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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

VASQUEZ-SALAZAR, *Petitioner*, v. BONDI, *et al.*, *Respondents*.	HON. CLAIRE C. CECCHI, U.S.D.J. Civil Action No. 25-17195

ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

PRELIMINARY STATEMENT

On October 20, 2025, U.S. Immigration and Customs Enforcement ("ICE") detained Petitioner, and the Department of Homeland Security ("DHS") in connection with ongoing removal proceedings for his presence in the United States without admission or parole. Petitioner now brings a habeas action under 28 U.S.C. § 2241, alleging that the Immigration and Nationality Act ("INA") and related enactments, the Administrative Procedure Act ("APA"), and the Due Process Clause require ICE to release him. The Court should dismiss or deny the petition.

First, Petitioner's detention is lawful under 8 U.S.C. § 1225(b). Second, Petitioner's application for recognition as a Special Immigrant Juvenile does not prohibit his detention or removal. Third, Petitioner's mandatory detention under § 1225(b) comports with due process, and even if it did not, the appropriate remedy is a bond hearing rather than immediate release. Finally, to the extent Petitioner challenges his removability or seeks a stay of removal while awaiting an adjustment to legal status, that relief is unavailable in habeas.

FACTUAL BACKGROUND

I. Relevant Legal Background

A. Detention of "Applicants for Admission" (8 U.S.C. § 1225(b))

"The power to admit or exclude [non-citizens] is a sovereign prerogative." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And "the Constitution gives 'the political department of the government' plenary authority to decide which [non-

citizens] to admit." *Id.* (emphasis added) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). "[A] concomitant of that power is the power to set the procedures to be followed in determining whether a[] [non-citizen] should be admitted." *Id.*; see *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

Section 1225 governs the detention of "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings, unless they indicate an intention to apply for asylum or other forms of relief. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (ii). If the alien does not indicate an intent to apply for asylum, does not express a fear of prosecution, or does not "have such a fear" after inquiry by an officer, he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(ii), (B)(iii)(IV).

Section 1225(b)(2)—which ICE argues applies to Petitioner here—is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien

"who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Still, the Department of Homeland Security ("DHS") has the sole discretionary 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." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). But "such parole . . . shall not be regarded as an admission," and upon its termination, the alien's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

B. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention on a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), immigration officials may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[1] By regulation, immigration officers can release an alien if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody

[1] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention, release the alien on bond, or release the alien on conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

C. Special Immigrant Juvenile Classification and Deferred Action

Petitioner is preparing to seek recognition as a Special Immigrant Juvenile ("SIJ"), Pet. ¶ 31, a classification available to noncitizen children subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. 8 U.S.C. § 1101(a)(27)(J); *see Matter of Cahuec Tzalam*, 29 I&N Dec. 300, 303-04 (BIA 2025). SIJ classification permits the recipient to apply for an adjustment to legal permanent resident ("LPR") status if certain other requirements are met, including that an immigrant visa is "immediately available" at the time of applying. 8 U.S.C. § 1255(a), (h). But SIJ classification does not confer lawful status or affect removability. *Matter of Cahuec Tzalam*, 29 I&N Dec. at 305 n.3. SIJ classification also does not preclude removal proceedings against the recipient or detention. *See, e.g.*, *Cortez-Amador v. Att'y Gen.*, 66 F.4th 429, 432 (3d Cir. 2023).

In March 2022, USCIS exercised its discretion to implement a policy of automatically considering deferred action for a period of four years to SIJ recipients who are ineligible to apply for adjustment of status solely due to unavailable immigrant visas.[2] The March 2022 policy further explained that "USCIS consider[ed] deferred action on a case-by-case basis to determine whether the noncitizen with SIJ classification warrants a favorable exercise of discretion." *Id.*

Deferred action (which has never been applied to Petitioner) confers no lawful immigration status and does not affect removability. Rather, it is an "act of administrative convenience to the government that gives some cases lower priority." 8 C.F.R. § 274a.12(c)(14). A recipient of deferred action may apply for and receive employment authorization for the period of deferred action upon a showing of economic necessity. *Id.* USCIS reserves the right to terminate a grant of deferred action at any time, as a matter of discretion. USCIS Policy Manual, Vol. 6, Part J, Ch. 4 § G.1.[3]

On June 6, 2025, USCIS revised its policy regarding deferred action for SIJ recipients.[4] Under current policy, USCIS will "no longer conduct deferred action

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[2] March 7, 2022 Policy Alert, https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf (last visited Oct. 2, 2025).

[3] https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4 (last visited Oct. 2, 2025).

[4] June 6, 2025 Policy Alert, https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf (last visited Oct. 3, 2025). A putative class action complaint pending in the Eastern District of New York is challenging this policy change. *See A.C.R. v. Noem*, No. 1:25-cv-3962 (E.D.N.Y.). The

determinations for aliens with SIJ classification who cannot apply for adjustment of status solely because an immigrant visa is not immediately available." *Id.* If USCIS previously granted deferred action to an SIJ recipient, the "deferred action remains valid for the authorized period, unless terminated by USCIS, on a case-by-case basis, as a matter of discretion." USCIS Policy Manual, Vol. 6, Part J, Ch. 4 § G.1.[5] USCIS also continues to "reserve[] the right to terminate prior grants of deferred action and revoke the related employment authorization as a matter of discretion" if, among other reasons, it "determines the favorable exercise of discretion is no longer warranted." *Id.* § G.2. "This termination and revocation may occur at any time, including prior to the end of the current validity period(s)." *Id.*

II. Petitioner's Immigration History

Petitioner was born in Guatemala in 2006. *See* Ex. A (I-213), at 1.[6] In March 2023, at age 16, Petitioner unlawfully entered the United States without inspection. *Id.* at 2–3; Pet. ¶ 14, ECF No. 1. Border patrol agents then arrested him and issued a Notice to Appear. Ex. A at 2; Pet. at Ex. B.

Because Petitioner entered the United States as an unaccompanied minor, the Trafficking Victims Protection Reauthorization Act ("TVPRA") allowed for his

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plaintiffs' motions for a preliminary injunction and class certification in that matter are fully briefed and awaiting a decision.

[5] https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4 (last visited Oct. 3, 2025).

[6] Respondents are attaching Petitioner's relevant immigration records as exhibits to this Answer under Federal Rule of Civil Procedure 10(c), which is incorporated by Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts (which is applicable to this § 2241 petition through Rule 1(b)).

eventual release to an uncle who lives in New Jersey. *Id.*; Pet. ¶¶ 15-19; *see generally* 6 U.S.C. § 279; 8 U.S.C. § 1232(a) and (b). Among other things, ORR has a statutory directive to place unaccompanied minors subject to immigration detention "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).

As Petitioner admits, he may be eligible for SIJ recognition, but that has not yet been granted because he is just beginning the process. Pet. ¶¶ 2, 24, 31. On August 7, 2025, DHS filed a Notice to Appear with the immigration court with an initial hearing date in 2026. Ex. B, Aug. 6, 2025 NTA. The NTA charges Petitioner as removable under 8 U.S.C. § 1182(a)(6)(A)(i) as "an alien present in the United States who has not been admitted or paroled," and under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant without a valid entry document. NTA at 3.

On October 20, 2025, DHS arrested Petitioner. Pet. ¶ 3. Petitioner is currently held at the Delaney Hall Detention Facility in Newark, New Jersey. *Id.* Petitioner's immigration proceedings remain ongoing.

III. Procedural History

Petitioner filed the present habeas petition on November 4, 2025. ECF No. 1. Petitioner brings four claims. First, Petitioner claims that his detention violates the TVPRA and a related settlement. Pet. ¶¶ 36–47. Second, Petitioner claims that his detention violates the INA because he was not provided a bond hearing under 8 U.S.C. § 1226. Pet. ¶¶ 48-57. Third, Petitioner alleges that his detention violates the Due Process Clause of the Fifth Amendment because he has not had an individualized

bond determination. Pet. ¶¶ 58-72. Fourth, Petitioner alleges that his detention violates the Due Process Clause and Administrative Procedure Act ("APA") because he qualifies for SIJ recognition and detention interferes with his access to counsel for his immigration proceedings on that and other issues. *Id* ¶¶ 73-89.

Respondents now move to dismiss the Petition in full.

STANDARD OF REVIEW

28 U.S.C. § 2241(c)(3) authorizes a court to grant a writ of habeas corpus where a prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, which is applicable to § 2241 petitions through Rule 1(b), provides this Court with the authority to dismiss a habeas petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief." *See also Moncrieffe v. Yost*, 367 Fed. Appx. 286, 288 n.2 (3d Cir. 2010) (noting summary dismissal of a § 2241 habeas petition is appropriate pursuant to Rule 4 of the Rules Governing Section 2254 Cases). "Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face." *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing 28 U.S.C. § 2254, Rule 4).

LEGAL ARGUMENT
THE COURT SHOULD DISMISS THE HABEAS PETITION

I. Petitioner's Detention is Lawful under 8 U.S.C. § 1225(b)

Petitioner argues that his detention is unlawful under the INA and APA because ICE failed to grant him an individualized bond determination and should have declined to detain him because of the TVPRA. But ICE has lawfully detained

Petitioner—now an adult—under 8 U.S.C. § 1225(b) and has provided him all available process. Section 1225(b)(2) provides that "in the case of an alien who is an applicant for admission, 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."

Petitioner's detention is lawful under the plain text of § 1225(b)(2). ICE determined Petitioner is inadmissible and issued a Notice to Appear charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i), as "an alien present in the United States who has not been admitted or paroled," and under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant without a valid entry document. *See* Ex. B. Accordingly, Petitioner is an "applicant for admission" as defined by 8 U.S.C. § 1225(a), and his detention is mandatory. *See Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an "applicant for admission" subject to mandatory detention under § 1225(b)); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission"). The Board of Immigration Appeals ("BIA"), the highest-level administrative body for interpreting immigration law, recently adopted this understanding of § 1225(b)(2) in a decision that binds all immigration judges and is persuasive authority here. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Matter of Q. Li*, 29 I&N Dec. 66 (2025).

By its plain text, § 1225(b) requires ICE to detain two types of "applicants for admission"—those who have "arrived in the United States" and those "who ha[ve] not been admitted." 8 U.S.C. § 1225(a)(1). "[A]rrive[d] in the United States" means the noncitizen has just entered the country—such as at the airport or at the U.S. border—or did so very recently. *See Thuraissigiam*, 591 U.S. at 139. Noncitizens "have not been admitted" if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). That latter category is broader and includes Petitioner because he is present in the United States without admission or parole. Accordingly, he is subject to § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (noting § 1225(b)(2) is a "broader," "catchall provision" that "applies to all applicants for admission not covered by § 1225(b)(1)").[7]

[7] Even though § 1225(b) requires the detention of both types of applicants for admission, immigration officials did not always interpret it that way. Specifically, DHS's predecessor agency, the U.S. Immigration and Naturalization Service ("INS"), read § 1225(b) to apply only to those who have arrived in the United States. That is, while INS detained arriving aliens, INS chose whether to detain aliens who have not been admitted. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131, (Mar. 6, 1997) ("Despite 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."). Noncitizens who were present without admission were detained under the discretionary rules of INA § 236(a), 8 U.S.C. § 1226(a). *See id.*

As of July 8, 2025, however, ICE has taken the position all applicants for admission, including those who are present without admission, are subject to mandatory detention under § 1225(b)(2). ICE takes this position because it accords with the plain language of the statute and is consistent with recent caselaw from the Board of Immigration Appeals, the highest-level administrative body for interpreting immigration law. *See Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Petitioner may argue that § 1225(b)(2) applies to only aliens "seeking admission," and that an alien is "seeking admission" only when they are taking an affirmative step to gain admission. *See, e.g.*, *Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496, at *7–9 (D.N.J. Sept. 26, 2025). But the BIA does not interpret the phrase "seeking admission" that way:

> 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 . . . In other words, 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.

Matter of Lemus, 25 I. & N. 734, 743 (BIA 2012). As such, the phrase "seeking admission" in § 1225(b)(2)(A) should be read to include an "applicant for admission." Therefore, aliens who are "applicants for admission" are also aliens who are "seeking admission." That is why, in § 1225(a)(3), Congress stated that immigration officers must inspect all aliens "who are applicants for admission or otherwise seeking admission." 8 U.S.C. § 1225(a)(3).[8]

Those phrases play out in a commonsense way in § 1225(b)(2). The statute begins with a limiting or qualifying clause (i.e., it says the subsection applies only to "any applicant for admission," which means only to those who are physically present).

[8] That is not to say the words "seeking admission" and "applicant for admission" are identical. The former is broader than the latter. An applicant for admission must be physically in the United States; a noncitizen can "seek admission" in the United States or outside of it, such as in an embassy before a consular officer. *See Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (although ruling against ICE, noting that the terms have slightly different breadth).

This limiting clause avoids the conclusion that the subsection would apply to those abroad; say, in an embassy. Having made clear § 1225(b)(2) applies only to those present here, it continues with the second clause, which says that detention is mandatory if the immigration officer determines the "alien seeking admission" is not entitled to it. *See Adamowicz v. I.R.S.*, 552 F. Supp. 2d 355, 367–68 (S.D.N.Y. 2008) ("'[A] limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.' This approach is successful not merely as a matter of grammar, but also as a matter of internal logic: the set of information defined in the first clause is specific and in no need of further restriction, whereas the set of information defined in the second clause more appropriately lends itself to such restriction."). Accordingly, because Petitioner is an applicant for admission in that he is present without being admitted, he is subject to § 1225(b)(2).[9]

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed Illegal Immigration Reform and Immigrant Responsibility Act to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than

[9] Even if the Court holds that the phrase "seeking admission" permits detention only of applicants for admission who are taking affirmative steps to gain admission (which it should not), Petitioner *is* taking such steps here by preparing to seek SIJ recognition. *See* Pet. ¶ 31.

persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). Respondents' reading of § 1225(b)(2) makes sense because it would not put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Otherwise, aliens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a). *See generally Matter of Yajure Hurtado*, 29 I&N Dec. at 222–25 (discussing legislative history in detail).

Respondents' reading of § 1225(b)(2) also works hand in hand with § 1226(a)'s discretionary detention authority. The two sections are not duplicative; instead, § 1226(a) applies to any noncitizen who is present in the country but not an applicant for admission. In other words, it applies to any noncitizen who was admitted, but then something happened that made them deportable under 8 U.S.C. § 1227(a) (listing classes of deportable aliens as "any alien . . . in and admitted to the United States" who fall under any of several classes of deportable alien). Some examples include noncitizens who violate their nonimmigrant status—e.g., a tourist, student visa holder, H-1B specialty occupations, and so on. *Id.* § 1227(a)(1)(c). These are noncitizens who were admitted into the country (so they are not applicants for

admission) but then engage in a deportable act such as overstaying their tourist visa, failing to comply with their student visa requirements, or losing their job that granted them H-1B status. Without § 1226(a), there would be no statutory authority for ICE to detain such noncitizens.[10]

Accordingly, Petitioner's detention is lawful under § 1225(b)(2).[11]

[10] Since early July, numerous district courts, including in this district, have addressed ICE's interpretation of § 1225(b)(2), and most have rejected it. *Compare Rivera Zumba*, 2025 WL 2753496, at *9 (holding that a noncitizen residing in the United States for 20 years was not affirmatively "seeking admission" and therefore not subject to § 1225(b)(2)) *and Romero v. Hyde,* No. 25-11631, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (collecting cases holding that ICE's interpretation is "contrary to the plain text of the statute and the overall statutory scheme"), *with Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an "applicant for admission" subject to mandatory detention under § 1225(b)) *and Pena v. Hyde,* No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission").

[11] Even if the court holds that § 1226(a) applies to Petitioner, the appropriate remedy is a bond hearing, not immediate release. *See Valeriano v. Bondi*, No. 25-cv-16100 (MAS), ECF No. 4 (D.N.J. Oct. 1, 2025), at 2. ("As Petitioner acknowledges, even under his reading of the relevant immigration statutes, he is still subject to detention under 8 U.S.C. § 1226(a), albeit with an entitlement to seek bond from an immigration judge. Should Petitioner prevail in this matter, the proper relief would constitute an order directing the Government to provide Petitioner with the bond hearing to which he contends he is entitled under§ 1226(a)."); *cf. Barbot v. Warden Hudson Cnty. Corr. Facility,* 966 F.3d 274, 278–79 (3d Cir. 2018); *but see, e.g.*, *Rivera Zumba*, 2025 WL 2753496, at *10–11 (ordering petitioner's release and "temporarily enjoin[ing] respondents from re-arresting petitioner under . . . 8 U.S.C. § 1226(a) for 14 days after her release").

II. Petitioner's Efforts to Obtain SIJ Classification and His Entry as an Unaccompanied Minor Do Not Prohibit Removal or Detention

Petitioner's intended efforts to obtain SIJ classification and a grant of deferred action also do not shield him from detention or removal. Nor does Petitioner's entry as an unaccompanied minor under TVPRA alter the detention authority.

First, even if Petitioner had SIJ recognition (which he does not at present), "[t]he fact that petitioner has been given [SIJ] status has no effect on ICE's statutory and regulatory authority to detain him." *Benito Vasquez v. Moniz*, No. 25-11737, 2025 WL 1737216, at *2 (D. Mass. June 23, 2025) (collecting cases). That is because SIJ classification provides a path to legal permanent residency, but *not* an exemption from removal, as the Third Circuit has recognized. *Cortez-Amador v. Att'y Gen.*, 66 F.4th 429, 432–33 (3d Cir. 2023) (holding that a SIJ recipient may be "subject to removal simply for presence in the United States without being admitted or paroled"); *see also United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) ("[A]n SIJ designation does not strip the U.S. government of all removal powers."); *Matter of Cahuec Tzalam*, 29 I&N Dec. at 305 n.3 (SIJ classification does not confer lawful status or affect removability).

Second, the Court lacks jurisdiction over a challenge to ICE's decision to initiate removal proceedings, notwithstanding the agency's prior grant of deferred action (which again, is not established for Petitioner at present). 8 U.S.C. § 1252(g) strips district courts of jurisdiction over any claim arising from a decision to "commence [removal] proceedings." *See also Reno v. Am.-Arab Anti-Discrimin. Comm.*, 525 U.S. 471 (1999) ("Respondents' challenge to the Attorney General's

decision to 'commence proceedings' against them falls squarely within § 1252(g)"); *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal[.]"); *Saadulloev v. Garland*, No. 23-106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest Saadulloev on April 4, 2023, clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g)."). Indeed, the Supreme Court cited challenges regarding the use of deferred action as a paradigm for what § 1252(g) is designed to prevent. *Reno v. AADC*, 525 U.S. 471, 483-85 (1999).

Even if Petitioner had deferred action (which he does not) and even if the Court had jurisdiction over such a claim (which it does not), ICE did not act unlawfully by initiating removal proceedings. Deferred action is simply "an act of administrative convenience to the government which gives some cases lower priority." 8 C.F.R. § 274a.12(c)(14). But it does not confer any lawful immigration status, alter Petitioner's classification as an "applicant for admission," or change his removability.

Finally, Petitioner argues that his detention is unlawful because he entered the United States as an unaccompanied minor. As an unaccompanied minor, Petitioner was detained under the TVPRA and transferred briefly into the custody of the Office of Refugee Resettlement before placement with a family member. 8 U.S.C. § 1232(a) and (b). But nothing in 8 U.S.C. § 1232 cross-references other detention authority in the INA or suggests that when ORR takes an unaccompanied child into custody or releases him from custody, he ceases to be an "applicant for admission."

Accordingly, neither Petitioner's pursuit of SIJ recognition nor his entry as an unaccompanied minor render his current detention unlawful under the INA or APA.

III. Petitioner's Mandatory Detention Comports with Due Process

The Court should also reject Petitioner's argument that he has not been afforded sufficient process. As a general matter, "applicants for admission are entitled only to those rights and protections Congress set forth by statute," and "the due process clause requires 'nothing more.'" *Pena*, 2025 WL 2108913, at *2 (citing *Thuraissigiam*, 591 U.S. at 140). That is because "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." *Thuraissigiam*, 591 U.S. at 139 (citation omitted) (cleaned up); *see also id.* ("[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border."). Here, once ICE determined that Petitioner entered the United States without inspection or parole (a fact that Petitioner does not dispute), it follows that Petitioner is an "applicant for admission" and subject to mandatory detention.

Petitioner's current detention also comports with due process. Although the due process clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), some amount of detention is generally permissible, *Demore v. Kim*, 538 U.S. 510, 511 (2003). To that end, it is the position of ICE that Petitioner's detention is presumptively reasonable if it does not exceed six months. *Zadvydas*, 533

U.S. at 701; *but see, e.g., Primero v. Mattivelo*, No. 25-11442, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025) (holding that where a petitioner is granted deferred action based on SIJ classification after a final order of removal, "the government may not rely on the presumptive period of permissible detention under *Zadvydas* and must afford Petitioner a bail hearing").

Here, ICE detained the Petitioner on October 20, less than one month ago. Pet. ¶ 3. Therefore, it is ICE's position that his detention is presumptively reasonable. *See, e.g.*, *Pena,* 2025 WL 2108913, at *2–3 (holding detention of 17 days under § 1225(b) comported with due process); *Pipa-Aquise*, 2025 WL 2490657, at *1 (holding that "Petitioner two-month detention" under § 1225(b) did not violate due process). Moreover, Petitioner can request release on parole under § 1225. 8 U.S.C. § 1182(d)(5)(A). He is represented by counsel in his immigration proceedings and can seek various forms of relief though that process.

Finally, even where detention under § 1225(b) has become "unreasonable" under the Due Process Clause, the appropriate remedy is a bond hearing, rather than immediate release. *See, e.g.*, *Akhmadjanov v. Oddo*, No. 25-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025). ICE respectfully submits that if the Court finds that Petitioner's detention is unreasonable, it should order a bond hearing instead of release. *Cf. Primero*, 2025 WL 1899115, at *5 (ordering bond hearing for detainee with deferred action based on SIJ).

Accordingly, the Court should dismiss Petitioner's due process challenge to his detention.

IV. Petitioner's Conditions of Confinement Claims Are Not Cognizable in Habeas

Petitioner also argues that the conditions of his confinement warrant release because detention interferes with his access to counsel and court hearings. These arguments are not justiciable in a habeas petition, and the Court should dismiss these claims for lack of jurisdiction.

Habeas relief under 28 U.S.C. § 2241 "is clearly quite limited." *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002). It is traditionally available only "where the deprivation of rights is such that it necessarily impacts the fact or length of detention." *Id.* By contrast, a change in the location or type of custody is a "condition of confinement" not cognizable in habeas. *Cardona v. Bledsoe*, 681 F.3d 533, 537 (3d Cir. 2012). Accordingly, the Third Circuit limits immigration detainees from pursuing condition-of-confinement claims in habeas except where there are plausible allegations that outright release from custody is only remedy for uniquely unconstitutional conditions, such as "the extraordinary circumstances . . . in March 2020 because of the COVID-19 pandemic." *Hope v. Warden York County Prison*, 972 F.3d 310, 324-25 (3d Cir. 2020).

The traditional limits on habeas jurisdiction do not leave detainees without a remedy for wrongful conditions of confinement. Constitutional claims challenging "the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core and may be brought pursuant to [a civil

complaint] in the first instance." *Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *see also Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001); *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010). Immigration detainees may also have remedies for money damages under the Federal Tort Claims Act ("FTCA") for the alleged malfeasance of federal officials.

Petitioner's allegations concerning his conditions of confinement do not rise to the extraordinary level that existed at the height of the COVID-19 pandemic, which means they are not cognizable in habeas.[12] Petitioner asserts that his current detention interferes with his legal representation rights and access to state court proceedings. Pet. ¶ 73-82. Even if the Court accepted those allegations at the pleadings stage, there are remedies short of release that could address the allegations, such as ordering access to counsel or access to court appearances by remote means. Petitioner can and must bring his allegations regarding his confinement in a civil complaint where such relief is available.

Consistent with this conclusion, district courts routinely dismiss conditions-of-confinement claims brought in habeas. *See Folk v. Warden Schuylkill FCI*, No. 23-1935, 2023 WL 5426740, at *2 (3d Cir. 2023) (per curiam) (finding "conditions-of-

[12] The Supreme Court has never "delineated the circumstances that might qualify as 'exceptional'" warranting habeas jurisdiction for conditions-of-confinement claims involving convicted inmates. *Cf. Reese v. Warden Phila. FDC*, 904 F.3d 244, 246 n.2 (3d Cir. 2018) (discussing pretrial detainee); *see also Ziglar v. Abbasi*, 582 U.S. 120, 145 (2017) (noting that the Supreme Court has "left open the question whether [a detainee] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus" but that those "detainees may seek injunctive relief" through a civil complaint).

confinement claim related to the conditions of the facilities or the lack of adequate medical care . . . non-cognizable" under § 2241); *Johnson v. Warden Canaan USP*, 699 Fed. App'x 125, 126 (3d Cir. 2017) (affirming District Court's reasoning that habeas corpus was "not an available remedy" because "Johnson was challenging the conditions of his confinement rather than the execution of his sentence"); *Simms v. Shartle*, No. 12-5012 RMB, 2012 WL 4506390, at *2 (D.N.J. Sept. 28, 2012) ("In addition, to the extent Petitioner wishes to assert claims alleging retaliation, denial of access to the courts, tampering with legal mail, violation of his Equal Protection rights, etc., *none* of these challenges can be litigated in the habeas proceedings at bar."). Thus, Court should dismiss Petitioner's access to counsel and courts claims.

V. Petitioner Cannot Seek a Stay of Removal via a Writ of Habeas Corpus

Finally, to the extent Petitioner challenges his removability or seeks a stay of removal while awaiting an adjustment of status, that relief is unavailable in habeas because it is not a challenge to the legality of Petitioner's detention. *See, e.g.*, *Vasquez,* 2025 WL 1737216, at * 3 (D. Mass. June 23, 2025) (to extent petitioner seeks to enjoin ICE from removing him from Massachusetts, to compel ICE to afford him an interview sooner, or to have the Court review ICE's determination regarding his removal, such requests are beyond habeas relief).

A stay of removal is not the type of relief that the Supreme Court found to be subject to habeas review. *See Thuraissigiam*, 140 S. Ct. at 1970 (holding that the relief sought, which did not include release, fell "outside the scope of the common-law habeas writ"). In reversing the Ninth Circuit's decision, the Supreme Court concluded

that habeas has been historically used to challenge the legality of detention. *Id*. at 1969-70. In *Thuraissigiam*, the petitioner did not seek "simple release," and if he had sought proper habeas relief, it would take the form of release "in the cabin of a plane bound for [the designated country]." *Id*. at 1970. Other circuits have followed this principle. *See*, *e.g.*, *Tazu v. U.S. Att'y Gen.*, 975 F.3d 292, 300 (3d Cir. 2020) ("And Tazu's constitutional right to habeas likely guarantees him no more than the relief he hopes to avoid—release into 'the cabin of a plane bound for Bangladesh.'") (brackets omitted); *E.F.L. v. Prim*, 986 F.3d 959, 965–66 (7th Cir. 2021) (holding that a petitioner could not invoke an alleged Suspension violation when a petition does not contest the lawfulness of restraint or seek release from custody).

Accordingly, this Court should dismiss the Petition to the extent it seeks a stay of removal.

CONCLUSION

For the foregoing reasons, the Court should dismiss or deny the Petition.

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