

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KAREN MARIELA AGUAYO MONTES,	)	CASE NO.: 1:26-CV-919
	)	
Petitioner,	)	JUDGE SOLOMON OLIVER, JR.
	)	
v.	)	MAGISTRATE JUDGE
	)	JENNIFER DOWDELL ARMSTRONG
	)	
SCOTT A. HILDENBRAND, et al.,	)	<u>ANSWER AND RETURN OF WRIT</u>
	)	
Respondents.	)	

Undersigned counsel represents federal respondents¹ in this habeas corpus action, in which Petitioner seeks a writ of habeas corpus releasing her from custody or, in the alternative, an order requiring the government to provide a bond hearing. ECF #1 (hereinafter, "Petition"). Respondents respectfully request that the Petition be denied.²

¹ Scott A. Hildenbrand, Geauga County Sheriff, is not a federal respondent and separately filed a motion to dismiss. *See* ECF #5.

² A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. In the immigration habeas context, that person is the Immigration and Customs Enforcement ("ICE") Field Office Director. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003); *see also Cabrera v. Raycraft*, 4:26-cv-00085, 2026 WL 904606, at *3 (N.D. Ohio Apr. 2, 2026) (report and recommendation). Therefore, Todd Lyons, Acting Director of U.S. ICE, and Todd Blanche, Acting U.S. Attorney General, are not proper respondents and must be dismissed. In addition, Acting Director Kevin Raycraft is substituted for Rebecca Adducci pursuant to Fed. R. Civ. Pro. 25(d).

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen of Mexico who arrived in the United States on an unknown date. Exhibit 1 (DHS Notice to Appear). On September 3, 2025, Petitioner was detained by ICE and placed in removal proceedings. Petition, PageID #4, 9; Exhibit 1. The Notice to Appear issued to Petitioner identified her as “an alien present in the United States” who was not “admitted or paroled after inspection by an Immigration Officer.” Exhibit 1. On January 13, 2026, an Immigration Judge (“IJ”) found Petitioner removable. *Id.*, PageID #4-5. Petitioner filed an appeal with the Board of Immigration Appeals (“BIA”) on January 27, 2026, and alleges that the “order of removal is contrary to law and is an abuse of discretion.” *Id.*, PageID #5. The matter remains pending. *Id.*

Petitioner is currently detained at Geauga County Jail. *Id.*, PageID #1. On April 14, 2026, the IJ considered and denied Petitioner’s custody redetermination request. *Id.*, PageID #15. An appeal, if any, is due May 14, 2026. *Id.*, PageID #16. To date, Petitioner has not filed an appeal.

On April 17, 2026, Petitioner filed the instant petition, seeking relief against federal respondents Todd M. Lyons, Acting Director U.S. Immigration and Customs Enforcement, Todd Blanche, Acting Attorney General, and Rebecca Adducci, former ICE Field Officer Director. *Id.*, PageID #1. Petitioner alleges that (1) her detention is unconstitutionally prolonged, and (2) she has been detained without a bond hearing. *Id.*, PageID #6. Petitioner has not presented either ground “in all appeals that were available” to her because, she alleges, ICE has not responded to Alternative to Detention requests and BIA cannot decide constitutional issues. *Id.*, PageID #2, 6.

II. LAW AND ARGUMENT

This petition should be dismissed because the Court lacks jurisdiction and Petitioner should be required to exhaust her administrative remedies. If this Court reaches the merits of the Petition, the Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A) because she is seeking admission to the United States, and Petitioner's due process rights have not been violated.

A. THIS COURT LACKS JURISDICTION TO DECIDE THE PETITION.

Section 1252(b)(9) provides that “[j]udicial review of all questions of law . . . including interpretation and application of . . . statutory provisions, arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*

Section 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when

the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Just.*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) “[A] primary effect of the REAL ID Act” is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031-32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law”).

As another Judge in this district held, “a constitutional challenge to detention pending removal and entitlement to a bond hearing collapse into analysis of the statutory and regulatory regime—whether, for example, Section 1226(a) entitles an alien to bond pending removal or whether Section 1225(b) authorizes the government to detain an alien. Congress has made clear that district courts lack the jurisdiction to make such determinations, even on a habeas petition under Section 2241.” *Amaya-Velis v. Raycraft*, __ F. Supp. 3d __, 2026 WL 100596, at *3 (N.D. Ohio Jan. 14, 2026) (citing 8 U.S.C. § 1252(b)(9)).

Similarly, in evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings—exactly what is happening here. *See Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018) (plurality section of opinion) (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal”). Petitioner challenges the decision and action to detain her, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [her] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294-95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020); *Amaya-Velis*, 2026 WL 100596, at *2; *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024).

B. PETITIONER SHOULD BE REQUIRED TO EXHAUST HER ADMINISTRATIVE REMEDIES.

Respondents acknowledge that exhaustion is discretionary here. When Congress has not imposed a statutory administrative exhaustion requirement, “judicial discretion governs whether or not exhaustion should be required.” *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (internal quotation mark omitted). But the doctrine of exhaustion serves several important purposes: It allows agencies to “apply [their] special expertise in interpreting relevant statutes and promotes judicial efficiency.” *Id.* (internal quotation marks omitted).

The Ninth Circuit Court of Appeals has created a persuasive three-prong test that holds prudential exhaustion is required when:

- (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3)

administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Puga v. Chertoff, 488 F.3d 812, 815 (9th Cir. 2007) (citations omitted).

A Judge in this district applied the *Puga* test to the administrative exhaustion requirement in immigration habeas cases and found that the *Puga* factors weigh in favor of requiring administrative exhaustion. *See Mendoza v. Raycraft*, No. 4:25cv2183, 2025 WL 3157796, at *9-11 (N.D. Ohio Nov. 12, 2025); *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25cv01621, 2025 WL 2444114, at *9-10 (N.D. Ohio Aug. 25, 2025).³

This Court should apply that rationale here. The first prong weighs in favor of requiring exhaustion because the BIA's expertise makes agency consideration necessary to generate a proper record and reach a proper decision. *Mendoza*, 2025 WL 3157796, at *9. Petitioner's argument is based on statutory interpretation of immigration statutes. *Id.* The BIA has expertise in immigration law and is in the best position to determine these complex issues. *Id.* As to the second prong, relaxing the exhaustion requirement would encourage petitioners to bypass the administrative process in favor of their preferred strategy of filing habeas petitions. *Id.* at *10. Consequently, this prong also weighs in favor of exhaustion. Finally, the third prong weighs in favor of requiring exhaustion because if the BIA were to agree with Petitioner on the issues she has raised in this case, Petitioner would be granted a bond hearing. *Id.* at *10.

"Requiring exhaustion under these circumstances therefore promotes the main purposes of exhaustion, i.e., it protects the BIA's authority by allowing it the opportunity to correct its

³ Another Judge in the district has also dismissed similar habeas petitions for failure to exhaust. *See, e.g., Amaya-Velis*, 2026 WL 100596; *Tecum Pastor v. Dir. of Detroit Field Office, U.S. ICE*, 814 F. Supp. 3d 875 (N.D. Ohio 2025); *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528 (N.D. Ohio 2025).

own mistakes and, further, promotes judicial efficiency by resolving potential issues and potentially obviating the need for judicial review.” *Id.* (citing *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)). Neither Petitioner’s likelihood of success at the administrative level, nor the fact that Petitioner is detained, has any bearing on the exhaustion analysis. *Hernandez Torrealba*, 2025 WL 2444114, at *11.

While a court may waive prudential exhaustion if administrative remedies are inadequate or futile, such is not the case here. *See Mendoza*, 2025 WL 3157796, at *10. Petitioner argues that appeal is futile because ICE failed to respond to Alternative to Detention Requests and BIA cannot decide constitutional issues. Petition, PageID #2. Yet, Petitioner has an appeal regarding her order of removal currently pending with the BIA and has the opportunity to appeal her custody determination. *See id.* PageID #5, 15-16. ICE is not BIA and BIA has authority to review both Petitioner’s removal order determination and IJ custody determination. This petition should be dismissed pending exhaustion of administrative remedies.

C. PETITIONER IS PROPERLY DETAINED.

Federal immigration law classifies all aliens. Aliens who enter the United States, and who have not been admitted, are applicants for admission and are also aliens seeking admission. Therefore, they are subject to detention under 8 U.S.C. § 1225. To be an applicant for admission who is seeking admission does not require the alien to take any additional affirmative steps. The manner in which an alien enters the United States determines his or her status, regardless of the amount of time spent in the United States.

1. Applicants for admission are subject to detention under 8 U.S.C. § 1225.

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)); *see Lopez v. Dir. of Enf’t and Removal Operations*, ___ F. Supp.

3d __, 2026 WL 261938, *1 (M.D. Fla. Jan. 26, 2026) (the “Court must faithfully interpret and apply the relevant statutes; it is not [the] Court’s role to evaluate or second-guess Congress’s policy choices, as reflected in the statutory text”).

Section 1225(a)(1) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)” 8 U.S.C. § 1225(a)(1); *Avila v. Bondi, et al.*, 170 F.4th 1128, 1132-33 (8th Cir. 2026). Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (“an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”) (quoting 8 U.S.C. § 1225(a)(1)); *Gutierrez Sosa v. Holt*, No. CIV-25-1257, 2026 WL 36344, *4 (W.D. Okla. Jan. 6, 2026) (“And once deemed an ‘applicant for admission,’ an alien is necessarily ‘seeking admission.’”).

Here, Petitioner did not present herself at a POE but instead entered the United States at some date, without having been admitted after inspection by an immigration officer. *See* Exhibit 1 (stating that Petitioner is subject to removal under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i)). Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

2. Applicants for admission are seeking admission and detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

Under 8 U.S.C. § 1225(b)(2)(A), “an alien who is an applicant for admission” “shall be detained for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into

8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)). While the phrase “applicant for admission” is defined in the statute, the term “alien seeking admission” is not. Compare 8 U.S.C. § 1225(a)(1) and 8 U.S.C. § 1225(b)(2)(A). The question in this case is whether Petitioner is “seeking admission” to the United States. Because she is, Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A).

Both the Fifth Circuit and the Eighth Circuit have recently found that aliens, such as Petitioner, are “seeking admission” to the United States. *Buenrostro-Mendez v. Bondi, et al.*, 166 F.4th 494 (5th Cir. 2026); *Avila*, 170 F.4th 1128. In particular, both Circuit Courts held that an “applicant for admission” is not differently defined from an alien “seeking admission.” *Buenrostro-Mendez*, 166 F.4th at 502 (“The everyday meaning of the statute’s terms confirms that being an ‘applicant for admission’ is not a condition independent from ‘seeking admission.’”); *Avila*, 170 F.4th at 1134 (“Not only do the similar meanings of ‘applicant for admission’ and ‘seeking admission’ demonstrate that they are equivalent, but the grammatical structure of the statute does too.” (citing 8 U.S.C. § 1225(b)(2)(A))). And as the Supreme Court has held, “there is no ‘canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing.’” *Jennings*, 583 U.S. at 303 (quoting *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 540 (2013)).

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated “applicants for admission” with aliens “seeking admission.” See *Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) “serves as a catchall provision

that applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens “seeking admission” to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that “[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] ‘shall be detained for a [removal] proceeding’” *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)). The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) “applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Id.* at 297; *see Buenrostro-Mendez*, 166 F.4th at 506 (citing the same provision of *Jennings* and stating “[t]hat language supports the government’s contention that ‘applicants for admission’ are according to the statute seeking entry or admission.”). The Court therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission. *See also Lucero v. Field Office Dir. of Enf’t and Removal Operations, et al.*, No. 1:25-cv-823, 2025 WL 3718730, at *4 (S.D. Ohio Dec. 23, 2025) (citing *Jennings*, 583 U.S. 281; *Coronado v. Sec., Dep’t. of Homeland Sec., et al.*, Case No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025)) (“the statutory phrase ‘aliens seeking admission’ does not refer to a *subset* of ‘applicants for admission,’ but rather is just another way to refer to that same group”).

Coronado contains a detailed analysis of the distinctions in § 1225 and § 1226. 2025 WL 3628229. In the *Coronado* court’s words, “applicants for admission as a textual matter fall within § 1225(b)(2),” whereas “an applicant for admission includes any ‘alien present in the United States who has not been admitted.’” *Id.*, at *7, 12. And “‘admission’ specifically means

lawful entry[.]” *Id.*, at *7. Also, no “examining immigration officer” has decided that the alien “is not clearly and beyond a doubt entitled to be admitted,” citing 8 U.S.C. § 1225(b)(2)(A). *Id.*, at *8. Simply said, by that court; “if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate.” *Id.*, at *10; *see also Lucero*, 2025 WL 3718730; *Phurtskhvanidze v. Field Office Dir. of Enf’t and Removal Operations*, No. 1:25-cv-827, 2026 WL 160833 (S.D. Ohio Jan. 21, 2026).

No additional step is necessary for an applicant for admission to be seeking admission. As the Southern District of Ohio recently explained, “the phrase ‘alien seeking admission’ in § 1225(b)(2)(A) is merely another way to refer to ‘applicant[s] for admission,’ and thus the same ‘deeming’ that makes someone an applicant for admission also makes them an ‘alien seeking admission,’ whether that is so as a matter of fact or not.” *Lucero*, 2025 WL 3718730, at *1. Likewise, as the Western District of Oklahoma noted: if not seeking admission, then what would the legal status be? *Gutierrez Sosa*, 2026 WL 36344, at *4. To have aliens who have been present in the United States for an extended period of time would “create[] a regime that *rewards* those aliens who evade deportation for long enough by making them no longer subject to automatic detention when caught.” *Id.*; *Higareda-Cano v. Noem*, No. 1:25-CV-225-H, 2026 WL 274495, at *1 (N.D. Tex. Jan. 30, 2026) (“The INA, unsurprisingly, does not bestow heightened procedural protections to illegal aliens based on their stealth and impenitence.”).

Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings “shall be detained.” 8 U.S.C. § 1225(b)(2)(A). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances,’” *Ardestani v. INS*, 502 U.S. 129, 135-36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)).

As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens. No provision within 8 U.S.C. § 1225(b)(2) refers to “arriving aliens,” or limits that paragraph to arriving aliens, as Congress intended for it to apply generally “in the case of an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. *See, e.g., id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

Petitioner claims that § 1225(b)(2)(A) is inapplicable to her because she is “not a recent entrant.” Petition, PageID #6. This argument, for the reasons set forth above, is inconsistent with the text of the statute. Petitioner is seeking admission to the United States and is therefore subject to detention during removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A).⁴

3. Applicants for admission may only be released from detention on an 8 U.S.C. § 1182(d)(5) parole.

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive

⁴ Undersigned counsel acknowledges that other district courts in the Northern District of Ohio have resolved this question against the government. *See, e.g., Kaur v. Raycraft, et al.*, No. 4:25-cv-2679, 2026 WL 709728 (N.D. Ohio, March 13, 2026); *Gu v. Noem, et al.*, No. 3:26-cv-36, 2026 WL 621356 (N.D. Ohio March 5, 2026); *Rodriguez v. Greene, et al.*, No. 4:26-cv-333, 2026 WL 574961 (N.D. Ohio, March 2, 2026); *Lemus v. Lynch, et al.*, No. 4:26-cv-203, 2026 WL 496731 (N.D. Ohio February 23, 2026); *Lopez v. Noem, et al.*, No. 3:26-cv-128, 2026 WL 395202 (N.D. Ohio February 12, 2026); *Gonzalez Lopez v. Raycraft, et al.*, No. 4:25-cv-2449, 2025 WL 3280344 (N.D. Ohio Nov. 25, 2025).

authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS’s discretion. *Jennings*, 583 U.S. at 300. Furthermore, the Court stated that the fact that parole is an exception to detention “implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released.” *Id.* (emphasis in original). Parole is not a bond hearing, and the two should not be conflated. Thus, Petitioner could be temporarily released on parole, but not on bond.

D. PETITIONER’S DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED.

The Supreme Court has made clear that in the context of removal proceedings, the process due is coextensive with the procedures provided by Congress. *See Thuraissigiam*, 591 U.S. at 138-40. The Court has also confirmed that statutory provisions denying bond during administrative removal proceedings do not violate the due process clause. *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”). These rules are part of the “broad power” Congress has over immigration matters. *Id.* at 521 (quoting *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976)).

Here, Section 1225(b)(2) does not afford Petitioner the ability to obtain release on bond, and so the Due Process Clause does not either. *See Martinez v. Larose*, 968 F.3d 555, 566 (6th Cir. 2020) (“Spotting a constitutional issue does not give a court the authority to rewrite a statute as it pleases.”) (quoting *Jennings*, 583 U.S. at 298); *Hamama v. Adducci*, 912 F.3d 869, 879-80 (6th Cir. 2018) (criticizing the District Court in a § 1231 habeas case for “create[ing] out of thin air a requirement for bond hearings that does not exist in the statute”). Moreover, there is no

question that Petitioner had notice of the charges of inadmissibility against her and that she received all process due in connection with her removal proceedings. No further process is due.

III. CONCLUSION

For the foregoing reasons, the Petition for writ of habeas corpus should be dismissed. This Court lacks jurisdiction to decide the Petition and, if it did, the Petitioner should be required to exhaust her administrative remedies. Petitioner is properly detained under § 1225(b)(2)(A) and has received all of the process to which she is entitled.

Respectfully submitted,

DAVID M. TOEPFER
United States Attorney

By: /s/ Elizabeth L. Berry
Elizabeth L. Berry (OH: 0095524)
Assistant United States Attorney
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3682
(216) 522-2404 (facsimile)
Elizabeth.Berry2@usdoj.gov

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

I certify that the foregoing *Answer and Return of Writ* comports with the page limitations identified in Local Rule 7.1. This case is unassigned, and the Answer is under 20 pages in length.

s/Elizabeth L. Berry
Elizabeth L. Berry