UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

JOSE TOMAS MARTINEZ-ELVIR PETITIONER

v. NO. 3:25-CV-00589-CHB

SAMUEL OLSON, in his Official Capacity as Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her Official Capacity as Secretary, U.S. Department of Homeland Security;
PAMELA BONDI in her Official Capacity as U.S. Attorney General; Executive Office for Immigration Review;
JEFF TINDALL, in his Official Capacity as Oldham County Jailer RESPONDENTS

RESPONSE TO ORDER TO SHOW CAUSE

Federal Respondents respond to the Court's Order to Show Cause why Petitioner's writ of habeas corpus should not be granted.[1]

INTRODUCTION

Petitioner is a noncitizen who was not lawfully admitted to the United States, and he has no lawful immigration status. He is currently detained by ICE while the agency pursues administrative removal proceedings against him. Petitioner does not challenge the agency's decision to initiate removal proceedings against him. Rather, Petitioner challenges the agency's decision to detain him under a statutory provision

[1] This response is filed on behalf of Federal Respondents Samuel Olson, Kristi Noem, Pamela Bondi, and Executive Office for Immigration Review. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition names Jeff Tindall, the Oldham County Jailer, as a respondent.

that does not entitle him to a bond hearing. Because Petitioner has not been admitted to the United States, he is lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

BACKGROUND

Petitioner, a native and citizen of Honduras, entered the United States without inspection approximately in June 2013. [Doc. 1, PageID.5, 7-8.] He was not admitted or paroled into the United States. [*See* Exhibit 1, Notice to Appear.]

On June 28, 2025, ICE officials issued a warrant for arrest for Petitioner determining that there was probable cause to believe that he was removable from the United States. [*See* Exhibit 2, Warrant for Arrest.] ICE officials also issued a Notice of Custody Determination indicating that pending final administrative determination, Petitioner would be detained. [*See* Exhibit 3, Notice of Custody Determination.] Although the forms ICE used for the warrant and notice cited 8 U.S.C. § 1226 (Immigration and Nationality Act "INA" § 236) as the authority for Petitioner's detention, ICE detained him under 8 U.S.C. § 1225(b)(2)(A) because he has been present in the United States without admission or parole. [*See* Exhibit 2, Warrant for Arrest & Exhibit 3, Notice of Custody Determination.]

On June 28, 2025, ICE officials also issued Petitioner a Notice to Appear in immigration court stating that he had not been admitted or paroled after inspection by an Immigration Officer. [*See* Exhibit 1, Notice to Appear.] As a noncitizen without admission or parole, Petitioner is considered an "applicant for admission" in 8 U.S.C. § 1229 removal proceedings and is therefore detained pursuant to 8 U.S.C. §

1225(b)(2)(A). [*See* Exhibit 4, Notice of Appeal from a Decision of an Immigration Judge.]

Afterwards, Petitioner requested a bond redetermination hearing. [Doc. 1, PageID.7.] A hearing was scheduled for July 18, 2025. [*See* Exhibit 5, Bond Order.] At the hearing, ICE argued that the IJ lacked jurisdiction to grant Petitioner bond because he was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). [Doc. 1, PageID. 8.] The immigration judge disagreed and ordered that Petitioner be released on bond. [*See* Exhibit 5, Bond Order.] On the same day, ICE filed a Notice of ICE Intent to Appeal Custody Redetermination, which invoked 8 C.F.R. § 1003.19(i)(2) that automatically stayed the immigration judge's bond order. [*See* Exhibit 6, Notice of ICE Intent to Appeal Custody Redetermination.] On July 31, 2025, ICE appealed the immigration judge's order to the Board of Immigration Appeals ("BIA"). [*See* Exhibit 4, Notice of Appeal from a Decision of an Immigration Judge.]

Petitioner is detained at Oldham County Detention Center. [Doc. 1, PageID. 2.] Petitioner has an application for cancellation of removal pending. [*Id.*] On September 11, 2025, Petitioner filed his petition seeking a writ of habeas corpus. [Doc. 1, PageID. 1.]

STANDARD OF REVIEW

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241. Petitioner bears the burden to show that his detention is unlawful. *Freeman v. Pullen*, 658 F. Supp.

3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)).

ARGUMENT

Petitioner's detention pursuant to the automatic stay of 8 C.F.R. § 1003.19(i)(2) is reinforced by Congress's command to detain him throughout his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Because Petitioner is an "applicant for admission," he is lawfully detained under 8 U.S.C. § 1225(b)(2)(A). As such, he cannot show that his detention violates the INA or due process.

I. Immigration and Nationality Act ("INA") Introduction

The INA set up a comprehensive scheme for the admission of aliens or non-citizens into the United States. *See* INA § 101(a)(3), 8 U.S.C. § 1101(a)(3) (defining an "alien" to mean "any person not a citizen or national of the United States"). The terms "admission" and "admitted" mean, with respect to a noncitizen, the lawful entry of the noncitizen into the United States after inspection and authorization by an immigration officer. 8 U.S.C.S. § 1101 (a)(13)(A).

A noncitizen must show that he or she is not inadmissible under INA § 212, 8 U.S.C. § 1182. The INA contains many provisions barring admission to certain noncitizens. *Id.* These grounds of inadmissibility include health-related issues, criminal bars, national security concerns, unlawful entry, alien smuggling, fraud, and unlawful reentry after a prior removal. *Id.*

A noncitizen who has been admitted to the United States may also be charged with the grounds of deportability listed in INA § 237, 8 U.S.C. § 1227. Some grounds of deportability include visa overstay, having been inadmissible at the time of entry or adjustment of status, marriage fraud, alien smuggling, conviction for a crime of domestic violence, conviction for certain firearms offense, or for being a threat to national security. INA § 237, 8 U.S.C. § 1227.

Prior to April 1, 1997 (the date that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) went into effect), there were two distinct types of proceedings before an immigration judge: deportation and exclusion proceedings. Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. "Exclusion hearings were held for certain [noncitizens] seeking entry to the United States, and deportation hearings were held for certain [noncitizens] who had already entered this country." *Ramos-Castellanos v. Garland*, No. 21-9545, 2022 U.S. App. LEXIS 10064, at *4 (10th Cir. Apr. 14, 2022) (citing *Vartelas v. Holder*, 566 U.S. 257, 261, 132 S. Ct. 1479, 182 L. Ed. 2d 473 (2012)). An "'entry' was defined as 'any coming of [a noncitizen] into the United States[] from a foreign port or place.'" *Id.* at *5 (citing 8 U.S.C. § 1101(a)(13) (1996)). However, "IIRIRA replaced the term 'entry' with '[t]he terms 'admission' and 'admitted' [to] mean . . . the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.'" *Id.* (citing 8 U.S.C. § 1101(a)(13)(A)(current version)). IIRIRA also "abolished the distinction between exclusion and deportation procedures and created a uniform proceeding known as 'removal.'" *Id.* at *5.

By creating the IIRIRA, "Congress acted, in part, to remedy the 'unintended and undesirable consequence' of having created a statutory scheme where [noncitizens] who entered without inspection could take advantage of…the right to request release on bond'" as afforded in deportation proceedings, "while [noncitizens] who 'actually presented themselves to authorities for inspection…were subject to mandatory custody'" as provided for in exclusion proceedings. *Matter of Yajure Hurtado*, 29 I& N Dec. 216, 223 (BIA 2025) (citing *See Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)).

At issue here is whether Petitioner, who has not been admitted or paroled and has no lawful status, is deemed an "applicant for admission" and thus subject to the mandatory detention scheme of 8 U.S.C. § 1225(b)(2)(A), or is eligible for discretionary bond under 8 U.S.C. § 1226(a). Based on the statutory scheme of the INA and the enactment of the IIRIRA, Petitioner is an applicant for admission and thus detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

II. Application of 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a)

The immigration detention scheme is mainly governed by four INA provisions that specify when a noncitizen may be detained:

1. INA Section 236(a), 8 U.S.C. § 1226(a) generally authorizes the detention of noncitizens pending removal proceedings and permits noncitizens who are not subject to mandatory detention to be released on bond or parole;
2. INA Section 236(c), 8 U.S.C. § 1226(c) generally requires the detention of noncitizens who are removable because of specified criminal activity or terrorist-related grounds after release from criminal incarceration;

3. INA Section 235(b), 8 U.S.C. § 1225(b) generally requires the detention of applicants for admission, such as noncitizens arriving at a designated port of entry as well as certain other noncitizens who have not been admitted or paroled into the United States, who appear subject to removal; and
4. INA Section 241(a), 8 U.S.C. § 1231(a) generally requires the detention of noncitizens during a 90-day period after the completion of removal proceedings and permits (but does not require) the detention of certain noncitizens after that period.

Congress enacted IIRIRA to eliminate "an anomaly 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) (en banc). Section 1225 was added to the INA as part of the IIRIRA, Pub. L. No. 104-208, § 302, 110 Stat. 3009-546, to accomplish this goal. The statute reads "in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A).

However, on March 6, 1997, almost a month before the IIRIRA went into effect, the Immigration and Naturalization Service (now known as DHS) stated in the supplemental information of the 1997 Interim Rule that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 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). Section 8 U.S.C. § 1226(a) provides that pending removal proceedings, the Attorney General "(1) may continue to detain the arrested [noncitizen]; and (2) may release the [noncitizen] on--(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General or (B) conditional parole." 8 U.S.C. § 1226(a).

Nevertheless, more recent decisions suggest an interpretation more akin to the IIRIRA enactments. In *Matter of Lemus*, the BIA explained that "Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . .". 25 I&N Dec. at 734, 743 (BIA 2012).

Further, in describing § 1225(b)(2), the Supreme Court characterized it as a broad "catchall" provision that applied to "applicants for admission" or noncitizens "seeking admission," which are the exact words used in § 1225(b)(2)(A). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 and 297 (2018); 8 U.S.C. § 1225(a)(1). The Court pointed out that "[u]nder § 302, 110 Stat. 3009–579, 8 U.S.C. § 1225, [a noncitizen] who 'arrives in the United States,' *or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'*" *Jennings*, 583 U.S. at 287 (emphasis added).

The Supreme Court also provided an example of who § 1226 applies to, explaining that a noncitizen "present in the country may still be removed if he or she falls 'within one or more...classes of deportable [noncitizens]'". *See Jennings*, 583 U.S. at 288 (citing § 1227(a), which applies to noncitizens "*in and admitted* to the United States") (emphasis added); 8 U.S.C. § 1227(a). The Court noted that "[s]ection 1226 generally governs the process of arresting and detaining that group of [noncitizens] pending their removal." *Id.*

More recently, on September 5, 2025, the BIA held that [noncitizens] "who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Matter of Yajure Hurtado*, 29 I& N Dec. 216, 220 (BIA 2025). In fact, BIA acknowledged that "for years Immigration Judges have conducted bond hearings for noncitizens who entered the United States without inspection." *Id.* at 225. The BIA, however, explained that "it does not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue [the Immigration Judge's authority to hold a bond hearing for a noncitizen present in the United States who has not been admitted after inspection] before them." *Id.*

Thus, based on statutory construction, noncitizens who have not been admitted or paroled are considered "applicants for admission." "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024).

III. Petitioner Is Lawfully Detained Under 8 U.S.C. § 1225(b)(2)(A) And His Detention Does Not Violate the INA

Petitioner falls within the category of noncitizens that must be detained during their removal proceedings under 8 U.S.C. § 1225(b)(2)(A). Under § 1225(b)(2)(A), immigration officials "shall" detain "an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). While the plain meaning of many of the terms in § 1225(b)(2)(A) could imply that the statute only applies to noncitizens in the process of initially arriving at an international border, the statutory definitions provided for those terms make it clear that the provision is broader and applies to many noncitizens who have already entered the United States unlawfully.

The statute defines an "applicant for admission" as any noncitizen "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). Thus, this definition deems any noncitizen who entered unlawfully as one applying for entry, even if they are already physically present within the United States. *See id.*; *see also* 8 U.S.C. § 1182(d)(5)(A); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) ("[noncitizens] who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' . . . 'as if stopped at the border.'"); *Matter of Lemus*, 25 I&N Dec. 734, 743 ("[M]any 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.* n.6 (distinguishing between "'*true*' applicants for admission," who entered the United States lawfully with a visa or proper entry document but then shifted to an unlawful status, and "*constructive* applicants for admission by operation of section 235(a)(1) [8 U.S.C. § 1225(a)(1)]" who entered unlawfully or were paroled).

Nevertheless, Petitioner argues that "1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States" and that "the statute's entire framework is premised on inspections at the border of people who are 'seeking admission.'" [Doc. 1, PageID. 13-14.] However, the statutory definition of "admission" does not refer to a noncitizen physically crossing the border into the country; instead, it describes "lawful entry," which relates to a noncitizen's legal right to enter, without regard to where or when that right may be granted. 8 U.S.C. § 1101(a)(13)(A). In particular, the statute defines "admission" as "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." *Id.* Therefore, the term "seeking admission" in § 1225(b)(2)(A) does not refer to a noncitizen attempting to physically access the United States; it instead refers to a noncitizen seeking a *lawful* means of entering the United States (e.g. receiving a visa). *See id.*; *see also* Admission, Black's Law Dictionary (12th ed. 2024) ("Admission: Immigration law. The entry into a country by [a noncitizen] with apparent legal permission to do so, usu. as obtained with a visa."). Section 1225(b)(2)(A) requires an immigration officer to detain a noncitizen "present" in the United States who has not been lawfully admitted or paroled and who is "not clearly and beyond doubt entitled to be admitted." *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A).

Here, Petitioner falls within the scope of § 1225(b)(2)(A). Petitioner was not inspected or admitted to the United States, and he was apprehended while present in the United States, so he is an "applicant for admission." 8 U.S.C. § 1225(a)(1). He is "seeking admission" because he wishes to remain in the United States and the only way for him to do that is after a lawful entry. *See* 8 U.S.C. §§ 1225(a)(1), 1101(a)(13)(A). An immigration official determined that he was not clearly and beyond doubt entitled to admission. [*See* Exhibit 4.] And ICE has pursued administrative immigration proceedings against him under 8 U.S.C. § 1229a. [*See* Exhibit 1.] Accordingly, Petitioner meets the elements of § 1225(b)(2)(A) and his detention under that statute is lawful.

IV. Detention Under 8 U.S.C. § 1226(a) Does Not Apply to Petitioner

Under 8 U.S.C. § 1226(a), ICE may obtain a warrant to arrest and detain a noncitizen to pursue administrative removal proceedings against them. 8 U.S.C. § 1226(a). Noncitizens detained under 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they fall into an exception, such as the exceptions described in § 1226(c). *See id.*

Section 1226(a) applies to noncitizens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to noncitizens who are "applicants for admission,"—a specially defined subset of noncitizens that explicitly includes those "present in the United States who ha[ve] not been admitted." *Id.* § 1225(a). *See also Florida v. United States,* 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of [noncitizens] as 'applicants for admission,' and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen]."). Because Petitioner falls squarely within the "applicants for admission" category, the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

Moreover, the language of § 1225(b)(2)(A) is mandatory and requires detention for noncitizens who fall within the scope of the statute until the conclusion of their administrative immigration proceedings. *See* 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 300 ("§§ 1225(b)(1) and (b)(2) do not use the word 'may.' Instead, they unequivocally mandate that [noncitizens] falling within their scope 'shall' be detained. Unlike the word 'may' which implies discretion, the word 'shall' usually connotes a requirement."). Thus, noncitizens who qualify as "applicants for admission" or who otherwise meet the criteria for § 1225(b)(2)(A) must be detained.

Nevertheless, Petitioner argues that § 1226(a) applies to him because in the decades that followed the enactment of the IIRIRA and the 1997 Interim Rule, "most people who entered without inspection were placed in standard removal proceedings and received bond hearings." [Doc. 1, PageID. 10.]. As explained above, though, Congress, in part, enacted the IIRIRA "to replace certain aspects of the current 'entry doctrine,' under which [noncitizens] who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to [noncitizens] who present themselves for inspection at a port of entry." *Torres*, 976 F.3d at 928. In addition, decisions like *Matter of Lemus*, 25 I&N Dec. at 743; *Jennings*, 583 U.S. at 287; and *Matter of Yajure Hurtado*, 29 I& N Dec. at 220 offer an interpretation of 1225(b)(2)(A) more akin with its enactment.

Particularly, in *Matter of Yajure Hurtado*, the respondent alleged that because he had been residing in the interior of the United States for almost 3 years (since his November 2022 entry without inspection), he could not be considered as "seeking admission" as the phrase is used in section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A). *Id.* at 221. The BIA posed the following question, "[i]f he is not admitted to the United States (as he admits), but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* The BIA explained that the respondent did not provide any legal authority illustrating how after an "undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer seeking admission and has somehow converted to a status that renders him or her eligible for a bond hearing under 8 U.S.C. § 1226(a)." . Similarly, Petitioner acknowledges he has not been admitted by virtue of his entry without inspection and has not provided such legal authority either. [Doc. 1, PageID. 8.] Thus, his argument must fail.

Further, although Petitioner alleges that he did not receive a warrant, ICE records indicated that one was served. Nevertheless, the BIA recently explained that the issuance of such a warrant does not change Petitioner's status. "[T]he mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for [a noncitizen] who falls under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)." *Matter of Yajure Hurtado*, 29 I& N Dec. at 227. As such, 8 U.S.C. § 1226(a) does not apply.

V. Petitioner Cannot Show That The Automatic Stay Violates His Due Process

Petitioner cannot show that the automatic stay violates his due process. The Fifth Amendment's Due Process Clause requires that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process contains both procedural components, which require the government to follow certain procedures before a deprivation, and substantive components, which "bar[ ] certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990) (internal quotation omitted); *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 145 (4th Cir. 2014).

The regulation pertaining to the automatic stay, 8 C.F.R. § 1003.19(i)(2) entitles the Department of Homeland Security to appeal an immigration judge's bond decision. If the requirements set out in 8 C.F.R. § 1003.6(c) are satisfied, the immigration judge's bond decision is stayed until the BIA resolves the appeal or 90 days passes, whichever happens first. 8 C.F.R. § 1003.6(c)(4).[2]

In addressing the automatic stay, the district court in *Altayar v. Lynch* explained that "a stay of some length is afforded precisely because it allows the Government an

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[2] 8 C.F.R. § 1003.6 provides for additional process, but that is not at issue in this case because the BIA has not resolved this appeal, nor has Petitioner been detained for 90 days since the stay.

opportunity to appeal before a detainee might flee." 2016 WL 7383340, at *4 (D. Ariz. Nov. 23, 2016) (citing *El-Dessouki, v Cangemi*, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006) ("a finite period of detention to allow the BIA an opportunity to review the immigration judge's bond redetermination is a narrowly tailored procedure that serves the government's interest in preventing flight of [noncitizens] likely to be ordered removable and in protecting the community").

Furthermore, as observed by the court in *Altayar*, "the regulations under 8 C.F.R. § 1003.38 provide for a constitutionally permissive appellate process in compliance with due process, which provides both parties in bond proceedings with an avenue to appeal the Immigration Judge's custody and bond decision." *See* 2016 WL 7383340, at *5 (citing 8 C.F.R. § 1003.38). In this respect, the *Altayar* court concluded that "the automatic stay [] does not turn the IJ decision into a meaningless formality because it affords the BIA time to consider an appeal," and "the purpose of the automatic stay is to 'avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.'" *Id.* (citing *Review of Custody Determinations*, 71 FR 57873-01, 2006 WL 2811410). As such, the automatic stay does not violate Petitioner's substantive due process.

In regards to procedural due process, Petitioner argues that the three *Mathews* factors weigh in his favor: (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, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); [Doc. 1, PageID. 11-15.] However, Petitioner's due process rights as a noncitizen who has not been admitted to the United States does not overcome the Government's interests in maintaining his detention during the limited automatic stay time period. In general, the Supreme Court has recognized that "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003). Also, the automatic stay, as applied here to Petitioner, is narrowly tailored to serve the Government's compelling interest in detaining him while the immigration judge's decision is appealed.

Further, [a noncitizen's] right to procedural due process is violated "only if [1] the proceeding was 'so fundamentally unfair that the [noncitizen] was prevented from reasonably presenting his case,'" and [2] the [noncitizen] proves that "the alleged violation prejudiced his or her interests." *Altayar*, 2016 WL 7383340, at *5 (citing *Mendez-Garcia v. Lynch*, 840 F.3d 655 (9th Cir. 2016) (citations omitted); *see also Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926–27 (9th Cir. 2007) ("Where [a noncitizen] is given a full and fair opportunity . . . to present testimony and other evidence in support of the application, he or she has been provided with due process.").

Here, Petitioner was given notice of the charges against him, he has access to counsel, he has attended a hearing with an immigration judge, he has requested bond, he will have or has had an opportunity to submit a response to ICE's appeal regarding the bond decision[3], and he has applied for cancellation of removal which is pending before the immigration court. As such, Petitioner has not identified a statutory procedure, which he is entitled, that ICE has denied him. Under these circumstances, Petitioner cannot show that his detention violates his procedural due process.

CONCLUSION

Because Petitioner is lawfully detained, Respondents respectfully request that the Court dismiss his petition for a writ of habeas corpus.

Respectfully submitted,

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[3] Pursuant to the BIA Practice Manual, once an appeal is filed, the Board will issue a briefing schedule allowing the parties to file briefs within twenty-one (21) days. *See* BIA Practice Manual § 7.3(b)(1), § 4.2(e).

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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/s/ Calesia Henson
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