

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-03980-RMR

EZEQUIEL ALCARAZ BARRIENTOS,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents

**RESPONSE TO PETITIONER'S FIRST AMENDED VERIFIED COMPLAINT FOR
HABEAS CORPUS RELIEF (ECF No. 19)**

Respondents submit this Response to Petitioner's First Amended Verified Complaint for Habeas Corpus Relief (ECF No. 19, the Petition). As explained below, the Court should deny the Petition. Petitioner's detention is authorized by 8 U.S.C. § 1225(b)(2)(A), and he is not entitled to be released on bond. And even if the Court were to determine that Petitioner is held pursuant to 8 U.S.C. § 1226(a), the Court should find that Petitioner's detention remains lawful due to Respondent's stay of the bond.

INTRODUCTION

The Petition presents two questions. The *first* is a question of statutory interpretation. The Department of Homeland Security (DHS) is detaining Petitioner under a statutory provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2)(A), that applies to noncitizens¹ who, like Petitioner, entered the United States without inspection and have never been admitted, and thus are treated as “applicants for admission.” Section 1225(b)(2)(A) requires detention of an “applicant for admission” if an “examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.”

Petitioner claims he is not an applicant for admission subject to § 1225(b)(2)(A) but is instead subject to 8 U.S.C. § 1226(a), another provision that also authorizes detention of certain noncitizens while removal proceedings are pending. See ECF No. 19 at 14-21. The practical difference between the two sections is that Congress has provided that noncitizens detained under § 1225(b)(2)(A) are ordinarily *not* eligible for bond hearings, while those detained under § 1226(a) are. Based on the premise that his detention is governed by § 1226(a) (and thus entitles him to a bond hearing), he requests that the Court declare that Respondents’ authority to detain Petitioner is solely pursuant to § 1226(a). ECF No. 19 at 24.

¹ The INA uses the term “alien,” which is defined as “any person not a citizen or national of the United States.” 8 U.S.C. § 1101(a)(3).

The Court should find that Petitioner is an applicant for admission within the scope of § 1225(b)(2) based on the text of the statute and the interpretation of that statutory provision by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents recognize that numerous nonprecedential decisions have reasoned otherwise. But as explained below, a close reading of the Supreme Court's explanation in *Jennings* of the scope of § 1225 supports Respondents' view, and the reasoning of many lower court decisions cannot be readily reconciled with the Supreme Court's interpretation of the statute in *Jennings*. Thus, the Court should find that Petitioner is subject to 8 U.S.C. § 1225(b)(2)(A) and thus does not have, as he claims, a right to a bond hearing.

The **second** question raised by Petitioner is, if detention under § 1225(b)(2)(A) is not lawful and Petitioner is thus entitled to a bond hearing, whether DHS has violated Petitioner's due-process rights, and engaged in ultra vires actions, by invoking a regulatory provision that allows DHS to obtain an automatic stay of a bond, 8 C.F.R. § 1003.19(i)(2), during DHS's appeal of the Immigration Judge (IJ)'s grant of a bond.

If the Court determines that Petitioner is subject to § 1225(b)(2), it need not address the legality of the automatic stay of Petitioner's release on bond, because Petitioner is not entitled to bond in the first instance. But even if the Court were to conclude that Petitioner instead must be detained pursuant to § 1226(a) and thus was entitled to a bond hearing, the Court should still uphold the regulation allowing for the automatic stay of the bond issued by the IJ. The invocation of the automatic stay has not denied him due

process. And Petitioner also has not shown that the automatic-stay provision meets the exceptionally high standards for an ultra vires claim.

BACKGROUND

I. Legal background

A. Sections 1225 and 1226

In the INA, Congress established rules governing when certain noncitizens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of noncitizens who are “applicants for admission.”

The scope of § 1225 was analyzed by the Supreme Court in *Jennings*. At issue in that case was whether certain noncitizens are entitled to periodic bond hearings during prolonged detention. Because in that case (as in this one) “[t]he primary issue [wa]s the proper interpretation of §§ 1225(b), 1226(a), and 1226(c),” 583 U.S. at 289, the Supreme Court’s explanation in *Jennings* of § 1225’s scope should guide the Court’s analysis here. The key points from *Jennings* are set forth below:

1. Section 1225 applies to “applicants for admission,” a term of art that includes aliens who are unlawfully present but were never admitted. Section 1225 provides in relevant part, “An alien present in the United States who has not been admitted . . . shall be *deemed* for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1) (emphasis added). The *Jennings* Court explained that § 1225 applies to “applicants for admission,” and that this term applies to *both* (a) an “arriving alien,” as

well as (b) an individual who is *present* in this country but has not been “admitted” through a lawful entry at a port of entry.² *Id.*

The Court in *Jennings* recognized that the statute uses the term “applicant for admission” as a term of art. “Under . . . 8 U.S.C. § 1225, an 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.’” 583 U.S. at 287 (emphasis added). In other words, noncitizens who are present in the country and were never lawfully admitted are “treated as”—in the words of § 1225(a)(1), they are “deemed to be”—“applicants for admission.”

2. “Applicants for admission” are not limited to noncitizens who have submitted an immigration application. The Court’s discussion of “applicant for admission” as a term of art made clear that the term “applicant for admission” is not limited to noncitizens who have submitted some type of immigration application. Rather, as the Court explained, there are two criteria to be an applicant for admission: “an alien who [1] ‘is present’ in this country but [2] ‘has not been admitted’ is *treated as* ‘an applicant for admission.’” *Id.* at 287 (emphasis added, marks added).

The Court commented later in its opinion that “[i]n sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2).” *Id.* at 289. But the Court’s reference to “aliens seeking

² The INA defines “admission” to mean “lawful entry” after “inspection and authorization by an immigration officer—such as may occur at a port of entry. *Id.* § 1101(a)(13)(A) (defining “admission” and “admitted” as “the lawful entry of the alien into the United States *after inspection and authorization* by an immigration officer”) (emphasis added).

admission” did not add a new “seeking admission” criterion that must exist for a noncitizen to fall within § 1225. Rather, this reference reflected the Court’s prior explanation that noncitizens who fall within §§ 1225(b)(1) and (b)(2) are, as a matter of law, “treated as” “applicants for admission.” *Id.* at 287.

Indeed, § 1225 elsewhere recognizes that the *status* of being an applicant for admission is one way that a noncitizen may be “seeking admission.” It states, “All aliens . . . who are applicants for admission *or otherwise seeking admission* . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). Section 1225 thus confirms that a noncitizen can seek admission simply by meeting the definition of an applicant for admission *or* can “otherwise” seek admission by directly applying for admission.

3. Section 1225(b) applies to all applicants for admission, not just arriving aliens or those who unlawfully entered the United States recently. The Court’s discussion of § 1225’s scope indicates that “applicants for admission” does not somehow *exclude* individuals who entered the United States years ago.

The Court explained that the *first* subsection of § 1225(b)—§ 1225(b)(1)—applies to two subcategories of applicants for admission. One subcategory applies to certain arriving noncitizens: those who have been “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” 583 U.S. at 287 (citing § 1225(1)(2)(a)(i)). Another subcategory applies to certain noncitizens who are unlawfully present without being admitted, and also are recent arrivals—those who are designated by the Attorney General in his discretion, if the individual “has not been admitted or paroled into the United States, and . . . has not affirmatively shown, to the satisfaction of

an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." See 583 U.S. at 287; § 1225(b)(A)(iii). Noncitizens in those two subcategories are subject to a process known as "expedited removal." 583 U.S. at 287 ("Aliens covered by § 1225(b)(1) are normally ordered removed 'without further hearing or review' pursuant to an expedited removal process." (quoting 8 U.S.C. § 1225(b)(1)(A)(i)).

The Court then explained that *all* applicants for admission who fall outside those narrow two subcategories in § 1225(b)(1) are covered by the *second* subsection of § 1225(b)—*i.e.*, § 1225(b)(2). It described § 1225(b)(2) as a "*catchall* provision that applies to *all* applicants for admission not covered by § 1225(b)(1)." 583 U.S. at 287 (emphasis added).

Thus, a noncitizen who meets the general definition of applicant for admission (such as an individual who is unlawfully present and has not been admitted) but does not fall within the two § 1225(b)(1) subcategories described above, is still an "applicant for admission" who falls under the "catchall" provision of § 1225(b)(2).

4. In § 1225, Congress did not grant applicants for admission a right to a bond hearing. The Court in *Jennings* recognized that § 1225 does not provide a bond hearing for noncitizens detained under that provision. It explained that Congress has provided that aliens covered by § 1225(b)(2) generally "shall be detained" during their removal proceedings, with narrow exceptions. 583 U.S. at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A). Under § 1225(b)(2)(A), all other applicants for admission who an

immigration officer determines are “not clearly and beyond a doubt entitled to be admitted” shall be detained for removal proceedings under 8 U.S.C. § 1229a.

5. Section 1226, in contrast, provides for detention, and bond hearings, for other categories of noncitizens subject to removal. The Court in *Jennings* recognized that a different statutory provision—§ 1226(a)—governed the detention of other noncitizens, including those who *had* been “admitted.” As the Court explained in *Jennings*,

Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls ‘within one or more . . . classes of deportable aliens.’ § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses *since admission*. See §§ 1227(a)(1), (2).

583 U.S. at 288 (emphasis added). In other words, § 1226(a) extends to noncitizens who were admitted.

The Court did *not* suggest that § 1226(a) governs the detention of noncitizens who are covered by § 1225(b)(2). Rather, the Court appeared to recognize that these *two* provisions—§ 1225(b)(2) and § 1226(a)—authorize detention for *different* sets of individuals: the detention of noncitizens covered by § 1225 is authorized by § 1225, and that *other* individuals in the country not covered by § 1225 may be detained under § 1226:

U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

583 U.S. at 289. In distinguishing between these detention authorities, the *Jennings* Court did *not* suggest that noncitizens who are properly covered by § 1225 (where Congress has not authorized bond) should instead governed by the detention authority set forth in § 1226(a)—the provision where Congress *has* expressly authorized bond.

B. Appeals of IJ’s bond decisions

For those non-citizens detained under § 1226(a) and afforded a bond hearing, Congress vested authority over bond appeals in the Attorney General. See 8 U.S.C. § 1103(g); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *11 (E.D. Wis. Oct. 30, 2025). Exercising this authority, the Department of Justice promulgated regulations that provide for appeal of an IJ’s decision to grant or deny bond. See 8 C.F.R. §§ 1003.19(f), 1003.38. As relevant here, if an IJ has ordered a non-citizen released on bond and DHS wishes to appeal that decision to the BIA, 8 C.F.R. § 1003.19(i)(2) permits ongoing detention of the non-citizen pending that appeal. This regulation, commonly referred to as the “automatic-stay regulation,” provides that if DHS “determine[s] that an alien should not be released . . . , any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon [DHS’s] filing of a notice of intent to appeal the custody redetermination . . . with the immigration court within one business day of the order.” *Id.* § 1003.19(i)(2). If DHS files a timely notice of appeal, the automatic-stay regulation further provides that “any order of the immigration judge authorizing release (on bond or otherwise)” shall, “except as otherwise provided in 8 CFR 1003.6(c), . . . remain in abeyance pending decision of the appeal by the

[BIA].” *Id.* § 1003.19(i)(2). Stay of the bond will “lapse 90 days after the filing of the notice of appeal,” absent a BIA decision. *Id.* § 1003.6(c)(4).

II. Factual background

Petitioner has not been inspected and admitted to the United States and thus is being treated as an applicant for admission.

Petitioner is a native and citizen of Mexico who illegally entered the United States at an unknown date at an unknown place. Ex. 1 at ¶¶ 4-5. He has never been admitted or paroled into the United States. *Id.* at ¶ 6.

ICE officers encountered Petitioner on October 6, 2025, in Denver. *Id.* at ¶ 7. ICE detained him under 8 U.S.C. § 1225(b) and issued a Notice to Appear (NTA) initiating removal proceedings under § 1229a. The NTA charged Petitioner with being deportable from the United States pursuant to § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated).

Petitioner has been in removal proceedings ever since. Petitioner and his attorney appeared before an IJ for an initial hearing on October 17, 2025. *Id.* at ¶ 10. Petitioner requested, and the IJ granted, additional time to prepare his case. *Id.* Since then, there have been several filings and hearings before the IJ. *Id.* at ¶¶ 11-21. His next hearing is set for January 21, 2026. *Id.* at ¶ 24. It was set for that time after Petitioner requested additional time to prepare. *Id.*

Petitioner filed a motion for a custody redetermination hearing (that is, a bond hearing) on December 30, 2025. *Id.* at ¶ 22. The IJ held that hearing and ordered

Petitioner released on a bond of \$5,000. *Id.* at ¶ 24. DHS reserved its right to appeal the IJ's bond decision. *Id.* DHS filed a Notice of Intent to Appeal Custody Redetermination (Form EOIR-43) on January 8, 2026. *Id.* at ¶ 25. Under the terms of the EOIR-43, the stay lapses if ICE does not file a notice of appeal within ten business days of the IJ's bond order, or upon ICE's withdrawal of the EOIR-43, or as set forth in 8 C.F.R. § 1003.6(c)(5). *Id.*

Petitioner remains detained at the Denver CDF pending resolution of removal proceedings. *Id.* at ¶ 27.

Petitioner will not be removed from the District of Colorado or the United States unless or until the District Court for the District of Colorado or the Court of Appeals for the Tenth Circuit vacates the District Court's order in *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR or Petitioner is no longer a member of the *Gutierrez class* (e.g., if he becomes subject to a final order of removal and is thus detained under 8 U.S.C. § 1231). *Id.* at ¶ 28.

III. Procedural background

Petitioner argues that the automatic-stay provision of 8 C.F.R. § 1003.19(i)(2) is unlawful; he also argues that he is not subject to § 1225 (which provides for mandatory detention) and that he is instead subject to § 1226 (which provides for the possibility of release on bond). *See generally* ECF No. 19. He specifically alleges that the automatic stay violates due process (Claims 1 and 2) and the APA as ultra vires (Claim 3), that he is not subject to § 1225(b)(2) but rather § 1226(a) (Claims 4 and 5), and that detention of Petitioner under § 1225(b)(2) violates the APA because he is not subject to § 1225(b)(2).

See *id.* at 21-25. He seeks immediate release or release on the \$5,000 bond set by the IJ, injunctive and declaratory relief providing that his detention violates due process and the APA and that the automatic-stay regulation does not apply to Petitioner, an injunction not to transfer Petitioner outside this district pending resolution of this case, fees under the Equal Access to Justice Act, and other miscellaneous relief. See *id.* at 25.

ARGUMENT

I. Petitioner is subject to detention under § 1225(b)(2)(A).

As explained above, § 1225(b)(2) applies to “applicants for admission,” which include noncitizens who, like Petitioner, entered without inspection and have been present in the United States for more than two years. And § 1225(b)(2)(A) mandates detention for a noncitizen “who is an applicant for admission” if they are “not clearly and beyond a doubt entitled to be admitted.” The statute defines “[a]pplicant for admission” to include noncitizens who (1) are “present in the United States who ha[ve] not been admitted” or (2) “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). In other words, a noncitizen who is present in the United States but has not been inspected or admitted is treated as an applicant for admission.

The Supreme Court’s explanation in *Jennings* of the scope of § 1225 shows that a noncitizen in Petitioner’s position is treated as an “applicant for admission” and is subject § 1225(b)(2). He is present in the United States but has not been “admitted”—*i.e.*, he has not made a “lawful entry . . . after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A); Ex. 1 ¶¶ 5-6. He does not argue that he is clearly and

beyond a doubt entitled to be admitted. As a result, his detention without bond is authorized by § 1225(b)(2)(A).

Petitioner resists this reading of § 1225(b)(2)(A). He makes three arguments about why this section should not apply to him: arguments from other text of the INA, the INA's legislative history, and the Government's past practice. He also relies on numerous nonprecedential opinions that have determined that noncitizens like him are not applicants for admission. None of these arguments are persuasive.

TEXTUAL ARGUMENTS. First, Petitioner makes textual arguments about why § 1225 does not apply to him.

The text of § 1225. He argues that § 1225 should be construed as limited to just those newly arriving in the United States. Specifically, he argues that § 1225(b)(2)(A) should be read in a limited way to apply to just those noncitizens who are arriving (whether or not at a designated port of arrival). See ECF No. 19 at 14-16.

But that reading of § 1225(b)(2)(A)—that it extends only to *new* arrivals—does not comport with the text of § 1225 or make sense in the context of the whole section. Rather, as the Court in *Jennings* explained, § 1225 applies to “applicants for admission,” who include *both* those just arriving in the United States *and* those who entered without inspection and have been residing here. For example, § 1225(b)(1)(A)(i) is not limited to noncitizens “arriving in the United States” who are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead, § 1225(b)(1)(A)(i) also applies, through its reference to § 1225(b)(1)(A)(iii), to some noncitizens who have *already* been residing in the United States and are inadmissible for

the same reasons—that is, applicants for admission who have “not been admitted or paroled” and have not “affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Petitioner’s argument also disregards that § 1225(b)(2) is a catchall that is broader than § 1225(b)(1). Section 1225(b)(2) is titled “Inspection of other aliens.” The “other aliens” in the title refers to a category of noncitizens that is not covered by § 1225(b)(1). As explained above, the Supreme Court expressly recognized that § 1225(b)(2), which refers to a “broader” category of noncitizens than those described in § 1225(b)(1), applies to all “applicants for admission” who do not fall within § 1225(b)(1). The Court stated that § 1225(b)(2) is a “catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1).” 583 U.S. at 287 (emphasis added). Accordingly, § 1225(b)(2) applies *both* to applicants for admission just arriving at the border who do not fall within § 1225(b)(1)(A)(i) *and* to applicants for admission who have been physically present in the United States but are not covered by § 1225(b)(1)(A)(iii)(II).

Petitioner points to the phrase “seeking admission” in § 1225(b)(2)(A) to argue that this section should be interpreted to be limited to noncitizens who are *actively* taking some step to gain admission to the United States. See ECF No. 19 at 17. But as explained above, the Court in *Jennings* defined who is treated as an “applicant for admission,” and that definition imposed no additional requirement that the person has filed an application.

Nor does the statute suggest otherwise. Section 1225(b)(1) contains no “seeking admission” language. Its detention provision applies, in the Attorney General’s discretion, even to some noncitizens who are not “arriving” at the time of their inspection by an immigration officer. See 8 U.S.C. § 1225(b)(1)(A)(i) (applying to an “alien . . . who is arriving in the United States or is described in clause (iii)” (emphasis added)); *id.* § 1226(b)(1)(A)(iii) (describing a noncitizen “who has not affirmatively shown” that they have “been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility”).

Other parts of § 1225 confirm that *anyone* falling within the category of “applicants for admission” is deemed, as a matter of law, to be seeking admission. See 8 U.S.C. § 1225(a)(3) (“All aliens . . . who are applicants for admission or *otherwise seeking admission* . . . shall be inspected by immigration officers.” (emphasis added)); *id.* § 1225(a)(5) (“An applicant for admission may be required to state . . . the purposes and intentions of the applicant *in seeking admission*” (emphasis added)).

In short, the Court in *Jennings* confirmed that all noncitizens who are “applicants for admission” are “seeking admission” by virtue of that status.

The text of § 1226. Petitioner next argues that § 1225(b)(2)(A) does not apply to him because the catchall provision, § 1226(a), should. Petitioner’s argument contradicts normal rules of statutory interpretation. Section 1226(a)’s general detention authority, which permits the issuance of warrants to detain noncitizens for their removal proceedings, must be read alongside § 1225, which *specifically* addresses the detention of applicants for admission. And § 1226 does not displace the more specific provisions in

§ 1225 governing the detention of applicants for admission. Where “there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one.” *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). Here, § 1225 is narrower in scope than § 1226. It applies only to “applicants for admission,” which includes noncitizens present in the United States who have not been admitted. See 8 U.S.C. § 1225(a)(1).

To be sure, § 1226(c)(1)(E) mandates detention for a narrow category of noncitizens who entered the country without inspection: those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes. It requires DHS to take such noncitizens into custody after their release from criminal custody and detain them. See *Nielsen v. Preap*, 586 U.S. 392, 414-15 (2019) (explaining that § 1226(c)(1)’s “when released” clause clarifies that DHS custody begins “upon release from criminal custody,” not before, and that it “exhort[s] [DHS] to act quickly”). But the fact that § 1226(c)(1)(E) provides rules for detention of a category of noncitizens who entered without inspection and then had criminal-related conduct does not show that § 1225(b)(2)(A) does not still apply to other such noncitizens who entered without inspection.

Put differently, it is true that for a certain narrow subset of noncitizens—those who entered without inspection and then committed (or may have committed) certain crimes—Congress has now mandated their detention in two separate provisions, both § 1225(b)(2)(A) (based on their entry without inspection) and § 1226(c)(1)(E) (also based on their criminal-related conduct). But any potential redundancy in requiring mandatory

detention for that subset of noncitizens subject to § 1226(c)(1)(E) does not affect § 1225(b)(2)(A)'s general applicability to other noncitizens who entered without inspection. Redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* The Court should not read § 1226(c) to require courts to ignore the express scope of § 1225.

Nor did Congress signal that courts should ignore the existing scope (and detention provisions) of § 1225 when Congress enacted the Laken Riley Act. That Act added § 1226(c)(1)(E), but did not alter § 1225(b)(2)(A). See PL No. 119-1, 139 Stat. 3 (2025). There is no indication that in modifying § 1226 through that Act, Congress intended, without ever saying so, to displace the authority in a separate provision—§ 1225(b)(2)(A)—to detain other applicants for admission.

Finally, Petitioner points to *Jennings* to attempt to bolster his reading of §§ 1225 and 1226. See ECF No. 19 at 17. On the contrary, as explained above, the full discussion in Part I.A.1 of the *Jennings* opinion confirms that § 1225(b)(2) applies to noncitizens, like Petitioner, who entered without inspection and have not been admitted.

LEGISLATIVE HISTORY. Petitioner also argues that the legislative history behind §§ 1225 and 1226 supports his position. See ECF No. 19 at 19. He argues that before Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act

(IIRIRA), another provision—8 U.S.C. § 1252(a) (1994)—authorized release on bond for noncitizens present in the United States when they were detained for deportation proceedings. *Id.* According to Petitioner, the IIRIRA re-codified the availability of bond hearings for most noncitizens. *Id.* He points to language in the House Report stating that § 1226(a) “restates the current provisions . . . regarding the authority . . . to arrest, detain, and release on bond a[noncitizen].” *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229).

But the legislative history weighs in favor of Respondents’ interpretation of §§ 1225 and 1226. Before the IIRIRA, § 1225 provided for the inspection of noncitizens only when they were arriving at a port of entry. See 8 U.S.C. § 1225(a) (1990) (discussing inspection of all noncitizens “arriving at ports of the United States”). It required that noncitizens arriving at a port of entry be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, noncitizens “in the United States” who “entered without inspection” were deemed deportable under 8 U.S.C. § 1251(a)(1)(B) (1994), and placed in deportation proceedings, where they could request release on bond. *Id.* § 1252(a)(1) (1994).

In short, under the pre-IIRIRA regime, whether a noncitizen was placed in exclusion proceedings or deportation proceedings depended on whether they had “entered” the country. But this focus on “entry” “resulted in an anomaly”—“non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

The IIRIRA sought to address this anomaly “by substituting ‘admission’ for ‘entry’ and by replacing deportation and exclusion proceedings with a general ‘removal’ proceeding.” *Id.* Congress thus expanded § 1225 to address not only those who presented themselves at a port of entry, but to include *all* applicants for admission—*i.e.*, noncitizens present in the United States who had not been admitted, as well as those just arriving. The House Judiciary Committee Report confirms Congress intended such a fix when enacting the IIRIRA. According to the Report, the IIRIRA was

intended to replace certain aspects of the 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. Hence, the pivotal factor in determining an alien’s status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). The Report also explains that before the IIRIRA “aliens who ha[d] entered without inspection [were] deportable under section [1251(a)(1)(B)]” but that after the IIRIRA “such aliens will not be considered to have been admitted.” *Id.* at 226. The revisions to § 1225 “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country,” would be on “equal footing in removal proceedings” as applicants for admission. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (citing 8 U.S.C. § 1225(a)(1)).

If the Court interprets § 1225 in the manner advocated by Petitioner, it would undo the fix that Congress enacted through the IIRIRA. On Petitioner’s reading, a noncitizen who enters without inspection would often be entitled to a bond hearing, while a noncitizen who presents themselves to immigration officers at a port of entry would not. Such a

reading would recreate the anomalous pre-IIRIRA incentives for those entering the country without inspection. But as the Supreme Court has recognized, a statutory interpretation that would allow applicants for admission to avoid mandatory detention simply by evading immigration officers when they enter the country would enshrine in our law “a perverse incentive to enter at an unlawful rather than a lawful location.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

PAST PRACTICE. Petitioner argues that detaining aliens like him under § 1225(b)(2)(A) would conflict with past practice. Specifically, he points to an entry in the Federal Register from 1997 which states that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” ECF No. 19 at 20 (citing *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

This citation from the Federal Register does not support Petitioner’s argument for at least two reasons. First, the entry appears to acknowledge that noncitizens who are present without having been admitted are “applicants for admission.” Thus, the cited language implicitly acknowledges that applicants for admission are not eligible for bond hearings under the statute. Instead, it apparently regarded them as eligible for bond hearings as a matter of administrative discretion, not of statutory interpretation.

Second, the Federal Register does not change the plain language of the statute. The weight given to agency interpretations must “depend upon their thoroughness evident

in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 388 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Here, the agency provided little analysis to support the reasoning for its statement about granting bond hearings to applicants for admission. See 62 Fed. Reg. at 10323. A prior practice by the agency of making such individuals eligible for bond hearings therefore carries little weight in interpreting the text of § 1225.

NON-BINDING DISTRICT COURT DECISIONS. Petitioner cites to many non-binding district court opinions from across the country finding that detention under § 1225(b)(2)(A) is unlawful under the circumstances presented.³ However, numerous courts have affirmed Respondents’ interpretation of § 1225, often articulating their reasoning in careful detail. See, e.g., *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Rojas*, 2025 WL 3033967, at *6; *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331, at *3-6 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, at *3-6 (W.D. La. Oct. 31,

³ Petitioner also cites a one circuit-court decision. *Castanon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025). See ECF No. 19 at 8. However, that decision was made in the context of a preliminary injunction, not a final decision on the merits; it was a decision that Defendants were “not likely to succeed on the merits” given “this preliminary record.” *Castanon-Nava*, 161 F.4th at 1062. So its persuasiveness is limited.

2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894, at *2 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855, at *3-7 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932, at *1-4 (W.D.N.Y. Dec. 4, 2025). As those decisions and the Supreme Court's discussion in *Jennings* show, Respondents' position is well supported by the statutory text as interpreted by federal courts.

In sum, none of Petitioner's arguments overcome § 1225's text. ICE lawfully holds him pursuant to § 1225(b)(2) and therefore he is not entitled to a bond hearing.

II. The Court should reject Petitioner's challenge to the automatic-stay regulation.

As a threshold issue, if the Court accepts Respondent's position that Petitioner is properly detained pursuant to § 1225(b), he is not entitled to bond. Petitioner's challenge to the automatic stay of bond would then become moot, and the Court need not address it. See *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1031 (E.D. Wis. 2007) (finding that where the petitioner was no longer held pursuant to the automatic stay provision of 8 C.F.R. § 1003.19(i)(2), his challenge to the automatic stay was moot), *aff'd sub nom. Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007).

Were the Court to find that Petitioner must be detained pursuant to § 1226(a), however, it should still deny Petitioner's challenge to the automatic stay of his bond. First, Petitioner has not shown that application to of the automatic-stay regulation deprives him of due process. Second, the regulation is not *ultra vires*.

A. The Supreme Court has upheld mandatory detention while removal proceedings are pending.

The Supreme Court “has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). Central to the Supreme Court’s reasoning was the fact that the mandatory detention had “a definite termination point”—the end of the removal proceedings—distinguishing this case from the potentially indefinite detention addressed in *Zadvydas v. Davis*, 533 U.S. 678 (2001). See *Demore*, 538 U.S. at 528-29.

Here, there is a similar definite termination point. The automatic stay expires after 90 days, or no more than 120 days in narrow circumstances (*if* DHS moves for an additional discretionary stay *and* the BIA fails to rule on *either* the underlying appeal *or* the extension motion before the automatic stay lapses). See 8 C.F.R. § 1003.6(c)(4) (“If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal.”); *id.* § 1003.6(c)(5) (the automatic stay “will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay”). Either way, the automatic stay has a “definite termination point.”⁴ See *Demore*, 538 U.S. at 529. And it cannot last longer than 120 days.

Also significant to the *Demore* Court was the fact that, while “the Fifth Amendment entitles aliens to due process of law in deportation proceedings,” “Congress may make

⁴ Other automatic stays of no more than 5 or 15 days—each following the BIA’s ruling on the appeal—are contemplated in the regulations, but neither has been invoked in Petitioner’s case, and Petitioner does not suggest otherwise. See 8 C.F.R. § 1003.6(d).

rules as to aliens that would unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522-23; see *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (noncitizens who have not been admitted have “only those rights regarding admission that Congress has provided by statute.”). Here, Congress has authorized mandatory detention of Petitioner, see 8 U.S.C. § 1225(b)(2)(A), and authorized the Attorney General to develop additional rules respecting bond. 8 U.S.C. § 1103(g)(2). Congress has not provided Petitioner the right to be released on bond pending appeal of an IJ’s order. And Petitioner fails to explain why due process would require him to be released or his custody be reviewed *while the BIA is already in the process of reviewing his custody* on a finite timeline.

In short, the Supreme Court has never held that a noncitizen has a due-process right to a bond hearing during removal proceedings that have a definite termination point.⁵

B. The *Mathews* factors do not apply.

Petitioner argues that his procedural due-process challenge is governed by the three-factor test in *Mathews v Eldridge*, 424 U.S. 319, 335 (1976). See ECF No. 19 at 9-12. But the Supreme Court has not applied the *Mathews* analysis in this context.

⁵ Due-process concerns about the automatic stay were addressed at length by the Department of Justice when the regulation was adopted. See Review of Custody Determinations, Executive Office for Immigration Review, Justice, 71 Fed. Reg. 57873, 57876-57881 (2006) (justifying the regulation in response to comments about due-process rights to freedom from restraint, indefinite detention, and a meaningful opportunity to challenge detention). The Department of Justice also justified its interest in the stay rule with statistics about the difficulties of removing aliens who were *not* detained, establishing a strong interest in preventing flight risks. See *id.* at 57882.

In *Demore*, the Supreme Court addressed due-process implications of detention pending removal proceedings and never suggested that it was proper to use the *Mathews* factors. See generally 538 U.S. at 517-31. Rather, to resolve the due-process challenge, the Supreme Court noted differences in the immigration context (“Congress may make rules as to aliens that would be unacceptable if applied to citizens,” *id.* at 522) and considered that detention was “necessarily a part of this deportation procedure,” *id.* at 524 (quoting *Carlson v. Landon*, 342 U.S. 524, 538 (1952)), and not indefinite, *id.* at 527-29. In *Thuraissigiam*, the Supreme Court addressed due-process issues about admission and likewise made no reference to *Mathews*. See 519 U.S. at 138-40. In *Zadvydas*, the Supreme Court considered due-process implications of “indefinite detention” when deportation was “no longer practically attainable,” 533 U.S. at 690, and considered the justification for nonpunitive detention against the individual’s interest in avoiding physical restraint, but did not cite *Mathews* or employ its three-factor test. See *id.* at 690-701. Indeed, just a few months after deciding *Mathews*, the Supreme Court considered a different due-process question about “an alien’s eligibility for participation in a federal medical insurance program,” and did not apply the three-factor test in *Mathews*. *Mathews v. Diaz*, 426 U.S. 67, 69 (1976). As explained above, in *Demore*, the Supreme Court concluded that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” 538 U.S. at 531. The Court need not conduct a separate analysis.

C. Even if the *Mathews* factors applied, Petitioner does not establish a due-procedural process right

To analyze procedural due-process claims, courts consider (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards,” and (3) “the Government’s interest” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). An analysis of these factors shows the automatic-stay regulation does not violate procedural due process. Respondents recognize that many district courts disagree, and Magistrate Judge Prose recently issued a decision disagreeing. See ECF No. 19 at 12. Nevertheless, Respondents respectfully assert that, as explained above, the *Mathews* test does not apply and, even if it did, the automatic-stay provision does not violate procedural due process, as explained below.

Liberty interest. Petitioner has a recognizable liberty interest in connection with his pre-removal detention. But because Petitioner is a noncitizen in removal proceedings, “that liberty interest is limited.” *Rojas*, 2025 WL 3033967, at *13 (rejecting a due-process challenge to the automatic stay at 8 C.F.R. § 1003.19(i)(2)); see also *Demore*, 538 U.S. at 514, 521-31 (no due-process violation for mandatory detention without an individualized assessment of whether the alien “posed either a danger to society or a flight risk” during removal proceedings).

Risk of erroneous deprivation. Petitioner argues that there is a high risk of an erroneous deprivation of his rights if the habeas petition is not granted, because the IJ had found him eligible for bond. See ECF No. 19 at 10-11. Petitioner argues that DHS can “unilaterally prolong detention” by invoking the automatic stay, that there is no

requirement that an agency official consider individualized facts to prolong the stay, and that the automatic stay is not subject to review by an impartial adjudicator. *Id.* These arguments misapprehend the bond determination currently in process.

Congress gave the authority to grant a bond to the Attorney General. See 8 U.S.C. § 1103(g)(2). The Attorney General has delegated different parts of the custody determination to different actors within the Department of Justice. Immigration judges make initial custody decisions based solely on the authority granted by the Attorney General. See 8 C.F.R. 1003.10(a); see also 71 Fed. Reg. at 57880. But an IJ's order "is only an interim one," 71 Fed. Reg. at 57880, as the BIA has appellate jurisdiction over bond orders. See 8 C.F.R. § 1003.1(b)(7) (appellate jurisdiction relating to bond); *id.* § 1003.1(d)(7) ("The decision of the Board shall be final except in those cases reviewed by the Attorney General" pursuant to § 1003.1(h)). The regulations make clear that any order by an IJ appealed to the BIA is not a final order. See 8 C.F.R. § 1003.19(i)(2) ("[A]ny order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination . . . and . . . shall remain in abeyance pending decision of the appeal by the Board").

Thus, while Petitioner suggests that the automatic stay is interfering with the IJ's custody determination, the Attorney General's final custody determination has yet to be made. Petitioner continues to receive individualized review of his custody even as he pursues this habeas litigation. That process has shifted within the Department of Justice to the BIA and is ongoing, and the IJ's interim order has been stayed. See 8 C.F.R. § 1003.19(i)(2). As discussed above, that stay has a definite end point of 90 (or, at most,

120) days. See *id.* § 1003.6(c)(4). Petitioner presents no argument why due process would require him to have his custody reviewed or to be released in the interim, while his custody is being reviewed within the Department of Justice pursuant to regulation.

Here, there is no substantial risk of an erroneous deprivation, because Petitioner is receiving the process bestowed by Congress, and Petitioner is subject to mandatory detention. See *Rojas*, 2025 WL 3033967, at *13 (“While Cirrus Rojas complains there is a risk that current procedures will cause an erroneous deprivation of his limited liberty interest, this is undercut by the Court’s ruling on the statutory interpretation question” about mandatory detention). Petitioner’s rights are protected in multiple ways, including that a “‘senior legal official’ certify that DHS’s ‘contentions justifying the continued detention of the alien have evidentiary support’ and that its legal arguments are nonfrivolous in order to preserve the automatic stay.” *Id.* “These are not trivial requirements.” *Id.* That Petitioner advocates for alternate procedures “does not mean the existing framework violates due process.” *Id.* at *14.

The government’s interest. “The government’s interest in maintaining the current procedures is significant.” *Id.* The automatic stay serves to maintain the status quo while a nonfrivolous appeal of an IJ’s order is made, and that stay is tightly circumscribed. As explained above, the government has a legitimate interest in maintaining custody over Petitioner while his custody is being reviewed. Furthermore, the Department of Justice extensively justified its interest in the stay rule with statistics about the difficulties of removing aliens who were not detained, establishing a strong interest in preventing flight risks. See 71 Fed. Reg. at 57878, 57880, 57882. The “United States has a ‘powerful

interest in maintaining the detention in order to ensure that removal actually occurs.” *Rojas*, 2025 WL 3033967, at *14. Finally, “any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.” *Mathews v. Diaz*, 426 U.S. at 81 n.17. The government has a strong interest in enforcing immigration laws.

In sum, the *Mathews* factors, even if they applied, do not establish a procedural due-process violation.

D. Petitioner’s substantive due-process claim fails.

Removal proceedings are civil proceedings, and aliens have no substantive due-process right to be at large during the pendency of removal proceedings against them because they have no fundamental right to be in the United States at all. *See Carlson v. Landon*, 342 U.S. 524, 534 (1952) (“So long, however, as aliens fail to obtain and maintain citizenship by naturalization, they remain subject to the plenary power of Congress to expel them under the sovereign right to determine what noncitizens shall be permitted to remain within our borders”); *DeMartinez v. Ashcroft*, 363 F.3d 1022, 1028 (9th Cir. 2004) (“Aliens have no fundamental right to be in the United States and Congress has exceedingly broad power over the admission and expulsion of aliens.” (internal quotations omitted)). As explained above, the automatic-stay provision flows from Congress’s delegation of powers to the Attorney General. Thus, Petitioner’s substantive due-process claim fails.

E. Petitioner's ultra vires challenge lacks merit.

Petitioner challenges the automatic-stay regulation as ultra vires because it allegedly misallocates decisionmaking authority about bonds and undermines the statutory bond scheme. See ECF No. 19 at 12-13. This argument misapprehends the regulatory scheme developed by the Department of Justice and fails to meet the high bar the Supreme Court has articulated for ultra vires challenges.

The Supreme Court recently explained that an "ultra vires" claim cannot succeed except where the agency order at issue "was an attempted exercise of power that had been specifically withheld,' and the agency's order violated a 'specific prohibition' in the Act." *Nuclear Regul. Comm'n v. Texas*, 605 U.S. 665, 681 (2025) (hereinafter *NRC*) (quoting *Leedom v. Kyne*, 358 U.S. 184, 188-89 (1958)). The Court explained that such an ultra vires argument cannot be accepted "simply because an agency has arguably reached a conclusion which does not comport with the law," because then "ultra vires review could become an easy end-run around the limitations of . . . other judicial-review statutes." *Id.* (quotation marks omitted). "Rather, it applies only when an agency has taken action entirely in excess of its delegated powers and contrary to a *specific prohibition* in a statute." *Id.* (emphasis in original) (quotation marks omitted).

As explained above, pursuant to statute, bond determinations are made by the Attorney General, not IJs. See 8 U.S.C. § 1103(g)(2). The Attorney General has authorized IJs to make *initial* bond determinations, many of which become final orders as a practical matter, particularly where they are not appealed to the BIA. But IJs' decisions are not necessarily *final* under the regulatory scheme designed by the Attorney General—

and the IJ's order is not final in this case. See 8 C.F.R. § 1003.1(d)(7) (giving the BIA final decision-making authority, except for those cases reviewed by the Attorney General); 8 C.F.R. § 1003.19(i)(2) (staying the IJ's order pending review by the BIA). Therefore, it is mistaken to characterize the regulation as permitting DHS to interfere with an IJ's discretion to grant a bond, because the Attorney General did not give sole discretion to IJs to make final custody determinations, and the final determination has yet to be made under process the Department of Justice devised.

Properly viewed, the regulation permits DHS to invoke an administrative appellate procedure (a process created by the Department of Justice) that is part of Petitioner's ongoing custody determination (currently under review by the Department of Justice). The regulation (created by the Department of Justice, pursuant to a grant of authority from Congress) sets a default rule that when such appellate procedure is invoked, the IJ's order should be automatically stayed. The Department of Justice did not delegate to DHS the regulatory authority granted by Congress or permit DHS to "unilaterally" override a final bond determination made by the Attorney General. The regulation simply maintains the status quo until the Attorney General has made a final bond determination, whether through the BIA or by the Attorney General herself. See 71 Fed. Reg. at 57880 ("The Attorney General provided, as a matter of discretion, that the alien should continue to be detained for a period of time necessary to allow for the Board to review the case.").

While it is true that the "Department of Justice has decided to make the trigger point for the automatic stay the decision by ICE to pursue an expedited appeal of a bond ruling," "[n]othing in the regulation exceeds the Department of Justice's authority or

reflects an improper delegation of that authority to ICE.” *Rojas*, 2025 WL 3033967, at *11. As the Supreme Court has explained, “Congress has empowered the Secretary [of Homeland Security] to enforce the Immigration and Nationality Act, . . . though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law.” *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019). Nothing in the automatic-stay regulation ceded the Attorney General’s authority to make a final decision on a bond to DHS.

Here, Petitioner’s ultra vires argument cannot meet the high standard to show that the agency’s action was “entirely in excess of its delegated powers and contrary to a specific statutory provision.” *NRC*, 605 U.S. at 681. As discussed, the invocation of the automatic stay of the IJ’s bond order was entirely consistent with 8 U.S.C. § 1103(g), which delegated authority to the Attorney General to promulgate regulations and review bond determinations. Petitioner does not identify a provision that Congress adopted *specifically* prohibiting the automatic-stay practice or *specifically* withholding the authority exercised. Absent a specific prohibition on the practice reflected in the automatic-stay provision, Petitioner cannot show that the regulatory provision at issue here is ultra vires, under *NRC*.

III. Petitioner’s APA claims fail.

The Court lacks jurisdiction to consider an APA claim here. Congress limited judicial review under the APA to situations where “there is no other adequate remedy in a court.” 5 U.S.C. § 704. If the Court were to have jurisdiction over Petitioner’s claim, it would be a habeas claim because Petitioner is challenging the legality of his detention.

See *J.G.G. v. Trump*, 604 U.S. 670, 673 (2025) (holding that where a party's argument challenges the validity of detention, the case must proceed in habeas). The availability of a habeas claim bars APA jurisdiction.

Even if there were APA jurisdiction, Petitioner's APA claims fails for the reasons described above. Petitioner is subject to § 1225(b)(2) and the automatic-stay regulation is lawful; ICE's following implementing § 1225(b)(2) and the automatic-stay regulation is neither contrary to law nor arbitrary and capricious.

CONCLUSION

For the reasons discussed above, the Court should dismiss or deny the Petition.

Dated: January 16, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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