

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

MOISES ANGEL FUENTES,	§	
<i>Petitioner,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 5:25-cv-00153
	§	
KRISTI NOEM, Secretary, Department of	§	
Homeland Security, <i>et al.</i> ,	§	
<i>Respondents.</i>	§	

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS
AND MOTION TO DISMISS**

Respondents, Kriti Noem, the Secretary of Homeland Security, *et al.*, file this opposition to Petitioner, Moises Angel Fuentes' Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (hereafter "the Petition") (Dkt. No. 1) and pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1) and 12(b)(6) move to dismiss the Petition for lack of subject matter jurisdiction and for failure to state a claim. As explained below, the Court lacks jurisdiction because Petitioner failed to exhaust administrative remedies prior to seeking habeas relief under 28 U.S.C. § 2241. Furthermore, the Court lacks authority to review the Government's exercise of discretion to detain Petitioner, an arriving alien that is currently lawfully detained under 8 U.S.C. § 1225(b)(2)(A) of the Immigration and Nationality Act ("INA"), throughout the pendency of his ongoing removal proceedings before an Immigration Judge.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

1. Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the Rio Grande Processing Center in Laredo, Webb County, Texas. Dkt. No. 1, ¶¶ 2, 7, 12. Petitioner brought this habeas corpus petition against Respondents seeking release from

immigration detention or a bond hearing pursuant to Section 236(a) of the Immigration and Nationality Act (“INA”). But Petitioner’s claims lack merit and the Court should dismiss the Petition for two significant reasons.

2. First, Petitioner was not denied an opportunity for a bond hearing, he simply failed to request a bond redetermination proceeding from an Immigration Judge pursuant to 8 C.F.R. §§ 1236, 1003.19 at any point prior to filing the Petition in this Court. Thus, Petitioner’s claim is not ripe and should be dismissed as Petitioner failed to exhaust available administrative remedies available to him his pending removal proceedings. Second, Petitioner is lawfully detained under Section 235(b) of the INA, 8 U.S.C. § 1225(b)(2), and is therefore subject to mandatory detention. Thus, even assuming Petitioner had properly exhausted administrative remedies by obtaining a final order on his bond redetermination, Congress divested the Court of jurisdiction over the type of discretionary bond issued in ongoing removal proceedings. Accordingly, the Petition should be dismissed under FRCP 12(b)(1) and 12(b)(6).

BACKGROUND AND PROCEDURAL HISTORY¹

3. On August 5, 2025, in Corpus Christi, Nueces County, Texas, a law enforcement officer with Nueces County Sheriff’s Office conducted a traffic stop of a vehicle transporting Petitioner, who was “on his way to work.” Dkt. No. 1, ¶¶ 17, 44; **Gov’t Ex. 1**, ¶ 4(c). (Unsworn Declaration of ICE Deportation Officer Marcos L. Gamez); **Gov’t Ex. 2** at 3 (Petitioner’s Record of Deportable/Inadmissible Alien). Upon suspicion of an immigration violation, the officer contacted the U.S. Border Patrol Station in Corpus Christi to request assistance in determining Petitioner’s immigration status. *See Gov’t Ex. 1*, ¶ 4(c); **Gov’t Ex. 2** at 3. After determining that Petitioner was an undocumented alien, originally from Mexico, who illegally entered the United

¹ Background and procedural history is taken from the Petition (Dkt. No. 1), Petitioner’s Exhibits A-D, pgs. 3-14 (Dkt. No. 1-2), and from Government Exhibits 1-5 attached herein.

States, the officer “arrested and transported” Petitioner to the U.S. Border Patrol Station. *Id.* Upon arrival, Petitioner was placed into custody of U.S. Customs and Border Protection (“DHS/CBP”). *Id.*

4. Because DHS/CBP found Petitioner entered the United States illegally from Mexico and had remained in the United States since approximately 2005, without prior admission or parole, DHS/CBP transferred Petitioner to the Port Isabel Service Processing Center and served Petitioner with a Notice to Appear, commencing removal proceedings and charging Petitioner as removable under the following sections of the INA: (1) Section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled; and (2) Section 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant who, at the time of entry, did not possess a valid entry document or suitable travel document. *See* Dkt. No. 1-2, Ex. A at 2-6; **Gov’t Ex. 1**, ¶¶ 4(a), (b), (d); **Gov’t Ex. 2** at 2-3. Additionally, DHS/CBP served Petitioner with DHS Form I-826 “Notice of Rights and Request for Disposition” (**Gov’t Ex. 3**), which Petitioner refused to sign, notifying Petitioner of his right to request a bond a hearing before an Immigration Court:

You have been arrested because immigration officers believe that you are illegally in the United States. You have the right to a hearing before the Immigration Court to determine whether you may remain in the United States. ***If you request a hearing before a judge in Immigration Court, you may be detained, or you may be eligible to be released from detention, either with or without payment of bond.***

Gov’t Ex. 3 at 1 (emphasis added).

5. The following day, August 6, 2025, CBP/DHS issued an Order to Detain Petitioner pending his removal proceedings at Port Isabel Service Processing Center (**Gov’t Ex. 4**) based on its finding that Petitioner was subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A). *See* **Gov’t Ex. 4** at 1; **Gov’t Ex. 2** at 2-3; Dkt. No. 1-2, Ex. A at 2-6.

Subsequently, Petitioner was transferred to the custody of DHS/ICE and detained at the Rio Grande Processing Center in Laredo, Webb County, Texas, where Petitioner remains in mandatory detention pending issuance of a final administrative order. **Gov't Ex. 1**, ¶ 4(i).

6. In his pending removal proceedings, Petitioner is scheduled for his final merit hearing on October 31, 2025. **Gov't Ex. 1**, ¶ 4(i). To date, Petitioner has not requested a bond redetermination from DHS/ICE's Enforcement and Removal Operations ("ERO") or the presiding IJ in his removal proceedings. *Id.*, ¶ 4(e). Instead, on September 17, 2025, through retained counsel record, Petitioner inquired about the possibility of parole, but has not submitted a formal request for humanitarian parole, including the basis for the request and all pertinent supporting documents. *Id.*, ¶ 4(g); *see also* Dkt. No. 1-2, Ex. B at 7-9. Nevertheless, despite being informed of his right to do so on August 5, 2025 (**Gov't Ex. 3** at 1), Petitioner failed to request a bond redetermination from DHS/ICE's ERO or a bond redetermination hearing from the IJ at prior Immigration Court hearings on September 10, 2025, and September 24, 2025. *See Gov't Ex. 1*, ¶¶ 4(e)-(h).

7. On September 20, 2025, Petitioner filed the instant Habeas Petition (Dkt. No. 1), along with a Motion for Preliminary Injunction and Temporary Restraining Order (Dkt. No. 2), claiming: (1) the mandatory detention provision of 8 U.S.C. § 1225(b)(2) is unlawfully applied to Petitioner and violates the INA because Petitioner should be detained under 8 U.S.C. § 1226(a); and (2) the detention of Petitioner "without a bond redetermination hearing" pending removal proceedings violated procedural and substantive due process under the Fifth Amendment. Dkt. No. 1, ¶¶ 50-56. There is no indication in the Petition that Petitioner exhausted administrative remedies

available to him prior to seeking habeas relief under 28 U.S.C. § 2241. Per the Court's Order, the Government submits this motion to dismiss in response to the Petition.² See Dkt. No. 4.

STANDARD OF REVIEW

Fed. R. Civ. P. 12(b)(1).

8. Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court must dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also id.* 12(h)(3) (“If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.”). “A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.” *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th Cir. 2005) (quotations omitted); Fed. R. Civ. P. 12(h)(3). The burden of establishing subject matter jurisdiction in federal court is on the party seeking to invoke it. *Hartford Ins. Group v. Lou-Con Inc.*, 293 F.3d 908, 910 (5th Cir. 2002). Accordingly, the party with the burden of proof must establish that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980). In ruling on a motion to dismiss for lack of subject matter jurisdiction, a court may rely on any of the following to decide the matter: “(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *St. Tammany Parish, ex. rel. Davis v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 315 (5th Cir. 2009) (quotations omitted). A court must accept all factual allegations in the plaintiff’s complaint as true. *Saraw Partnership v. United States*, 67 F.3d 357, 569 (5th Cir. 1995). “In considering a challenge to subject matter jurisdiction,

² The Government intends to respond to the pending Motion for Preliminary Injunction and Temporary Restraining Order (Dkt. No. 2) separately on or before October 13, 2025 (21 days after the filing of the motion) as Respondents were only ordered to respond to the Petition by October 6, 2025. See Dkt. No. 4 at 1.

the district court is ‘free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has the power to hear the case.’” *Krim*, 402 F.3d at 494.

B. Fed. R. Civ. P. 12(b)(6).

9. A court may dismiss a claim for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007) (brackets omitted)). “Threadbare recitals of the elements of a case of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. Nor must a court accept as true “legal conclusions” or “a legal conclusion couched as a factual allegation.” *Id.* at 678-79.

ARGUMENT

I. Habeas relief under 28 U.S.C. § 2241 is unavailable because Petitioner failed to exhaust administrative remedies under 8 C.F.R. §§ 1236, 1003.19.

10. The Court should dismiss the Petition for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. It is well settled that before a prisoner can bring a habeas petition under 28 U.S.C. § 2241, administrative remedies must be exhausted before federal court intervention. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (A federal prisoner

must “exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241.”); *see* 8 C.F.R. § 1003.19(a) (“A custody and bond determination made by the service pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236). If the petitioner does not exhaust available remedies, the petition should be dismissed. *Fuller*, 11 F.3d at 62.

11. For purposes of 28 U.S.C. § 2241 relief, exhaustion of administrative remedies is jurisdictional. *See Swain v. Pressley*, 430 U.S. 372, 383 (1977). As thoroughly explained in *McCarthy v. Madigan*: “Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency...[t]he exhaustion doctrine also acknowledges the common sense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is hauled into federal court.” 503 U.S. 140, 144-45 (1992).

12. Here, the Petition did not allege or show there has been any exhaustion of administrative remedies. *See generally* Dkt. No. 1. On August 5, 2025, upon taking custody Petitioner, DHS/CBP served him with DHS Form I-826, notifying Petitioner of his right to request a bond a hearing before an Immigration Court. *See Gov’t Ex. 3* at 1. By regulation, an IJ has authority to review custody determinations made by DHS, and an application for an initial bond redetermination by Petitioner, his attorney or representative, may have been made “orally, in writing, or, at the discretion of the Immigration Judge, by telephone.” 8 C.F.R. §§ 1003.19(a)-(b). Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and DHS/ICE Petitioner “has not requested a bond redetermination from ERO or an Immigration Judge.” *Gov’t Ex. 1*, ¶ 4(e). Contrary to the Petition, DHS/ICE’s response to Petitioner’s counsel of record’s parole inquiry on September 17, 2025, did not constitute a determination by DHS/ICE or a bond

redetermination that is consistent with regulations 8 C.F.R. §§ 1236, 1003.19. *See* Dkt. No. 1, ¶ 47 (citing Ex. B at 7-9, Dkt. No. 1-2),

13. Because Petitioner has failed to exhaust administrative remedies available to him under 8 C.F.R. §§ 1236, 1003.19 prior to filing suit, habeas relief under 28 U.S.C. § 2241 is unavailable to Petitioner. *See Fuller v. Rich*, 11 F.3d at 62. Therefore, the Court should dismiss this action for lack of subject matter jurisdiction.

II. The Petition should be dismissed because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and review of a bond determination is beyond this Court's authority.

14. The Court should dismiss the Petition for lack subject matter jurisdiction because judicial review is unavailable for pending removal proceedings under INA § 235(b), 8 U.S.C. § 1225(b)(2), which subjects Petitioner to mandatory detention. “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)). 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); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”). 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) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for

admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted” (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or attempting to come into the United States at a port-of-entry [(“POE”)]...” 8 C.F.R. §§ 1.2, 1001.1(q).

15. All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection...”). An applicant for admission seeking admission at a United States POE “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal...and is entitled, under all of the applicable provisions of the immigration laws...to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

16. Here, Petitioner did not present himself at a POE but instead entered the United States on or about November 2005 between POEs and without having been admitted after inspection by an immigration officer. Dkt. No. 1, ¶ 17; **Gov’t Ex. 1**, ¶ 4(b); **Gov’t Ex. 2** at 1-2. On or about August 5, 2025, a law enforcement officer with Nueces County Sheriff’s Office

detained Petitioner on traffic stop and brought him directly to DHS/CBP at the U.S. Border Patrol Station in Corpus Christi, Texas after determining Petitioner had crossed into the United States illegally and remained in the United States without legal documentation. *See Gov't Ex. 1*, ¶ 4(c); *Gov't Ex. 2* at 3. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

17. Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under 8 U.S.C. § 1225(b)(1)³ or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). Immigration officers have discretion to apply expedited removal under 8 U.S.C. § 1225(b)(1) or to initiate removal proceedings before an IJ under 8 U.S.C. § 1229a. *E-R-M- & L-R-M-*, 25 I&N Dec. at 524; *see also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

A. Petition is an applicant for admission in 8 U.S.C. § 1229a removal proceedings and mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

³ Section 1225(b)(1) authorizes immigration officers to remove certain inadmissible aliens “from the United States without further hearing or review” if the immigration officer finds that the alien, “who is arriving in the United States or is described in [8 U.S.C. § 1225(b)(1)(A)(iii)] is inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)].” 8 U.S.C. § 1225(b)(1)(A)(i); *see* 8 C.F.R. § 235.3(b)(2)(i). If the Department of Homeland Security (DHS) wishes to pursue inadmissibility charges other than 8 U.S.C. § 1182(a)(6)(C) or (a)(7), DHS must place the alien in removal proceedings under 8 U.S.C. § 1229a. 8 C.F.R. § 235.3(b)(3). Additionally, an alien who was not inspected and admitted or paroled, but “who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with [8 U.S.C. § 1225(b)(2)] for a proceeding under [8 U.S.C. § 1229a].” *Id.* § 235.3(b)(1)(ii); *id.* § 1235.6(a)(1)(i) (providing that an immigration officer will issue and serve an NTA to an alien “[i]f, in accordance with the provisions of [8 U.S.C. § 1225(b)(2)(A)], the examining immigration officer detains an alien for a proceeding before an immigration judge under [8 U.S.C. § 1229a]”).

18. Applicants for admission whom DHS places in § 1229a removal proceedings are subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) *and* aliens “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing before the IJ.

19. Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287; *see* 8 U.S.C. § 1225(b)(2)(A), (B). 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) (emphasis added); 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)).

20. 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) (emphasis added). “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)); see *Lamie*, 540 U.S. at 534 (“It is well established that when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” (quotation marks omitted)). 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. The distinction the Attorney General drew in the 1997 Interim Rule (addressed in detail below) between “arriving aliens,” see 8 C.F.R. §§ 1.2, 1001.1(q), and “aliens who are present without being admitted or paroled,” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997), finds no purchase in the statutory text. 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).

21. On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (**Gov’t Ex. 5**). In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens 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.” *Yajure Hurtado*, 29 I&N Dec. at 220.⁴ The BIA

⁴ Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal

concluded that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

22. In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “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.* (parentheticals in original). The BIA’s decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C. § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

23. Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225

proceedings. See, e.g., *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

and 1226(a) do not overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the BIA held that an alien who illegally crossed into the United States between POEs and was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”).⁵ *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

24. Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a—and “[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings,”

⁵ Though not binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., *Moore’s Federal Practice* § 134.02[1] [d], p. 134–26 (3d ed.2011)) (providing that “[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case”); *Evans v. Skolnik*, 997 F.3d 1060, 1067 (9th Cir. 2021) (same), the U.S. District Court for the Northern District of Florida’s decision is instructive here. *Florida* held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either 8 U.S.C. §§ 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention under 8 U.S.C. § 1225(b) meaningless.” *Id.*

Jennings, 583 U.S. at 301–03, IJs do not have authority to redetermine the custody status of an alien present without admission.

25. Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed directly into removal proceedings under 8 U.S.C. § 1229a. Petitioner is therefore subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. “It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA].” *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). “In the context of custody proceedings, an Immigration Judge’s authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . .” *Id.* at 46. The regulation clearly states that “the [IJ] is authorized to exercise the authority in [8 U.S.C. § 1226].” 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review “[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236”); *see id.* § 1003.19(h)(2)(i)(B) (“[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5).]”). “An [IJ] is without authority to disregard the regulations, which have the force and effect of law.” *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

26. Aliens, like Petitioner, present without admission in 8 U.S.C. § 1229a removal proceedings are both applicants for admission under 8 U.S.C. § 1225(a)(1) and aliens seeking admission under 8 U.S.C. § 1225(b)(2)(A). As discussed above, such aliens placed in removal proceedings under 8 U.S.C. § 1229a are applicants for admission as defined in 8 U.S.C. § 1225(a)(1), subject to detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for a bond redetermination hearing before the IJ. Such aliens are also considered “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). To be sure, “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.” *Lemus*, 25 I&N Dec. at 743; *see Yajure Hurtado*, 29 I&N Dec. at 221; *Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that “an application for admission [i]s a continuing one”).

27. 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 (emphases added). 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.

28. Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to 8 U.S.C. § 1225(b) detention: “In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2).” *Id.* at 289. This was recently reiterated by the BIA in *Matter of Q. Li*, which held that for aliens “seeking

admission into the United States who are placed directly in full removal proceedings, [8 U.S.C. § 1225(b)(2)(A)] . . . mandates detention ‘until removal proceedings have concluded.’” 29 I&N Dec. At 68 (quoting *Jennings*, 583 U.S. at 299).

B. Even assuming Petitioner sought a bond redetermination by an Immigration Judge, the Immigration Judge would likely determine that he lacked authority to issue Petitioner a bond as he is subject to mandatory detention under 8 U.S.C. § 1225(b).

29. As noted above, Petitioner, an applicant for admission placed in removal proceedings, is subject to mandatory detention under § 235(b) of the INA, 8 U.S.C. § 1225(b). *See Gov’t Ex. 4* at 1; *Gov’t Ex. 2* at 2-3; Dkt. No. 1-2, Ex. A at 2-6. He is therefore subject to mandatory detention. *See id.*; *Gov’t Ex. 5* at 14 (BIA dismissing *Yajure Hurtado* appeal because the IJ “lacked authority to hear the respondent’s request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and the regulation at 8 C.F.R. § 235.3(b)(1)(ii)”). The *Yajure Hurtado* decision (*Gov’t Ex. 5*), which was issued after the DHS initially served Petitioner with DHS Form I-826 “Notice of Rights and Request for Disposition” (*Gov’t Ex. 3*), notifying Petitioner of his right to request a bond a hearing before an Immigration Court, is binding precedent on immigration judges. *See Gov’t Ex. 3* at 1; *Gov’t Ex. 5*. Therefore, even assuming had Petitioner had exhausted administrative remedies available to him and requested a bond redetermination hearing, an IJ would unquestionably find that it lacked the authority to issue Petitioner a bond pending his removal from the United States.

C. Even assuming the Petitioner’s claim under 8 U.S.C. § 1226 had merit, it further fails because judicial review is precluded under § 1226(e).

30. Congress has stripped district courts of jurisdiction to hear challenges to decisions to issue a bond or not, decisions to revoke a bond, or the decision to delay compliance with an

ultra-vires bond. The detention of an alien prior to a final order of removal is generally governed by INA § 236, 8 U.S.C. § 1226. According to 8 U.S.C. § 1226(e), DHS’s “discretionary judgment” regarding bond determinations “shall not be subject to judicial review.” To be clear, this provision does not strip courts of jurisdiction over constitutional questions. *Demore v. Kim*, 538 U.S. 510, 517 (2003). And Petitioner has asserted a Due Process claim here. Dkt. No. 1, ¶¶ 53-56. But what Petitioner is really challenging in this action is DHS’s denial of a bond by determining that Petitioner is an alien subject to mandatory detention. This challenges a discretionary decision not subject to review pursuant to § 1226(e). *See e.g., Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 875 (E.D. Wis. 2007) (holding that the decision to disregard the IJ’s order and refuse to accept the bond was subject to § 1226(e)).⁶ But as provided above, Petitioner did not request a custody redetermination from DHS/ICE’s ERO or the Immigration Judge. *See Gov’t Ex. 1*, ¶ 4(e).

31. In summary, even assuming Petitioner had requested a custody redetermination, which Petitioner did not, the BIA decision in *Yajure Hurtado* made clear that Petitioner is not subject to be released on bond as he is subject to “mandatory” custody until his removal proceedings have concluded. Because this Court lacks authority to preside over this issue raised in the Petition, the Court should dismiss the Petition for lack of jurisdiction.

III. Judicial Review of Petitioner’s removal proceedings is unavailable under 28 U.S.C. § 2241.

32. Lastly, to the extent the Petitioner seeks judicial review of removal proceeding determinations—which as provided above none were made because Petitioner failed to exhaust administrative remedies—such claims should be dismissed. In the present action under 28 U.S.C.

⁶ On appeal, the Seventh Circuit held that the petitioner in *Al-Siddiqi* had pled a Due Process claim which overcame § 1226(e). *Al-Siddiqi v. Achim*, 531 F.3d 490, 493 (7th Cir. 2008).

§ 2241, there is no jurisdictional basis for this Court to review Petitioner's challenges to his removal proceeding. The "sole function" of habeas relief is to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose," which means that it "is not available to review questions unrelated to the cause of detention." *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976).

33. In 2005, Congress enacted the REAL ID Act, which relied on explicit language demanded by *Demore v. Kim* to strip district courts of jurisdiction over habeas petitions challenging the Attorney General's discretionary decisions. *See Nolos v. Mukasey*, No. EP-08-CV-287-DB, 2008 WL 5351894, at *2 (W.D. Tex. Sept. 25, 2008) ("Congress enacted the REAL ID Act on May 11, 2005, which stripped district courts of jurisdiction over 28 U.S.C. § 2241 petitions attacking removal orders."). *See also* 8 U.S.C. § 1252(B)(ii) (supplying the language needed to strip habeas jurisdiction from district courts reviewing discretionary decisions of the Attorney General). *See Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917 (W.D. Tex. 2018).

34. In *Hernandez-Castillo v. Moore*, 436 F.3d 516, 519 (5th Cir. 2006), the Fifth Circuit held that the REAL ID eliminates habeas corpus review of final removal orders and removal-related claims except those entered under expedited removal provision at 8 U.S.C. § 1225(b)(1). However, this Court still has jurisdiction under 28 U.S.C. § 2241 to review statutory and constitutional challenges to immigration detention under (*Zadvydas v. Davis* 533 U.S. 678 (2001)), *provided that administrative remedies have been exhausted*, and, pursuant to 8 U.S.C. § 1252, as amended REAL ID Act, that the basis is: (a) not a matter solely reviewable by the court of appeals in a petition for review; (b) independent of challenges to Petitioner's removal proceeding; and (c) does not arise from the decision or action to commence proceedings, adjudicate cases or execute removal orders against an alien under the INA.

35. Because the habeas corpus action before the Court is not one involving the expedited removal provision of 8 U.S.C. § 1225(b)(1) or involve an issue under *Zadvydas*, the Court lacks jurisdiction over the Petition seeking habeas relief under 28 U.S.C. § 2241.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1) for lack of subject-matter jurisdiction and for failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Baltazar Salazar, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 6th day of October, 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: **s/ Baltazar Salazar**
BALTAZAR SALAZAR
Assistant United States Attorney