

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

SIDAHMED EDAHI,

PETITIONER

v.

CIVIL ACTION NO. 4:25-CV-00129-RGJ

MIKE LEWIS, in his Official Capacity
as Hopkins County Jailer; and
SAMUEL OLSON, in his Official Capacity as
Field Office Director, Chicago Field Office,
U.S. Immigration and Customs Enforcement

RESPONDENTS

**RESPONSE TO ORDER TO SHOW CAUSE AND
MOTION TO DISMISS**

Federal Respondent tenders this response to the Court's Order to Show Cause. For the reasons stated below Petitioner's writ of habeas corpus should be dismissed.¹

INTRODUCTION

Petitioner was not lawfully admitted to the United States, and he has no lawful immigration status. He is currently detained by the U.S. Immigration and Customs Enforcement ("ICE") while he appeals the immigration judge's removal order finding him removable for being in the United States without being admitted or paroled and denying his applications for asylum, withholding of removal, and protection under the

¹ This response is filed on behalf of Federal Respondent, Samuel Olson. 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 Mike Lewis, the Hopkins County Jailer, as a respondent.

Convention Against Torture (CAT)². Petitioner challenges the agency's decision to detain him under a statutory provision that does not entitle him to a bond hearing. The Court lacks jurisdiction over Petitioner's claims under 8 U.S.C. § 1252. But even if the Court possessed jurisdiction, because Petitioner has not been admitted to the United States, he is an applicant for admission and lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

BACKGROUND

Petitioner, a native and citizen of Mauritania, has been present in the United States since May 5, 2023, when he was apprehended in Arizona after crossing the border without authorization and not at a port of entry. [Doc. 1, PageID.1., ¶ 2; Exhibit 1, I-213, Record of Deportable/Inadmissible Alien.] On May 6, 2023, ICE officials issued Petitioner a Notice to Appear in immigration court, the charging document that initiated his removal proceedings. [Doc. 1-2, PageID.21.] Therein, Petitioner was charged, under 8 U.S.C. § 1182(a)(6)(A)(i), for being present 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. [Doc. 1-2, PageID.21.] He was released on his own recognizance.

Afterwards, Petitioner filed a defensive application for asylum, withholding of removal, and protection under CAT.³ Petitioner's individual merits hearing began on March 19, 2025 where he, represented by counsel, testified before the immigration judge

² United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, G.A. Res. 39/46, 39th Sess., U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984).

³ Application not produced to due to its confidential nature.

and presented evidence in support of his claims. [Exhibit 2, March Notice of In Person Hearing.] The immigration judge continued the hearing to May 27, 2025 to allow for retrieval of additional evidence. [Exhibit 3, May Notice of In Person Hearing.] The immigration judge allowed the parties to submit written closing arguments.

On May 28, 2025, ICE officials issued a Warrant for Arrest for Petitioner determining that there was probable cause to believe that he was removable from the United States.⁴ [Doc. 1-3, PageID.25-26.] ICE officials also issued a Notice of Custody Determination indicating that pending final administrative determination, Petitioner would be detained. [Doc 1-1, PageID.19.]

Petitioner is detained at Hopkins County Detention Center. On October 3, 2025, the immigration judge issued a decision finding Petitioner removable under 8 U.S.C. § 1182(a)(6)(A)(i), for being present 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

⁴ The references to the Immigration and Nationality Act (“INA”) in the Warrant for Arrest merely provide the basis for the immigration officer’s authorization to arrest and detain. “An I-200 form must be signed by an authorized immigration officer who states that he or she has ‘probable cause to believe’ the named alien is removable.” *N.S. v. Dixon*, 141 F.4th 279, 283 (D.C. Cir. 2025) (citing 8 C.F.R. § 236.1(a); *id.* § 287.5(e)(2) (listing categories of officers so authorized)). “It is directed ‘To: Any immigration officer authorized [to serve an arrest warrant for immigration violations] pursuant to sections 236 and 287 of the Immigration and Nationality Act’ and its implementing regulations.” *Id.* “To execute an I-200 form, an immigration officer of a type listed in the regulation must have ‘successfully completed basic immigration law enforcement training.’” *Id.* (citing 8 C.F.R. § 287.5(e)(3); *see also id.* § 287.5(c)(1) (same required before making an arrest under 8 U.S.C. § 1357(a)(2))); *see also* 8 C.F.R. § 236.1(b)(1) (“At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest.”). In *Rojas v. Olson*, the court provided a similar explanation: The top of the DHS warrant form directs the warrant to the attention of “[a]ny immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act [codified at 8 U.S.C. §§ 1226 and 1357] and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations.” (RCF No. 1-2.) This language is best read not as an invocation of Section 1226 or an admission that that provision applies to Cirrus Rojas. Rather, it describes the agents to whom the warrant is directed and identifies two sources for their arrest authority. This language does not state that Cirrus Rojas is subject to the discretionary detention provisions of Section 1226 or excepted from the provisions of Section 1225.” 2025 WL 3033967, at *9 (E.D. Wisc. Sept. 30, 2025).

and denied his applications for relief and protection. [Exhibit 4, Order of Immigration Judge.] That decision would have become final on November 3, 2025 or, upon a timely appeal of the decision to the Board of Immigration Appeals (BIA), once the BIA issues its decision. Petitioner has a pending appeal of the immigration judge's decision. [Exhibit 5, Appeal to BIA.] On October 30, 2025, Petitioner filed his writ of habeas corpus. [Doc. 1, PageID.1.]

ARGUMENT

I. The Court Should Dismiss This Habeas Petition, Because it Lacks Jurisdiction to Review it, Under 8 U.S.C. §§ 1252(b)(9), (g).

The Court lacks jurisdiction to consider this petition under two provisions of the INA. First, 8 U.S.C. § 1252(g) strips the Court of subject matter jurisdiction over Petitioner's claims as they are "arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien . . ." 8 U.S.C. § 1252(g); *see also Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at 8-9 (6th Cir. Aug. 13, 2025) (explaining that § 1252(g) applies to habeas claims and does not violate the Suspension Clause). Here, Petitioner is challenging ICE's decision to detain him while his defensive applications for relief and protection are adjudicated during his removal proceedings. The detention is "connected directly and immediately" with the adjudication of his case. *See Tsering v. ICE*, 403 F. App'x 339, 343 (10th Cir. 2010) (cleaned up); *see also Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 943 (5th Cir.1999). Thus, the Court cannot review the Agency's decision to detain him.

“Other circuits have recognized this straightforward point.” *Ozturk v. Hyde*, 2025 WL 2679904, at 2 (2d Cir. Sept. 19, 2025) (Menashi, J., concurring); see *Suri v. Trump*, 2025 WL 1806692, at 11 (4th Cir. July 1, 2025) (Wilkinson, J., dissenting) (When the government detains “pending a decision on whether the alien is to be removed – the detention arises from the commencement of proceedings or adjudication of cases.”); *Cardoso v. Reno*, 216 F.3d 512, 517 (5th Cir. 2000) (“the Congressional aim of § 1252(g) is to protect from judicial intervention the Attorney General’s long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders.”).

It is true that Section 1252(g) does not cover “all claims” arising from decisions to commence proceedings, adjudicate cases, or execute removal orders. See *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020). But it continues to bar review of narrow matters “arising from” those decisions – such as the Agency’s decision to detain Petitioner. See *id.* Holding otherwise ignores the term “arising from” in the statute and flouts the maxim of statutory construction against superfluities. That maxim “instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous.” *Hibbs v. Winn*, 542 U.S. 88, 89 (2004). Deciding that Section 1252(g) only revokes the Court’s jurisdiction over the Agency’s ultimate decision to commence proceedings, adjudicate cases, or execute removal orders renders the provision “arising from” superfluous. Accordingly, the Court should interpret section 1252(g) to revoke the Court’s jurisdiction to review the Agency’s decision to

detain Petitioner, as it was “arising from” the Agency’s decision to adjudicate his removal proceedings.

Secondly, 8 U.S.C. § 1252(b)(9) strips the Court of jurisdiction to review Petitioner’s habeas claims as the petition requires the Court to answer legal and factual questions “arising from any action taken or proceeding brought to remove . . .” him. *See* 8 U.S.C. § 1252(b)(9). Legally, Petitioner asks the Court to interpret the INA to determine which legal authority authorizes his detention during his removal proceedings. [*See generally* Doc. 1.] As the Court has held, “the central question at issue in th[ese types of] matter[s] is which detention provision, Section 1225 or Section 1226, applies to [Petitioner]. This is a purely legal question of statutory interpretation” *Guerra v. Woosley*, 2025 WL 3046187, 2025 U.S. Dist. LEXIS 215005, at *5 (W.D. Ky. Oct. 31, 2025). Answering such a question which arose from the Agency’s “action taken to remove an alien,” and is, thus, precluded under 8 U.S.C. § 1252(b)(9). Further, Petitioner asks the Court to find that Petitioner’s detention is unlawful. [Doc. 1, PageID.16, 18.] Doing so would require the Court to make the factual determination that Petitioner is not removable as inadmissible, because he was admitted or paroled into the United States.⁵ It cannot do so.

If the Court exercised jurisdiction, in contravention of Section 1252(b)(9), to make the factual determination as to his admissibility and the legal holding identifying the

⁵ Petitioner does not contest this factual basis. In any event, the record basis to justify Petitioner’s arrest and subsequent detention cannot be separated from the factual support for the initiation and adjudication of his removal proceedings. The factual support for his arrest is an assessment by a CBP Agent that he was present without admission or parole. [Doc 1-2, PageID.21.] This is the same assessment made to support commencing and adjudicating his removal proceedings in immigration court. [*Id.* (noting that he was charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i).]

statute governing his detention, it could create the absurd holding that “it is unconstitutional for the government to detain aliens pending removal for a reason that allows the government to remove them.” *Ozturk*, 2025 WL 2679904 at 2 (Menashi, J., concurring). This is exactly what Congress sought to preclude in Section 1252(b)(9). “Congress channeled judicial review of removal proceedings into a single proceeding to avoid such an incoherent result.” *Id.* By enacting Section 1252(b)(9), “Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process that previously had held sway in regard to removal proceedings.” *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007) (citing H.R. Rep. No. 109-72, at 174). It designed the statutes “to consolidate and channel review of *all* legal and factual questions that arise from the removal of an alien into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals.” *Id.* (emphasis in original). It is reasonable to conclude, therefore, that the jurisdictional bars do not prevent the adjudication of a claim that is “unrelated to any removal action or proceeding,” *Delgado v. Qurantillo*, 643 F.3d 52, 55 n.3 (2d Cir. 2011) (cleaned up), or “independent of challenges to removal orders,” H.R. Rep. No. 109-72, at 176 (2005). But when petitioners, such as Petitioner, are “challenging the decision to detain them in the first place” arguing there is no factual support for adjudicating removal proceedings or legal support for detaining them throughout the duration of those proceedings, that is a challenge to the Agency’s action taken or proceeding brought to remove, which Congress barred. *Jennings*, 583 U.S. at 294 (plurality opinion); *see also id.* at 314 (Thomas,

J., concurring in part and concurring in the judgment) (“§ 1252(b)(9) removes jurisdiction over [aliens’] challenge to their detention.”).

Accordingly, the Court should dismiss Petitioner’s habeas petition for lack of jurisdiction, as it challenges decisions arising from the Agency’s action to adjudicate his removal proceedings, requires the Court to answer legal and factual questions, and in any event, may be presented before the immigration judge, the BIA, and then to the Sixth Circuit Court of Appeals – but not to this Court.

II. Alternatively, the Court Should Deny the Habeas Petition, Because Petitioner is Lawfully Detained Under 8 U.S.C. § 1225(b)(2).

As a preliminary matter, the Court should hold that Petitioner is being detained under 8 U.S.C. § 1225(b)(2). Even if the Supreme Court’s decision in *Jennings* did not control this determination,⁶ the Court should accord *Skidmore* deference to the BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025) and hold that this statute properly applies to the Petitioner.

As the BIA determined, “aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A)[] and must be detained for the duration of their removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300 (holding that these provisions of the INA “unequivocally mandate that aliens falling within their scope [of section 1225(b)(1) and (2)] shall be detained,” and that “[u]nlike the word may, which implies discretion, the word shall usually connotes a requirement”). The Court should defer to this persuasive

⁶ See *Jennings*, 583 U.S. at 287 (An “applicant for admission,” must “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”).

interpretation of the statute, even if it is not bound by it. See *Pemberton v. Bell's Brewery, Inc.*, 150 F.4th 751, 763, n. 4 (6th Cir. 2025) (explaining that *Skidmore* deference survived the Supreme Court's decision in *Loper Bright Enters v. Raimondo*, 603 U.S. 369, 402 (2024); see also *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (explaining that agency has always been one of the factors that may give an Agency's interpretation "power to persuade, if lacking power to control"))).

Contrary to other holdings, the BIA's decision is persuasive and accurately construes the statutory text. As the BIA explained, an "applicant for admission" under 8 U.S.C. § 1225(a)(1), by virtue of his entry without inspection, must necessarily be considered as "seeking admission," as the term of art is used in 8 U.S.C. § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220. This interpretation is supported by agency precedent, see *Matter of Lemus*, 25 I. & N. Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws"), and the Supreme Court's decision in *Jennings* which 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," *Jennings*, 583 U.S. at 281.

This interpretation also makes sense. A contrary reading creates a "legal conundrum," because there "is no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful

status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under . . . 8 U.S.C. § 1226(a)." *Hurtado*, 29 I. & N. Dec. at 221.

Moreover, the Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025), does nothing to contradict this interpretation. Section 1226(c) was amended to require the Attorney General to take into custody certain "criminal aliens" who are deemed inadmissible, under specific grounds, whom *also* "[are] charged with, . . . arrested for . . . convicted of . . . admits having committed or admits committing acts which constitute . . . burglary, theft, larceny, shoplifting, . . . assault of a law enforcement officer . . . or any crime that results in death or serious bodily injury to another" once that "alien is released." 8 U.S.C. § 1226(c)(1)(E). This detention statute, by its plain terms, applies only to certain criminal aliens being released from custody for that crime. And nothing in this provision of the INA "alter[s] or undermine[s] the provisions of . . . 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute shall be detained for a proceeding under [8 U.S.C. 1229a]." *Hurtado*, 29 I. & N. Dec. at 222. If it did, the terms of 8 U.S.C. § 1225(b)(2)(A) would be rendered superfluous and thus, such interpretation "would be in contravention of the 'cardinal principle of statutory construction,' which is that courts are to 'give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.'" *Id.* (quoting *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)).

Petitioner does not contest his removability for being present in the United States without being admitted or paroled. Thus, the Court should treat him as an applicant for

admission that is seeking relief from removal. “Admission” is defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). And an “[a]pplicant for admission” is “[a]n alien present in the United States who has not been admitted” 8 U.S.C. § 1225(a)(1). Read in tandem with the statute’s plain terms, as the Court must do,⁷ the INA makes clear that all unadmitted and uninspected aliens 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.

Indeed, the INA makes clear that “applicants for admission” may be required to testify as to their “purposes and intentions . . . in seeking admission.” 8 U.S.C. § 1225(a)(5) (emphasis added). It therefore follows that an “applicant for admission” and a person “seeking admission” are one and the same. As such, the Court should avoid this “patently absurd” interpretation which draws a distinction between the terms. *See United States v. Brown*, 333 U.S. 18, 27 (1948) (a court can reject the plain language interpretation of a statute if such an interpretation would lead to “patently absurd

⁷ When interpreting a statute, “the inquiry ‘begins with the statutory text, and ends there as well if the text is unambiguous.’” *In re Vill. Apothecary, Inc.*, 45 F.4th 940, 947 (6th Cir. 2022) (quoting *Binno v. Am. Bar Ass’n*, 826 F.3d 338, 346 (6th Cir. 2016)); *see also King v. Burwell*, 576 U.S. 473, 486 (2015). Each word in the statute should be read in line with “its ordinary, contemporary, common meaning.” *Kentucky v. Biden*, 23 F.4th 585, 603 (2022) (quoting *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997)). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Beecham v. United States*, 511 U.S. 368, 372 (1994) (“The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences.”). Often, “the ‘meaning – or ambiguity – of certain words or phrases may only become evident when placed in context.’” *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)); *see also Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) (“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s ordinary meaning.”).

consequences”). 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). But even if an “applicant for admission,” like Petitioner, was not by definition “seeking admission,” here, Petitioner is seeking relief from removal. He fought against the government’s argument that he was removable before the immigration judge (and lost), and he is currently seeking relief from removal because he appealed the immigration judge’s decision to the BIA. [Exhibit 5, Appeal to BIA.] Petitioner is an “applicant for admission” who is seeking relief from removal, and, consequently, he is detained under § 1225(b)(2)(A).

Although district courts have taken issue with ICE’s interpretation of 8 U.S.C. § 1225, other courts have supported ICE’s interpretation. In *Chavez v. Noem*, the Southern District of California explained that “[s]uch a reading of the statute comports with Congress’ addition of § 1225(a)(1) by [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)]. Prior to IIRIRA, an ‘anomaly’ existed ‘whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.’” *Chavez v. Noem*, - F.Supp.3d ----, 2025 WL 2730228, at 4–5 (S.D. Cal. Sept. 24, 2025) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). The addition of § 1225(a)(1), thus, “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA – in the position of an ‘applicant for admission.’” *Torres*, 976 F.3d at 928; see also *Pipa-Aquise v. Bondi*, 2025 WL 2490657, at 2 (E.D. Va. Aug. 5, 2025); *Pena v. Hyde*, No. 25-

cv-11983, 2025 WL 2108913, at 2 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). Just last week, two more district courts agreed that applicants for admission, like Petitioner, are detained under 8 U.S.C. § 1225. *Sandoval v. Acuna*, 2025 WL 3048926 (W.D.La. October 31, 2025) (rejecting Petitioner’s “recent arrival” interpretation of § 1225(b)(2)); *Rojas v. Olson*, 2025 WL 3033967 (E.D.Wis. October 30, 2025) (rejecting each of Petitioner’s arguments made herein); *but see, e.g., Barrera*, 2025 WL 2690565.

As Petitioner is properly detained under 8 U.S.C. § 1225(b)(2), he cannot show that his detention violates his due process rights. “[D]ue process is flexible,” and “calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also Landon v. Plasencia*, 459 U.S. 21, 34 (1982). As an applicant for admission detained under 8 U.S.C. § 1225(b)(2), he does not have due process rights beyond those provided in 8 U.S.C. § 1225. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (“[A]n alien in respondent’s position has only those rights regarding admission that Congress has provided by statute.”). This “rests on fundamental propositions: the power to admit or exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.” *Id.* at 139 (cleaned up).

Petitioner does not allege—nor can he—that the Agency failed to follow the procedures set forth in 8 U.S.C. § 1225. The record makes clear that he was given notice

of the charges against him, he has access to counsel, and he is currently appealing the immigration judge's order of removal. Accordingly, he cannot show that his detention violates any procedural due process rights.

III. 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 he is 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 he should be detained under § 1226 but, as one form of relief, requests that the Court release him. [Doc. 1, PageID.17.] That is a legal oxymoron. His request denies the very process statutorily mandated by the detention statute he 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);⁸ see also 8 C.F.R. § 1003.19(d).

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

⁸ 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.

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 he 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

Because Petitioner is lawfully detained, Federal Respondent respectfully requests that the Court dismiss his petition for a writ of habeas corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

KYLE G. BUMGARNER
United States Attorney
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/s/ Calesia Henson

Calesia Henson
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