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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GURPARTAP SINGH, Petitioner, v. WARDEN OF THE GOLDEN STATE ANNEX DETENTION FACILITY, ET AL., Respondents.	CASE NO. 1:25-CV-01689-EPG ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS; OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

This Court should deny the petition because petitioner's detention is lawful as he is being detained pursuant to the mandatory detention statute, 8 U.S.C. § 1225(b). Because there is no regulatory, statutory, or constitutional requirement that Petitioner be afforded a bond hearing, Petitioner's claim that he must be afforded a bond hearing before an immigration judge at which the government bears the burden of proof should be denied. Because Petitioner's detention is lawful, the Court should also deny the Petitioner's motion for Preliminary Injunction (PI).

II. FACTUAL BACKGROUND

Petitioner Gurpartap Singh is a native and citizen of India. Declaration of Deportation Officer Mayra Gallenkamp ("Gallenkamp Decl.") at ¶ 5. Petitioner entered the United States without inspection on May 7, 2023 near Lukeville Arizona. *Id.* Border Patrol Agents apprehended Petitioner that same day, and Peitioner admitted that he was present in the United States without valid documentation. *Id.* at

¶ 6. Two days later, DHS released Petitioner on his own recognizance and enrolled him in the Alternatives to Detention (ATD) program. *Id.* at ¶ 7. The form provided to Petitioner upon his release referenced INA section 236 (8 U.S.C. § 1226). *See id.* On May 26, 2025, ICE re-detained Petitioner and referred him for a credible fear interview based on Petitioner's expressed fears of returning to India. *Id.* at ¶ 8. Two days later, DHS conducted Petitioner's credible fear interview, and the asylum officer found that Petitioner expressed a credible fear and referred Petitioner for full removal proceedings. *Id.* at ¶¶ 9–10. Petitioner's immigration court proceedings have been continued seven times, often at Petitioner's own request for more time to secure counsel. *Id.* at ¶¶ 11–18. Petitioner's next scheduled hearing in immigration court is set for February 10, 2026. *Id.* at ¶ 19. In the meantime, Petitioner remains detained subject to 8 U.S.C. § 1225(b)(2). *Id.* at ¶ 20.

III. STATUTORY BACKGROUND

A. "Applicants for Admission" Under 8 U.S.C. § 1225

The Immigration and Nationality Act ("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 . . .)." 8 U.S.C. § 1225(a)(1); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("an alien who tries to enter the country illegally is treated as an 'applicant for admission'") (citing 8 U.S.C. § 1225(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[.]"). However long they have been in this country, an alien who is present in the United States but has not been admitted "is treated as 'an applicant for admission.'" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Under Section 212(a) of the INA, certain classes of aliens are inadmissible — and therefore ineligible to be admitted to the United States — including those "present in the United States without being admitted or paroled" and those without proper entry documents. 8 U.S.C. §§ 1182(a)(6)(A)(i), (A)(7)(A)(i)(I).

B. Detention Under 8 U.S.C. § 1225

Petitioner entered the United States without admission or inspection on December 16, 2022.

Petitioner was apprehended, processed, placed in removal proceedings, and released shortly thereafter. Applicants for admission may be removed from the United States by expedited removal under § 1225(b)(1), or full removal proceedings before an immigration judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded."). Petitioner is an Applicant for Admission and undergoing full removal proceedings before an immigration judge under 8 U.S.C. § 1229a. Therefore, he is subject to mandatory detention pending the outcome of those proceedings. 8 U.S.C. § 1225(b)(2)(A).

2. Section 1225(b)(2)

Under Section 1225(b)(2), an alien "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "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) (requiring that such aliens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (proceedings under section 1229a are "full removal proceedings under section 240 of the INA"); *see also id.* ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, [] 8 U.S.C. § 1225(b)(2)(A)[] mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299); 8 C.F.R. § 235.3(b)(3) (an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under § 1225(b)(1) "shall be detained" pursuant to § 1225(b)(2)). 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 also Biden v. Texas*, 597 U.S. 785, 806 (2022).

C. Detention Under 8 U.S.C. § 1226(a)

A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been lawfully admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a) provides for the arrest and detention of these aliens "pending a decision on whether the alien is to be

removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, 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 he 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 redetermination (*i.e.*, a bond hearing) by an 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 or release the alien on bond or 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. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider).

Until recently, the government interpreted § 1226(a) to be an available detention authority for aliens present without being admitted or paroled who were placed directly in full removal proceedings under § 1229a. *See, e.g.*, *Ortega-Cervantes*, 501 F.3d at 1116. In view of legal developments, the government has determined that this interpretation was incorrect and inconsistent with the plain text of the statute; 8 U.S.C. § 1225 is the sole applicable immigration detention authority for *all* applicants for admission. *See Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). Under the plain text of the statutes, proceedings under 8 U.S.C. § 1226(a) apply to aliens who are not applicants for admission, including those admitted or paroled into the United States.

IV. REQUEST FOR ABEYANCE

The 8 U.S.C. §§ 1225 and 1226 issue raised by Petitioner is arising in many immigration cases, including *Rodriguez Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025), which is on an expedited appeal to the Ninth Circuit and appears to be set for argument on the February 2026 calendar (Ninth Circuit Docket No. 25-6842). The statutory analysis in that case may be dispositive of issues herein. Respondents therefore request that the court hold its ruling on the merits in abeyance pending

[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)).

the Ninth Circuit's ruling in *Rodriguez Vazquez*.

V. ARGUMENT

A. This Court Should Dismiss the Petition or Stay Proceedings Based on Petitioner's Failure to Exhaust Administrative Remedies.

Petitioner argues that "there is no requirement to exhaust administrative remedies because no other forum exists in which petitioner can raise the claims herein" and "any further exhaustion requirements would be unreasonable, as immigration judges have now taken the position, citing Matter of Yajure Hurtado, 29 I&N Dec. 216, 220 (BIA 2025), that they lack jurisdiction to conduct a bond hearing with respect to migrants such as Petitioner." ECF 15 at 11–12. Thus, by Petitioner's own admission, he has not sought administrative review of his continued detention by either an Immigration Judge or the Board of Immigration Appeals.

When an alien fails to exhaust administrative review, courts should "ordinarily" dismiss the habeas petition without prejudice or stay proceedings until he exhausts that process. *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Bypassing review by an IJ and the BIA is an "improper" "short cut." *Id.* The Ninth Circuit identifies three reasons to require exhaustion before entertaining a habeas petition. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency's "expertise" makes its "consideration necessary to generate a proper record and reach a proper decision." *Id.* (quoting *Noriega–Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Second, excusing exhaustion encourages "the deliberate bypass of the administrative scheme." *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Third, "administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each reason applies here.

1. Exhaustion is warranted in this case.

In his petition, Petitioner asserts that he is properly subject to 8 U.S.C. § 1226(a), and thus must, at least, be afforded a pre-deprivation hearing before an Immigration Judge. ECF 1 at 17–22. While Respondents position is that Petitioner's unlawful entrance and subsequent proceedings render him an applicant for admission under 8 U.S.C. § 1225, Petitioner's status has not been established by administrative review of that question. Before addressing how an agency's own actions of detention and

release affect the matter, this Court likely would benefit from an IJ's and the BIA's expertise interpreting the situation. *See Puga*, 488 F.3d at 815. After all, "the BIA is the subject-matter expert in immigration bond decisions." *Aden v. Nielsen*, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). And the BIA is well-positioned to assess how specific agency actions, such as a release on recognizance, affects the statutory provisions at stake for Petitioner.

Moreover, the BIA exists to, among other things, resolve disputes such as that here. *See* 8 C.F.R. § 1003.1(d)(1). By regulation:

> [T]he [BIA], through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.

Id.

Waiving exhaustion also would "encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district court." *Aden*, 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief before an IJ and the BIA if this Court permits review here. Allowing petitioners to employ the strategy of skipping the agency adjudicative system entirely and going straight to federal court would needlessly increase the burden on district courts. *See Bd. of Tr. of Constr. Laborers' Pension Trust for S. Calif. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) ("Judicial economy is an important purpose of exhaustion requirements."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency"). This Court should allow the administrative process to play out, as Petitioner has taken no action to have his detention administratively reviewed.

2. Petitioner's reason to waive exhaustion would swallow the rule.

Federal courts are "not free to address the underlying merits [of a habeas petition] without first determining the exhaustion requirement has been satisfied or properly waived." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Discretion to waive exhaustion "is not unfettered." *Id.* A petitioner bears the burden to show that an exception to the exhaustion requirement applies. *Leonardo*, 646 F.3d at 1161; *Aden*, 2019 WL 5802013, at *3.

Detention alone is insufficient to excuse exhaustion. *See, e.g., Delgado*, 2017 WL 4776340, at *2. Adopting such a rationale "would essentially mandate the release of all detainees while their appeals

were pending and, thereby, stand the exhaustion requirement on its head." *Meneses v. Jennings*, No. 21-CV-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024); *see also Bogle v. DuBois*, 236 F. Supp. 3d 820, 823 n.6 (S.D.N.Y. 2017) (noting that "continued detention . . . is insufficient to qualify as irreparable injury justifying non-exhaustion") (quotation marks omitted).

Nor has Petitioner sufficiently alleged that he is suffering irreparable harm if he followed the required course of putting the issue before an IJ and pursuing an appeal with the BIA in the event of an unfavorable outcome to Petitioner. While Petitioner would remain in custody pending such appeal, so too does every single individual who alleges unlawful detention, meaning every alien litigating their detention decision would meet an irreparable-harm standard if that standard is premised solely on continued detention. *See, e.g., Delgado*, 2017 WL 4776340, at *2. The exception would swallow the rule. *See id.* ("Because all immigration habeas petitions could raise the same argument [that detention is irreparable injury], if it were decisive, the prudential exhaustion requirement would always be waived—but it is not."). Therefore, the court should decline to waive exhaustion here and require Petitioner to follow the proper course with an IJ adjudication and a BIA appeal before seeking relief in habeas before this court.

B. Petitioner is Subject to mandatory detention under 8 U.S.C § 1225(b)

If this court determines that exhaustion is waived and reaches the merits, it should still deny the Petition and the motion for TRO. Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which provides that Petitioner "shall" be detained. Because Petitioner is currently detained under 8 U.S.C. § 1225(b)(2)(A), he is ineligible for release or bond hearing under 8 U.S.C. § 1226(a). He seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing that he is not entitled to. Petitioner argues that, contrary to the plain language of 8 U.S.C. § 1225(b)(2)(A), he is entitled to a bond hearing and release on conditions under 8 U.S.C. § 1226(a). Petitioner falls precisely within the statutory definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) because he was and remains an applicant for admission.

Detention under this statute is thus mandatory, and the only mechanism for release is parole, which may be permitted under 8 U.S.C. § 1182(d)(5) as an exercise of the discretion of the Department

of Homeland Security. Petitioner's prior release in the discretion of DHS, even though the release document cited 8 U.S.C. § 1226, does not have the effect of having converted petitioner's presence in the United States into an "admission." "[A]n alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Detentions under 8 U.S.C. § 1225(b) authority do not require warrants. *See Jennings*, 583 U.S. at 302 (explaining that the government may detain an applicant for admission without a warrant under 8 U.S.C. § 1225(b), but must obtain a warrant under 8 U.S.C. § 1226(a) for other aliens).

C. There is no Constitutional Right to an Immigration Court Bond Hearing and Petitioner's Right to Due Process has not been Violated.

Petitioner also argues that not providing a pre-re-detention hearing violates his due process rights. ECF 15 at 9. However, Petitioner is an applicant for admission originally apprehended near the border, so his due process rights are minimal. *Thuraissigiam*, 591 U.S. at 107 (finding that an alien apprehended near the border "has no entitlement to procedural rights other than those afforded by statute"). "Applicants for admission,"—including Petitioner—"fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287. They are not entitled to custody redetermination hearings, whether pre- or post-detention. *Id.* at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Further, as the Supreme Court described in *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022), unlike federal agencies, "[r]eviewing courts are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them." The fact that Petitioner is an applicant for admission resolves the dispute in this case because applicants for admission must be detained under statute, and they are not entitled to bond hearings. The court should not invent a due process right to a hearing where none exists in the governing statutory scheme.

While Petitioner correctly notes that due process applies to all persons within the United States, including applicants for admission, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972). In the case of an alien entering without inspection or admission and intercepted near the border, those rights are reduced. *See*

Thuraissigiam, 591 U.S. at 107. Petitioner was never granted admission to the United States. For immigration law purposes, he is treated as being stopped at the border, even though he has been physically present within the United States. *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995) (en banc); *Thuraissigiam*, 591 U.S. 103, 139 (2020).

"[A]pplicants for admission have virtually no constitutional rights regarding their applications." *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-34 (1982)). "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950). Thus, when it "involve[s] an asylum applicant who had not 'technically entered the United States,' [the Court] examine[s] only whether the government violated the statutory rights that Congress afforded such applicants." *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th Cir. 2020) (citation omitted).

Immigration laws have long authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *Demore v. Kim*, 538 U.S. 510, 523–26 (2003); *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). In the Immigration and Nationality Act, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523 n.7) ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.").

The government's interest in protecting the public and preventing deportable non-citizens from fleeing are strong and compelling. *See e.g., Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1208 (9th Cir. 2022) (government's interests in "protecting the public from dangerous criminal aliens" and "increas[ing] the chance that, if ordered removed, the aliens will be successfully removed" are "interests

of the highest order that only increase with the passage of time").

The courts have recognized that "there is little question that the civil detention of [noncitizens] during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable … [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed.'" *Prieto–Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

The mandatory detention statute does not provide for bond hearings as demanded in the petition. Congress in the INA did provide for the possibility of parole in the discretion of the agency. 8 U.S.C. § 1182(d)(5). Due process requires no further relief than that already provided in the parole process authorized by Congress.

Because the Petition fails on the merits, the court should not provide immediate injunctive relief. "A [petitioner] seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008). Here, Petitioner has not shown he is likely to succeed on the merits, and therefore should not receive immediate injunctive relief.

D. In the Alternative, Respondents Request the Court Order Petitioner to be Afforded Such Process as Complies with 8 U.S.C. § 1226(a)

In the alternative, if the court disagrees with Respondents, finding both that exhaustion is waived and that Petitioner is entitled to process beyond what is authorized by 8 U.S.C. § 1225(b), Respondents request the Court order that Petitioner receive process consistent with 8 U.S.C. § 1226(a) and its implementing regulations. Such hearing should be the same as a custody redetermination hearing before an Immigration Judge. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. In such a hearing, the IJ should be permitted the discretion to undertake the inquiry normally associated with such redetermination hearings. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). The Court also should not order process beyond this hearing or alter the burdens imposed on the parties by statute, as doing so would be creating additional process beyond the statutory scheme, which reviewing courts are generally not free to impose. *See Johnson*, 596 U.S. at 582.

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VI. CONCLUSION

2 For the foregoing reasons, it is respectfully requested that the Court deny petition for writ of
3 habeas corpus and the motion for a preliminary injunction.

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6 Dated: January 8, 2026

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8 By: /s/ J. DOUGLAS HARMAN
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9 Assistant United States Attorney

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