IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

JOSELIN DANIEL CARRANZA-MEJIA, Petitioner, v. KRISTI NOEM, et al., Respondents.	))))))))	CIV-26-076-SLP

RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER

RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents[1] United States Attorney General Pamela Bondi, United States Secretary of the Department of Homeland Security Kristi Noem, U.S. Department of Homeland Security ("DHS"), and Field Office Director of Enforcement and Removal Operations, Dallas, Texas, Robert Cerna (collectively, "Respondents"), pursuant to the Court's Order (Doc. 7), respond to the Petition for Writ of Habeas Corpus (Doc. 1) and respectfully submit that the Court should deny the Petition and enter an order of dismissal.

Respondents are aware of this Honorable Court's holding in *Cortes v. Holt*, No. CIV-25-1176-SLP, 2026 WL 147435, at *1 (W.D. Okla. Jan. 20, 2026), and understand this case may be resolved similarly. This Response is filed to preserve arguments on appeal that other Courts, to include judges within this Court, have found persuasive.[2]

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[1] Respondent Fred Figueroa, Warden of the Diamondback Correctional Center, is not a federal official and this response is therefore not filed on his behalf.

[2] This Court is currently split on this issue. While Judges Dishman and Wyrick have adopted the Respondents' position, *see Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026), other members of the Court have disagreed. *See, e.g.*, *Cortes v. Holt*, No. CIV-25-1176-SLP, 2026 WL 147435, at *1 (W.D. Okla. Jan. 20, 2026); *Rojas v. Noem*, No. CIV-25-1236-HE, 2026 WL 94641 (W.D. Okla. Jan. 13, 2026); *Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021 (W.D. Okla. Dec. 22, 2025); *Colin v. Holt, et al.*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025).

Outside this Court, several district courts initially adopted the position set out in the R&R. However, "[a] growing number of courts have gone the other way." *Coronado v. DHS*, 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *see also Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Hernandez Cruz v. Noem*, No. 8:25-CV-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL

INTRODUCTION

Petitioner is an alien challenging the Department of Homeland Security's decision to detain him pursuant to 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. 1226(a). The practical difference between the two sections is that noncitizens detained under § 1226(a) *may* be eligible for a bond hearing at the *discretion* of DHS, but noncitizens detained under § 1225(b)(2)(A) may not be released on bond. Petitioner contends that he should be regarded as detained pursuant to § 1226 and provided a bond determination. Petitioner also asserts that any ongoing detention without a bail determination violates due process.

Thus, this case largely turns on the plain language of the Immigration and Nationality Act ("INA") and specifically 8 U.S.C. § 1225(b)(2)(A). That Section provides:

> [I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

Importantly, Petitioner cannot dispute that he is an "applicant for admission." Instead, Petitioner lodges historical and structural challenges to the use of § 1225, noting that recent enforcement of § 1225(b)(2)(A) is a change in policy by the new administration. While

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3199872 (C.D. Cal. Nov. 12, 2025); *Cabanas v. Bondi,* No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson,* 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, Case No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), *report and recommendation adopted,* No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025); *Rojas v. Olson*, Case No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025);*Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

that contention is true, it is hardly a reason to resist the plain language of the statute. Petitioner also notes that several district courts see it differently and have ruled that § 1225 only applies to "arriving aliens," despite the notable *absence* of that phrase in § 1225(b)(2)(A).

But those decisions cannot account for the plain language of § 1225, the overall statutory structure, and congressional intent behind its adoption as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Further, Petitioner's request to construe his detention as pursuant to § 1226(a) rather than § 1225(b)(2)(A) is a challenge to how DHS commenced proceedings (not his mere detention), which is barred by the jurisdiction stripping provision of the INA. That is especially true given that § 1226 does not guarantee a bond determination.

In support of his due process claims, Petitioner relies on *Bautista v. Santacruz*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), arguing he is entitled to be released based on a partial final judgment entered therein that provides for declaratory relief. *See* ECF No. 92 (*Bautista v. Santacruz*, No. 5:25-CV-1873, 2025 WL 3713982 (C.D. Cal. Dec. 18, 2025)). Petitioner's reliance on *Bautista* is misplaced for several reasons. The *Bautista* judgment is advisory and expressly disclaimed the injunctive relief Petitioner seeks here, and enforcement outside that Court is effectively an impermissible universal injunction and a legal nullity.

Moreover, Petitioner advances a conception of due process that precludes any detention of aliens without a bond determination. That expansive position has never been adopted by the Supreme Court, despite repeated invitations to do so. In other contexts, the

Court has only recognized an obligation to conduct bond determinations under different circumstances and after much longer detention than Petitioner has faced.

Finally, the Petitioner's due process claim asking this Court to restrict the immigration court's future bond determination is premature and outside this Court's jurisdiction. For these and the reasons discussed below, dismissal is appropriate.

BACKGROUND

I. Legal Framework – Statutory Analysis of § 1225 and § 1226

A. Applicants for Admission

In the INA, Congress established rules governing when certain aliens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission"—a subset of aliens. Section 1225 defines an "applicant for admission" as any "**alien present in the United States who has not been admitted** or who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). In other words, an applicant for admission is an alien who (1) is present in the United States and did not lawfully enter the country *or* (2) is arriving in the United States. Petitioner falls into the first group.

B. Removal Proceedings with Mandatory Detention: 8 U.S.C. § 1225

Applicants for admission may primarily be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or through regular

removal proceedings under § 1225(b)(2).

Section 1225(b)(1), titled "Inspection of aliens arriving in the United States ... ," describes the two categories of applicants for admission that are subject to expedited removal proceedings. The first category includes those aliens who are arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[3] *Id.* § 1225(b)(1)(A)(i). The second category includes those noncitizens who have "not been admitted or paroled into the United States," who have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," and who also are inadmissible under Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II). Noncitizens within the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and "shall be detained" until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).[4]

Section 1225(b)(2), titled "Inspection of other aliens," "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). 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"

[3] Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

[4] Depending on the circumstances, an alien who is ordered removed under Section 1225(b)(1)(A)(i) but who is not removed within 90 days of the removal order, *may* be released under an order of supervision. 8 U.S.C. § 1231(a)(3).

shall be detained for removal proceedings under 8 U.S.C. § 1229a. Thus, § 1225(b)(2)(A) generally provides for detention during full removal proceedings for aliens who are applicants for admission, but who do not fall within one of the two categories described in § 1225(b)(1) (*i.e.*, arriving aliens and other aliens subject to expedited removal). Section 1225 does not provide a bond hearing for aliens detained under that provision.

C. Warrants for Arrest Pending Deportation: 8 U.S.C. § 1226

While § 1225 applies to applicants for admission, § 1226 applies more generally to *all* noncitizens (including for example, legal permanent residents, stowaways, and others who are *not* applicants for admission), even if the noncitizen has not yet encountered or been examined by immigration officers. Further, § 1226 is initiated by warrants issued by the Secretary of DHS. Thus, § 1226 provides procedures for detention and removal of a broader class of noncitizens and uses a different means to do so.

Section 1226(a) provides that if the Secretary[5] of DHS issues a warrant, regardless whether there was prior interaction or examination by an immigration officer, a noncitizen may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." The section is a means of effectuating detention prior to any examination by an immigration officer. Following arrest, and subject to certain restrictions, the noncitizen may be examined and remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers can release such an alien if he

[5] The INA's statutory references to the Attorney General are "a legal artifact," and the term "Attorney General" should be read to mean the "Secretary of Homeland Security." *Awe v. Napolitano*, 494 F. App'x. 860, 862 n. 3 (10th Cir. 2012).

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). If not released by an immigration officer, the alien can request a custody redetermination by an immigration judge before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

Within that broader category of all noncitizens, § 1226(c)(1) pertains to the mandatory detention of noncitizens who have had certain interactions with the criminal justice system. *See* 8 U.S.C. 1226(c) ("The Attorney General shall take into custody *any* alien who--" (emphasis added)). To this end, lawful permanent residents–*i.e.*, those who *have been admitted* to the United States and are *not* applicants for admission–may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Nielsen v. Preap*, 586 U.S. 392 (2019) (lawful permanent resident detained pursuant to § 1226). It also reaches other noncitizens who are *not* applicants for admission, such as noncitizens admitted erroneously but who are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i).

In summary, § 1225 only applies to applicants for admission and requires examination by an immigration officer, while § 1226 more generally applies to *all* noncitizens, even if not yet encountered or examined by immigration officers and is initiated by warrants—even prior to inspection. While there is some overlap between the provisions, that is consistent with the broad purposes of the INA, the different means and remedies necessary to effectuate them, and the discretion afforded the Executive to do so.

II. Legal Framework – *Maldonado Bautista* Class Action

The Petition references a nationwide class action granted by the United States District Court for the Central District of California. Pet. at 10, ¶ 42. On September 5, 2025, the Bureau of Immigration Appeals (BIA) issued a precedential decision that § 1225(b)(2)(A) mandates detention for inadmissible noncitizens found in the country and holds that immigration judges lack authority to grant bond hearings in those circumstances. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (*Hurtado*).

The Petitioners in *Bautisa* challenged that determination but, importantly, did not amend their complaint to seek vacatur of *Hurtado*. As such, while *Bautista* sought to cast doubt on *Hurtado* for the same reasons it questioned the DHS policy, suggesting it was "no longer controlling" and "no longer tenable," the order *expressly declined* to vacate that decision. *Bautista*, 2025 WL 3713982, at *7 (Doc 92) ("The Application is **DENIED** as to including vacatur of *Matter of Yajure Hurtado* in the judgment"); *see also Lopez v. Lyons*, No. 1:25-CV-226-H, 2025 WL 3683918, at *1 (N.D. Tex. Dec. 19, 2025) ("The vacatur order sets aside one policy, but it declined to set aside a broader, independent decision from the Board of Immigration Appeals. Thus, the orders do not change immigration judges' obligations to deny bond hearings, and they afford no preclusive relief."). Further, the *Bautista* court did not (and could not) grant the injunctive relief Petitioner now seeks.[6]

[6] *Bautista*, 2025 WL 3713987, at *22 ("The Court cannot *compel* agency action. It has been made abundantly clear that § 1252(f)(1) prohibits lower courts from granting class wide injunctive relief, and the Supreme Court's decision in *Trump v. CASA* has eliminated the existence of the universal preliminary injunction."); *Id.* at *27

III. Petitioner's Background

Petitioner is an applicant for admission. Petitioner entered the United States unlawfully and was charged as removable under 8 U.S.C. § 1182(a)(6)(A)(i), an alien present without admission or parole. Pet. ¶ 3. Around October 2, 2025, ICE encountered and detained Petitioner. *Id.* ¶ 22. Petitioner is currently held at Diamondback Correctional Facility in [Cushing] sic. Watonga, Oklahoma. *Id.* ¶ 23.

Significantly, in his immigration proceedings, Petitioner filed a Form I-589, Application for Asylum. Ex. 1 ("Application"). Seeking asylum is a step towards seeking a form of admission. "The Secretary of Homeland Security or the Attorney General ... may adjust to the status of an alien **lawfully admitted** for permanent residence the status of any alien granted asylum" who meets various requirements. 8 U.S.C. § 1159(b) (emphasis added); 8 C.F.R. § 1209.2(a)(1) ("the status of any alien who has been granted asylum in the United States may be adjusted to that of an alien **lawfully admitted** for permanent residence." (emphasis added)). Thus, Petitioner is seeking a form of admission. *Ugarte-Arenas*, 2025 WL 3514451, at *4 ("As a matter of fact, however, it is clear Petitioner is seeking admission into the United States. He has filed an application for asylum and is thus seeking authorization to remain in the country. Petitioner is therefore an "alien seeking admission" into the United States subject to § 1225(b)(2)(A)."); *Rojas*, 2025 WL 3033967, at *8 ("The record confirms that Cirrus Rojas is now in fact seeking admission to the United

("However, the Supreme Court has acknowledged that a declaratory judgment, "[t]hough it may be persuasive, ... is not ultimately coercive.").

States. His petition acknowledges that he has an application for asylum pending in the immigration court.").

IV. Petitioner's Claims

Petitioner asserts three counts. Count I alleges a statutory violation of the INA and challenges DHS's commencement of proceedings pursuant to § 1225(b)(2)(A). Count II alleges a broader due process violation stemming from Petitioner's ongoing detention without a bond determination. Count III alleges a *future* due process violation based on a speculative future bond amount.

ARGUMENT

The Petition should be denied. Count I challenges DHS's decision to detain Petitioner under § 1225(b)(2)(A) and therefore runs headlong into the INA's jurisdiction channeling and stripping provisions, depriving this Court of jurisdiction. Further, Petitioner's statutory assertions misread the INA and cannot account for the statutory definition of "applicants for admission." Petitioner's reliance on *Bautista* misconstrues the scope and relief available under *it.* And finally, Petitioner's claims of due process violations in Count II and Count III are premature and without basis.

I. Petitioner's Statutory Argument Is Jurisdictionally Barred and Misreads the INA

A. Petitioner's Statutory Claim (Count I) Is Barred by the INA's Jurisdiction Channeling and Stripping Provisions

This Court cannot consider Petitioner's challenge to DHS's commencement of proceedings pursuant to § 1225(b)(2)(A) rather than § 1226(a). As explained below, the

INA channels challenges arising from actions taken to remove an alien to the appropriate court of appeals.

Congress has provided noncitizens with a vehicle to challenge the statutory provision that DHS relies on to detain and remove noncitizens. Specifically, the INA provides that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review. 8 U.S.C. § 1252(a)(5). Review of a final order includes review of "all questions of law and fact, *including interpretation and application of constitutional and statutory provisions*, arising from any action taken or proceeding brought to remove an alien from the United States." *Id.* § 1252(b)(9) (emphasis added). The decision to effectively begin those proceedings via § 1225(b)(2)(A) and immediate filing of an NTA is integral to the removal proceedings and a question of law that can be reviewed by the appropriate court of appeals as part of any appeal of a final order of removal—but not this Court. *See Acxel S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) ("1252(b)(9) consolidates all questions of law and fact, including constitutional and statutory challenges, arising from removal proceedings into one petition for review—the review of a final removal order before a circuit court of appeals." (cleaned up)).

In addition to the channeling provision, Congress also limited what types of claims district courts can review. Specifically, 8 U.S.C. § 1252(g) states that, except as otherwise provided in Section 1252, courts lack jurisdiction to consider "any cause or claim by or on behalf of any alien arising from the decision or action by [DHS] to *commence* proceedings, *adjudicate* cases, or *execute* removal orders against any alien under this chapter."

(emphasis added). The bar on considering the commencement of proceedings includes a bar on considering challenges to the *basis on which* DHS chooses to commence removal proceedings. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars [courts] from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents [courts] from considering whether the agency should have used a different statutory procedure to initiate the removal process.").

Accordingly, Congress—in sections 1252(a)(5) and (b)(9)—provided aliens (like Petitioner) with a vehicle to challenge the basis on which ICE seeks to detain and remove them in the court of appeals; but Congress also—in sections 1252(b)(9) and (g)—deprived district courts of jurisdiction to review an alien's challenge to DHS's decision about the basis of removal proceedings.

Petitioner will no doubt try to sidestep the jurisdictional bar by claiming that he is not challenging the decision to *execute* proceedings, but merely his ongoing detention. While Petitioner's due process claims (Counts II and III) arguably only challenge his ongoing detention, Count I expressly challenges the basis of the *application* of proceedings against him and is barred. Boiled down to its essence, Count I contends that DHS should have used its arrest powers under § 1226. Pet. ¶ 50. But that is foreclosed by § 1226 itself. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the *application* of this section shall not be subject to review.") (emphasis added).

Further, upon examination and detention, DHS filed charges. Thus, the immigration officer's examination of Petitioner directly and immediately effected *commencement* of the

proceedings and therefore triggers the jurisdictional bar. *See Namgyal Tsering v. U.S. Immigr. & Customs Enf't*, 403 F. App'x 339, 343 (10th Cir. 2010) ("We agree with the Fifth Circuit that claims that clearly are included within the definition of arising from are those claims connected *directly and immediately* with a decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." (cleaned up)).

Petitioner's functional request for relief underscores this point. He asks the Court to *reconstrue Executive actions* into something they are not (§ 1226 instead of § 1225), undermining prosecutorial discretion. Yet, "§ 1252g was directed against … attempts to impose judicial constraints upon prosecutorial discretion." *Veloz-Luvevano v. Lynch*, 799 F.3d 1308, 1315 (10th Cir. 2015) (quoting *Reno v. Am.–Arab Anti–Discrimination Comm.*, 525 U.S. 471, 485 n. 9 (1999)); *See also* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review.").

Thus, as opposed to the challenge to detention in Counts II and III, Count I challenges the application of § 1225, which only collaterally affects the potential for release on bond. *Acxel S.Q.D.C.*, 2025 WL 2617973, at *3 ("Petitioner precisely challenges Respondents' decision to detain him. Although he contends that § 1252(b)(9) does not bar his claims because he is challenging his ongoing detention, not the initial decision to detain him, this difference does not alter the Court's conclusion.").

Accordingly, this Court is without jurisdiction to hear Petitioner's statutory challenge.

B. Petitioner's Statutory Argument Misconstrues the INA and the "Applicant for Admission" Deeming Provision

The plain language of § 1225(b)(2)(A) straightforwardly applies in this case. To escape that conclusion, some courts have suggested ambiguity based on the title and/or structure of the provision and past practice, and others read a limitation of "arriving noncitizen" into the language of § 1225(b)(2)(A) that is conspicuously absent from the actual text. As noted below, each of those contentions is in error.

1. Section 1225(b)(2)(A) Does Not Contain an "Arriving" Limitation

Congress used the phrase "arriving alien" throughout Section 1225. *See, e.g.* 8 U.S.C. §§ 1225(a)(2), (b)(1), (c)(1), (d)(2). The phrase distinguishes a noncitizen presently or recently "arriving" in the United States from other "applicants for admission" who, like Petitioner, have been in the United States without being admitted. But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)(A)'s mandatory-detention provision. Had Congress intended to limit § 1225(b)(2)(A)'s scope to "arriving" noncitizens, it would have used that phrase like it did in § 1225(b)(1), a mere one subsection prior. But Congress did not, and that omission must be given effect. *Cabanas*, 2025 WL 3171331, at *5 ("The problem with the argument, however, is that Congress could have said that § 1225(b) applied only to *arriving aliens* if that's what was meant. But it didn't, even as three other closely related subsections did."); *Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (cleaned up)); *Sosa v.*

Alvarez-Machain, 542 U.S. 692, 711 n.9 (2004) (concluding that "[t]he Government's request that we read [a specific] phrase into [a statutory] exception, when it is clear that Congress knew how to specify [those words] when it wanted to, runs afoul of the usual rule that when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.").

Despite the lack of an "arriving" limitation, Petitioner asserts in conclusory form that the statute's framework is premised on inspections at the border of people who are 'seeking admission' to the United States. But that sweeping position cannot account for the definition of an applicant for admission that includes those found in the country and § 1225(b)(2)(A)'s lack of the "arriving" modifier. *Montoya*, 2025 WL 3733302, at *2 ("The statute gives no temporal or geographic limitations on the status of being an applicant for admission.").

The Title of § 1225 underscores this point. It reads: "Inspection by immigration officers, *expedited removal of inadmissible arriving aliens*, **referral for hearing.**" The first underlined portion is a reference to subpart (a)'s inspection obligations. The second italicized portion refers to the expedited proceedings of (b)(1) for "arriving aliens." Importantly, however, the third part of bolded text is a reference to the full removal proceedings under (b)(2)(A) for noncitizens present in the country. That is because "arriving aliens" are subject to *expedited* removals and do not get hearings pursuant to § 1229a. In contrast, noncitizens present in the country are provided full removal hearings under (b)(2)(A) ("detained for a proceeding under section 1229a"). *See Sandoval*, 2025 WL 3048926, at *4 ("However, aliens subject to removal under § 1225(b)(2) are not

subject to expedited removal but, rather, removal proceedings in the ordinary course pursuant to § 1229a."). No other portion of § 1225 provides for hearings. Thus, the title is consistent with the Respondents' reading—and *inconsistent* with Petitioner's interpretation.

Likewise, the subpart titles of §§ 1225(b)(1) and (b)(2) are consistent. The title of (b)(1) is "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." In contrast, (b)(2) has *no* reference to arriving aliens. It reads "Inspection of other aliens." Again, the use of "arriving" in some parts of § 1225 and not others must be given effect. Petitioner's interpretation renders the references to "arriving" superfluous.

2. Petitioner's Interpretation Undermines the Purpose of the IIRIRA

Petitioner's interpretation effectively repeals a statutory fix Congress enacted with IIRIRA in 1996. Specifically, prior to the IIRIRA, an "anomaly" existed "whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). The addition of § 1225(a)(1) "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.'" *Id.*; *see also* H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("This subsection is 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.").

Petitioner's argument would undo that fix and incentivize noncompliance with immigration laws by providing more protection to those that bypass border inspections and evade detection to reside within the United States—a result at odds with the intent of Congress when amending § 1225 of the INA. *See Chavez*, 2025 WL 2730228, at *4 (rejecting Petitioner's reading because it would repeal the IIRIRA statutory fix); *Sandoval*, 2025 WL 3048926, at *6 n.7 ("For this Court to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA."); *Oliveira*, 2025 WL 3095972, at *6 (holding that application of § 1225(b)(2)(A) to those residing in the "country comports with the legislative history of [IIRIRA]").

Petitioner points to the commentary implementing regulations for IIRIRA to suggest that the Executive understood § 1225 to only apply to arriving aliens. Specifically, he cites (without quotation) to 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). *See* Pet. ¶ 33. But the commentary actually reads: "*Despite being applicants for admission*, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). Thus, contrary to Petitioner's assertion, the italicized portion acknowledges the plain language of the

statute that noncitizens in the country *are* "applicants for admission" under § 1225, but announces the *discretionary* choice to use § 1226 for detentions and thus permit bond hearings. A new administration has deviated from that prior choice, as it is permitted to do. Thus, Petitioner and several courts conflate enforcement discretion with statutory interpretation, which then leads to concern about ambiguity that does not exist. *Rojas,* 2025 WL 3033967 at *9 ("In the end, the Court concludes that it must follow the most natural reading of the statutory text. Prior administrations' generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it. As explained above, Respondents' reading is more consistent with the plain terms of Section 1225(b).").

3. Claims of Passive Residency Do Not Alter Whether a Noncitizen Is an Applicant for Admission Subject to Detention

Petitioner may argue in reply (it is not found in the Petition and therefore waived) that he is not "seeking admission." Essentially, Petitioner may (but has not yet) argue that passive residency is not "seeking admission." Although some courts have adopted that reasoning, those opinions fail to give effect to the plain language of the statute, defy cannons of statutory interpretation, and are wrongfully decided. Indeed, the Supreme Court has treated § 1225(b)(2)(A) as applying to "*all applicants for admission* not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287 (emphasis added); *see also Sandoval*, 2025 WL 3048926, at *5 n.5 ("The fact that Petitioner may have lacked the subjective intent to ever apply for admission does not prevent her from being categorized as an "applicant for admission" under § 1225. For this Court to hold otherwise would clearly contravene the plain statutory language and Congress's intent.").

"As always, we start with the statutory text." *Garland v. Cargill*, 602 U.S. 406, 415 (2024). Statutory language "is known by the company it keeps." *Dubin v. United States*, 599 U.S. 110, 124 (2023) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining 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) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission." In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to withdraw their applications for admission or seek voluntary departure. No additional affirmative step is necessary.

Section 1225(a)(3) confirms this by providing that all aliens "who are applicants for admission or *otherwise seeking admission* … shall be inspected by immigration officers." (emphasis added). The word "'[o]therwise' means 'in a different way or manner . . . .'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("The phrase 'or otherwise' operates as a catchall: the specific item that precede it are *meant* to be subsumed by what comes after the phrase 'or otherwise.'" *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019) (same); *see also* Black's Law Dictionary 1101 (6th ed. 1990) ("Otherwise. In a different manner; in another way, or in other ways"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such

that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1225(b)(2)(A). *Montoya*, 2025 WL 3733302, at *7 ("Here, § 1225(a)(3) explains how the contested phrases relate. Specifically, "applicants for admission or otherwise seeking admission" creates a formal logical relationship between the two concepts.").

"Seeking admission" is thus 'a term of art' that includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful" but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [INA §] 235(a)(1) . . . ." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743. For example, an alien who previously unlawfully entered the United States and never is admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, obtaining travel documents, such as a visa, and presenting at a port of entry for inspection—is deemed to be "*again* seek[ing] admission" to the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission "by operation of law." *Id.*; *see also Montoya*, 2025 WL 3733302, at *8-9 ("'Seeking' does not describe what the alien is voluntarily doing or the alien's mindset. The alien is 'seeking admission' in the same way the alien is 'an applicant for admission'—by congressional decree. So, all 'applicants' for admission are 'seeking admission.'").

The everyday meaning of the statutory term also supports this reading. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one *applying* for something necessarily is *seeking* it. *Accord Mejia Olalde*, 2025 WL 3131942, at *3 ("To 'seek' is a synonym of to 'apply' for."). *Compare* Webster's New World College Dictionary (4th ed.) at 69 ("apply" means "To make a formal request (*to* someone *for* something)"), *with id.* at 1298 ("seek" means "to request, ask for"). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or *admission*" (emphasis added)). Likewise, an alien who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") necessarily is "seeking admission" to the United States. *Accord Rojas*, 2025 WL 3033967, at *8 ("seeking admission" is "best read as simply another way of referring to aliens who are applicants for admission").

All of this confirms that neither the duration of an alien's unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an "applicant for admission" is "seeking admission." *Montoya*, 2025 WL 3733302, at *2 ("The statute does not create a third 'non-seeking applicant' category, and the 'applicant for admission' category explicitly includes both arriving and present unadmitted aliens."). "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to." *Mejia Olalde*, 2025 WL 3131942, at *4. For example, Section 1225(b)(1) may apply to aliens "arriving in the United States" or who "ha[ve] been physically present in

the United States continuously for [a] 2-year period." 8 U.S.C. § 1225(b)(1). So, "[i]f Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)'s inclusion of *both* aliens "arriving" and those "present in the United States" confirms that *all* aliens who are not admitted are "applicants for admission," regardless of the length of their presence in the country.

None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As § 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission," but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain admission. Stowaways, too, are not "applicants for admission" but are still subject to inspection for admissibility. *See* 8 U.S.C. §§ 1182(a)(6)(D); 1225(a)(2). Moreover, given the complexity of the statutory scheme and IIRIRA's changes, Congress's use of the phrase "or otherwise seeking admission" ensured that all aliens would be subject to Section 1225(a)'s inspection requirement—including aliens who entered before IIRIRA's effective date.

Further, as a matter of law, by being "present in the country" without being "admitted," Petitioner *is* deemed an "applicant for admission." *Mejia Olalde,* at *3 ("[T]he

statute *defines* [petitioner] as seeking admission … Because [petitioner] is an alien, present in the United States, who has not been admitted, the law defines him to be an applicant for admission. He is thus seeking admission."); *Sandoval*, 2025 WL 3048926, at *5 n.5 ("The fact that Petitioner may have lacked the subjective intent to ever apply for admission does not prevent her from being categorized as an "applicant for admission" under § 1225. For this Court to hold otherwise would clearly contravene the plain statutory language and Congress's intent."); *Oliveira*, 2025 WL 3095972, at *5 n.4 (same); *Vargas Lopez*, at *9 ("just because [petitioner] illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)").[7]

Moreover, Petitioner has *not* offered to voluntarily depart, *see* 8 U.S.C. § 1229(c) (Voluntary Departure). To the contrary, Petitioner **is seeking a form of admission** by trying to stay in the country. *Montoya*, 2025 WL 3733302, at *10 ("This in turn lends the straightforward inference that 'applicants for admission' apply for admission until taking the actions prescribed under § 1225(a)(4) [voluntary departure].")

4. Petitioner's Passing Citation to Jennings Is Misplaced

Petitioner notes that *Jennings* observed that § 1225 applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." Pet. ¶ 46 (citing *Jennings*, 583 U.S. at 287). From that

[7] Additionally, a contrary reading leads to the absurd result that immigration officers cannot immediately detain a noncitizen residing in the United States without determining if they were somehow *actively* seeking admission (a standard not identified or defined in the INA or implementing regulations). Instead, the proper standard for the immigration officer is that which is plainly stated in the INA; namely, whether the noncitizen is "entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

quote, Petitioner argues that "the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended." *Id.* ¶ 47. However, Petitioner's initial quote picks up after—and therefore omits—the critical qualifying phrase "*generally begins*"—meaning the Supreme Court was not explaining *all* applications of 1225. Rather, the border is where its application begins, not where it *ends*. Indeed, the quoted sentence cites to all of § 1225 generally, *not* § 1225(b)(2)(A) specifically.

In *Jennings*, the Supreme Court addressed whether aliens were entitled to periodic bond hearings during detentions under §§ 1225 and 1226 that became prolonged. 583 U.S. at 291-92. In doing so, the Court suggested that § "1225(b) applies *primarily* to aliens seeking entry into the United States," *id.* at 297 (emphasis added), and that § 1226(a) is the "default rule" for aliens "inside the United States," *id.* at 288. But *Jennings* goes on to confirm that § 1225(b)(2) should apply to aliens who entered without inspection. Specifically, the *Jennings* Court described § 1225(b)(2) as a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." *Id.* at 287 (emphasis added). And the Court did *not* limit § 1225(b) to those just arriving in the United States. In short, *Jennings'* general description of the statutory framework does not support Petitioner's sweeping reading and the Court was not addressing the statutory question at issue here.

II. Petitioner's reliance on *Bautista* misconstrues the scope and relief offered under it.

A. *Bautista* provides for declaratory, not injunctive relief.

Petitioner claims the "Immigration Courts are not recognizing the class action

and still following *Matter of Yajure Hurtado."* Pet. ¶ 42. This wrongly interprets *Bautista* as granting injunctive relief and vacating *Hurtado*. As one court cogently explained:

> Petitioner claims that he 'is entitled to a bond hearing as a member of this class.' But even Petitioner does not believe that argument. If he did, then his remedy lies in the Central District of California, and he would have sought relief there. His decision not to do so speaks volumes about the legal validity of that class certification order.

Pastor v. ICE, No. 25-02761, 2025 WL 3746495, at *5 (N.D. Ohio Dec. 24, 2025).

Petitioner appears to take issue with immigration judges' continued application of the precedential law of *Hurtado* which is binding on the immigration courts. Petitioner would have the immigration courts flout that binding precedent and provide relief to Petitioner not authorized by *Bautista*. As noted above, the relevant *Bautista* order expressly declined to vacate *Hurtado*. Accordingly, the *Bautista* orders "are advisory opinions because they do not redress the alleged harm and are not preclusive." *Lopez*, 2025 WL 3683918, at *1. Indeed, *Bautista's* prior orders conceded that "class-wide relief order would not interfere with the Government's efforts to detain noncitizens under § 1225(b)(2) because a declaratory judgment ... is not ultimately coercive." *Id.* at *7 (cleaned up). Thus, *Bautista* "was declaratory: nothing more, nothing less" because "[t]he Nation's immigration judges—bound by the BIA—must follow *Yajure Hurtado* as binding precedent." *Id.* at *8-9. Accordingly, there is nothing for this Court to enforce.

Moreover, the *Bautista* court entered an order of declaratory relief. But the

Petition does *not* seek declaratory relief. Instead, it seeks *injunctive relief* in the form of release from detention. *See* Pet. at 15 (Prayer for Relief). In short, the Petition conflates *Bautista*'s declaratory relief with the injunctive relief it seeks, without any further explanation, and therefore fails to carry Petitioner's burden.

That omission is particularly stark given what the *Bautista* court did not and could not order. *See* 8 U.S.C. § 1252(f)(1) (barring injunctive relief in class actions). Specifically, the *Bautista* court correctly conceded that *Garland v. Aleman Gonzalez*, 596 U.S. 543, 554–55 (2022), prohibited it from ordering class-wide injunctive relief to enforce its orders. *See* No. 5:25-CV-1873, Doc. 93 at 31, 47-48. Yet the Petition seeks to have this Court do what *Bautista* acknowledged it could not do by seeking injunctive relief based on nothing more than the reference to the class action suit. The Court should decline the invitation to help evade *Aleman Gonzalez.*

B. The Petition Seeks Enforcement of a Universal Injunction for Which Courts Lack Jurisdiction

In *CASA*, the Supreme Court held that universal injunctions "likely exceed the equitable authority that Congress has granted to the federal courts" through the Judiciary Act of 1789 and its statutory descendants. *Trump v. CASA, Inc.*, 606 U.S. 831, 837 (2025). The Court stated that federal district judges may only grant relief that is identical or analogous to the type of equitable relief afforded at the founding, particularly in the English High Court of Chancery. *Id.* at 841–42. As cogently explained recently by another district court, the *Bautista* partial judgment is effectively a prohibited universal injunction:

> More importantly, this class seeks to resolve a question of interpretation for the entire Nation and, in this line of implication, *still* does not bind any of its class members from seeking individual relief. The difference between this action and a true universal injunction is meaningless. Once more, there would be a system by which the "plaintiff must win just one suit to secure sweeping relief," and where, "to fend off such an injunction, the Government must win everywhere." *CASA*, 606 U.S. at 855, 145 S.Ct. 2540; see *Ramirez Melgar*, [No. 25-555,] 2025 WL 3496721, at *15 [D. Neb. Dec. 5, 2025]. Indeed, this system is even more concerning than the last, because the lack of injunctive relief in the class-wide order means that new cases will arise—potentially seeking the same broad relief—even as the *Maldonado Bautista* litigation progresses. The government could ultimately prevail on appeal in *Maldonado Bautista.* But until that day comes, it must fend off thousands of additional cases addressing the same issue that claim the Central District's orders are binding, and it would face the real risk that other district courts will take the same improper approach, creating an unending minefield of class-action claims.

Lopez, 2025 WL 3683918, at *13. Accordingly, this Court—like the Central District of California—lacks jurisdiction to enforce a universal injunction. *See also Machado v. Grant,* Case No. CIV-25-01315-PRW, (W.D. Okla. Jan. 13, 2026). ("The Maldonado Bautista court does not have jurisdiction over the Petitioner's custodian, as that court sits in California and Petitioner is held in the Western District of Oklahoma.).

III. Petitioner's Constitutional Due Process Argument (Count II) Regarding his Continued Detention Is Premature and Without Basis

The Supreme Court concluded in *Demore v. Kim*, 538 U.S. 510 (2003), that mandatory detention pending removal proceedings does not violate due process. The detainee in *Demore* challenged his detention without an individualized bond hearing under § 1226(c). That provision, much like § 1225(b)(2)(A), mandates detention in certain circumstances throughout the pendency of removal proceedings. *Id.* at 527–28. The *Demore* detainee argued that constituted indefinite detention and violates the Due Process

Clause. But the *Demore* Court rejected that premise. Section 1226(c) has a definitive end-point—the end of the removal proceedings—and thus a noncitizen is not subject to indefinite detention. *Id.* at 529.

Petitioner relies on *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Pet. ¶ 52 (citing *Zadvydas* in support of his Count II for the proposition that "Freedom from imprisonment . . . lies at the heart of the liberty that the Clause protects."). But the petitioner there was facing the prospect of indefinite detention and the Court still held that detention up to six months was presumptively reasonable. Here, Petitioner was detained less than six months when the Petition was filed. Further, like § 1225(c), detention pursuant to § 1225(b) is *not* indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue . . . until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. In short, the Petition is premature and without basis.

Thus, granting the Petition under the premise that *all* detention must be subject to bond hearings would require a reading of the Due Process Clause that the Supreme Court has never endorsed and in fact has repeatedly avoided. *See Jennings*, 583 U.S. at 312 (remanding for consideration of constitutional arguments). This Court should decline to take such a drastic step. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution."); *Demore v. Kim*, 538 U.S. 510, 522 (2003) ("And, since *Mathews,* this Court has

firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.").

IV. Petitioner's Request for Extraordinary Remedies Based on a Future Due Process Violation (Count III) is Not Ripe for Adjudication and Should Be Denied.

Petitioner makes an extraordinary request for relief in this habeas case by asking the Court to restrict the immigration judge's *future* actions in his proceedings. Not only does Petitioner ask this Court to order a bond hearing, but Petitioner seeks to dictate the terms of the future bond that can be set. Pet. ¶ 62. This claim is not ripe, but even if it were it would be outside the jurisdiction of this Court to order. The determination of bond is within the purview of the immigration judge, and any appeals of the immigration judge's decision are reviewed by the Board of Immigration Appeals.

As explained by the United States Supreme Court, "Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003). Petitioner's request to have the Court dictate an immigration judge's future discretionary actions invites this Court to "entangle" itself in an abstract issue. It should decline to do so.

This Court cannot adjudicate a future due process violation based on a speculatory bond amount. In determining whether to set bond and the amount of bond, an immigration

judge considers several factors like danger to the community, flight risk, and the ability to pay. *See Matter of Guerra*, 24 I&N Dec. 37, 37–38 (BIA 2006). And the immigration judge is in the best position to analyze these considerations. *Id.* at 40. Moreover, any appeal of those decisions are within the jurisdiction of the Board of Immigration Appeals. The BIA Practice Manual clearly states in Section 7.2(b): "Appellate Jurisdiction – (1) Immigration judge decisions – The Board has jurisdiction over appeals of immigration judge bond rulings." *See also* 8 C.F.R. § 1003.1(b)(7) (appeals relating to determinations of bond are filed with the Board of Immigration Appeals); 8 C.F.R. § 1236.1(d)(3)(i) (designation the circumstances under which a noncitizen can appeal bond determinations to the Board of Immigration Appeals).

Because the Petitioner's alleged due process violation regarding a future amount for bond determination is not yet ripe and outside the scope of this Court's jurisdiction, the Petition should be dismissed.

CONCLUSION

The Respondents respectfully request that the Court deny the Petition and dismiss the case.

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Respectfully submitted,
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