
Martínez, Hugo R.
Internet-Based

IJ Decision Data: -- NA --

IJ Decision: This case is pending.

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