

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

S.N.H.,)	
)	
Petitioner,)	
v.)	Case No. 3:25-cv-993-DRL-SJF
)	
BRIAN ENGLISH, <i>et al.</i> ,)	
)	
Respondents.)	

RESPONDENTS' RESPONSE TO *HABEAS* PETITION

S.N.H. has petitioned for a *writ of habeas corpus* under 28 U.S.C. § 2241. He asks this Court to order that he be immediately released from custody or, in the alternative, given a bond hearing. Though this Court has rejected a similar argument in prior proceedings, the Government reiterates and supplements its position that this Court should deny the Petition for lack of subject matter jurisdiction and because S.N.H. is lawfully detained as an “applicant for admission” pending removal proceedings under 8 U.S.C. § 1225(b)(2).

INTRODUCTION

S.N.H. (“Petitioner”) is a Pakistani citizen who was never been legally admitted to the United States. He is currently detained at Miami Correctional Facility pending the outcome of his removal proceedings. Petitioner argues that his detention violates his due process rights and the Immigration and

Naturalization Act (“INA”). He asks this Court to order his release from custody or, alternatively, a bond hearing.

The Court should deny this Petition for several reasons. First, the Court lacks jurisdiction to grant the requested relief under 8 U.S.C. § 1252. Second, setting jurisdiction aside, Respondents respectfully maintain that Petitioner is lawfully detained as an alien “applicant for admission” pending his removal proceedings. 8 U.S.C. § 1225(b)(2). Third, DHS has the authority to stay an individual’s release pending decision of an appeal of the Immigration Judge’s order under 8 C.F.R. § 1003.19(i)(2). For these reasons, the Court should deny this Petition.

Respondents recognize that some of the legal issues presented in this case, including subject matter jurisdiction and the statutory authority for DHS to detain Petitioner, are being litigated in district courts across the country, including this District.¹ Respondents further acknowledge this Court’s recent ruling concerning a similar challenge to the government policy or practice at issue in this case. *Aguilar v. English*, 2025 WL 3280219 (N.D. Ind. Nov. 25, 2025). While Respondents respectfully disagree with the prior decision, in the interest of judicial economy, to expedite the Court’s

¹ See e.g. *Aguilar v. English, et al*, case no. 3:25-cv-898 (finding section 1225(b)(2) did not apply); see also *Bhupinder Singh v. English, et al.*, case no. 3:25-cv-962 (awaiting decision) and *Diaz v. English*, 3:25-cv-960 (awaiting decision).

consideration of this matter, and so as to not waive the issue, Respondents incorporate by reference the legal arguments it presented in *Aguilar* (Ex. A) and its supplemental arguments in *Meija Diaz* (Ex. B).

FACTUAL BACKGROUND

Petitioner is a native and citizen of Pakistan who entered the United States in 2023 without admission, inspection, or parole. DE # 1-6 at 1. He was served with a Notice to Appear (“NTA”) charging him as removable for being present in the United States without admission or parole under INA § 212(a)(6)(A)(i). *See id.*; DE #1, ¶ 20.

In August 2024, Petitioner had an initial bond redetermination hearing. In opposition, DHS submitted evidence showing that Petitioner posed a danger to the community. The Immigration Judge agreed and denied bond. DE #1, ¶ 29. In May 2025, Petitioner received a second bond hearing. The Immigration Judge found there was a change in circumstances and ordered that he be released on a \$4,500 bond. *Id.* at ¶ 33. DHS appealed with the Board of Immigration Appeals (“BIA”) and obtained a discretionary stay under 8 C.F.R. § 1003.19(i)(1). *Id.* at ¶ 35. The BIA thereafter remanded the case to the Immigration Judge for a new bond hearing to reconsider Petitioner’s immigration proceedings.

On September 2, 2025, at a third bond hearing, the Immigration Judge found that Petitioner did not pose a danger to the community or present a flight

risk and ordered he be released on a \$20,000 bond. *Id.* The following day, DHS appealed the bond decision and filed a Form EOIR-43, invoking the automatic stay provision in 8 C.F.R. § 1003.19(i)(2). *See id.* at ¶ 44; Ex. C (Notice of Intent to Appeal). DHS completed a certification signed by Chief Counsel setting forth the bases for invoking the automatic stay, including that the evidentiary record and existing law justified DHS's decision to continue detention. *Id.*

Two days later, the BIA decided the case *In Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In *Hurtado*, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”

Petitioner is currently detained at Miami Correctional Facility in Bunker Hill, Indiana, as an “applicant for admission” pending resolution of removal proceedings. 8 U.S.C. § 1225(b)(2). The removal and bond appeals are still pending before the BIA. Petitioner filed a *habeas* petition in this Court arguing, among other things, that his detention is unlawful under INA and unconstitutional under the Fifth Amendment’s Due Process Clause. Petitioner seeks his immediate release, or instead a discretionary bond hearing under 8 U.S.C. § 1226(a).

LEGAL STANDARD

A petition for a writ of habeas corpus challenges the legality or constitutionality of the government's restraint or imprisonment of the petitioner. 28 U.S.C. § 2241. A petitioner bears the burden to demonstrate that his detention is unlawful. *Walker v. Johnston*, 312 U.S. 275, 268 (1941).

ARGUMENT

This Court should dismiss this *habeas* petition because it lacks subject matter jurisdiction. And setting jurisdiction aside, Petitioner's detention is lawful because he is an alien "applicant for admission" under § 1225(b)(2) and thus subject to mandatory detention. Respondents recognize that, despite its objections, this Court has previously rejected some of these arguments. To avoid any possible claim of waiver, the United States nevertheless briefly reviews those arguments here.

I. PETITIONER'S *HABEAS* CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

The Court should dismiss this Petition because it lacks jurisdiction over Petitioner's *habeas* claim. Like the arguments presented in the Government's response brief in *Aguilar*, this Court lacks jurisdiction by virtue of the jurisdictional bars set forth in 8 U.S.C. § 1252. *See* Ex. A, p. 4-10 (discussing lack of jurisdiction under §§ 1252(e)(3)(A)(ii), (b)(9), and (g)). To avoid duplicative work and a long response, the Government has not set out those

arguments again in this Response. Should this Court desire, the Government could supplement this response with the complete arguments.

II. THE COURT SHOULD DISMISS THE PETITION BECAUSE PETITIONER'S DETENTION IS LAWFUL.

A. Petitioner Is Properly Detained as an Alien "Applicant for Admission" under § 1225.

Jurisdiction aside, Petitioner is lawfully detained as an alien "applicant for admission" pending the adjudication of removal proceedings under § 1225(b)(2). *See* Ex. A, p. 10-21. Respondents contend that aliens who were never admitted to the United States do not qualify for bond and are properly detained under 8 U.S.C. § 1225. *Id.* at 10-20. Specifically, the plain text of the INA mandates that Petitioner—who is present in the United States without being admitted—is correctly considered an "applicant for admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Respondents' reading of § 1225 is consistent with the everyday meaning of the statutory terms. *See* Ex. B, p. 6-12 (explaining that an alien "applicant for admission" covers a subset of aliens "seeking admission" under a straightforward reading of the statute). Petitioner is thus properly detained under § 1225(b)(2) because he unambiguously falls within the statute's scope.

And if any doubt remained, the structure and history of the statute dispel it by providing contextual support for Respondents' plain-text interpretation. Section 1225 governs the inspection, detention, and removal of aliens seeking

admission into the United States. 8 U.S.C. § 1225. It specifically defines which aliens are deemed “applicants for admission.” *Id.* It provides (among other things) detailed procedures for handling them, including an expedited removal process, an asylum process, and detention requirements. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(A)–(B). And it includes specific detention requirements for “an alien who is an applicant for admission.” *Id.* § 1225(b)(2)(A).

Here, Petitioner is properly classified as an “applicant for admission” under § 1225(b)(2). He entered the country without inspection, has never been admitted, and has applied to remain here. *See* DE # 1 at ¶ 27 (referencing his asylum application). Ultimately, the plain text of § 1225(b)(2) makes clear that Petitioner is an alien “applicant for admission” and subject to mandatory detention during the duration of his removal proceedings. Accordingly, the Court should dismiss this Petition.

B. The Automatic Stay Provision is Valid

Petitioner attempts to challenge the regulation under which DHS stayed his detention. As explained above, Petitioner is lawfully detained as an alien “applicant for admission” under § 1225(b)(2) and thus the Court does not need to reach this issue. But to the extent it does, DHS properly invoked the automatic stay under 8 C.F.R. § 1003.19(i)(2).

8 C.F.R. § 1003.19(i)(2) provides that in any case where DHS has determined that an individual should not be released, or has set a bond of

\$10,000 or more, any order of the Immigration Judge authorizing release (on bond or otherwise) shall be stayed when DHS files a Notice of Intent to Appeal the Custody Determination (using form EOIR-43) with the immigration court within one business day of the order. The decision to file this form and invoke the automatic stay is subject to DHS's discretion. *Id.*; see also *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1032 (E.D. Wis. May 22, 2007) (finding automatic stay provision in 8 C.F.R. § 1003.19(i)(2) “not unreasonable” as it “represents the judgment of the Attorney General as to how best implement the authority granted [her]”).

Here, DHS filed a Notice of Intent to Appeal one day after it received the Immigration Judge's third bond hearing decision. See Ex. C. The Notice set forth DHS's individualized basis for seeking the stay. *Id.* The stay expires when the BIA issues a decision. The appeal is still pending and thus the stay is still valid.

In the face of this clear statutory authority, Petitioner asks the Court to find that the automatic stay violates substantive and procedural due process. Petitioner points to other district courts who have found that the automatic stay provision is unconstitutional in recent months. DE # 1 at ¶ 73. However, none of those decisions arise from this District or are binding upon this Court, which can engage in its own analysis. Moreover, it is important to note that other

courts have recently held that 8 C.F.R. § 1003.19(i)(2) comports with due process. *See, e.g., Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Malan v. Noem*, No. CV 25-12570, 2025 WL 3012855 (D. Mass. Oct. 27, 2025). This Court should rely on the clear regulatory and statutory language, which permits an automatic stay of release under the facts presented here.

Petitioner identifies no other alleged violations of his due process rights. He has been given notice of the charges against him, has access to counsel, has attended hearings with an immigration judge, and has pursued appeals with the BIA. Petitioner's only plausible challenge to his detention is that he is detained under the wrong statute (he is not), which would make his detention unlawful, but it would not make it unconstitutional. *See DHS v. Thuraissigiam*, 591 U.S. at 138–40 (2020); cf. also *Al-Shabee v. Gonzales*, 188 F. App'x 333, 339 (6th Cir. 2006) (unpublished) (Petitioner's "disagreement with the Immigration Judge's order, however, does not constitute a violation of the Due Process Clause"). Therefore, the Court should reject his due process claim.

CONCLUSION

Respondents respectfully maintain that § 1225 (b)(2) applies to Petitioner. Petitioner's detention during his ongoing removal proceedings is

lawful and does not violate due process. For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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