

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JONNY ANTONIO SERAQUIVE PAQUI,

Petitioner,

v.

25-CV-01029-LJV

JOSEPH FREDEN, in his official capacity as Field Office
Director, Buffalo Field Office, U.S. Immigration & Customs
Enforcement, et al.,

Respondents.

NOTICE OF MOTION

MOVING PARTY:

Respondents

PLACE:

The Honorable Lawrence J. Vilardo
United States District Judge
Robert H. Jackson United States Courthouse
2 Niagara Square
Buffalo, New York 14202

RELIEF SOUGHT:

Respondents respectfully move for an Order
dismissing the Petition pursuant to Federal Rule
of Civil Procedure 12(b)(6).

RETURN DATE:

Absent court order, Local Rule of Civil Procedure
12(b)(2)(B) provides that any responding papers be
filed within 14 days of the motion and any reply
filed within 7 days of the responding papers.

PAPERS SUBMITTED:

Memorandum of Law

Respondents reserve the right to submit reply papers to any opposition which may be
filed.

Respectfully submitted,

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DATED: October 28, 2025
Rochester, New York

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MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS

Petitioner Jonny Antonio Seraquive Paqui brings this action challenging his continued detention by the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) in light of Paqui’s being granted Special Immigrant Juvenile (“SIJ”) classification. Pet., ECF No. 1 at ¶ 1. Because Paqui’s detention is lawfully authorized, the Petition should be dismissed in its entirety.

BACKGROUND FACTS¹

Paqui is a citizen of Ecuador who unlawfully entered the United States in May 2024. ECF No. 1 at ¶ 1. In 2025, he was granted SIJ status. *Id.* A grant of SIJ classification confers no legal immigration status; it allows the recipient to seek to adjust their status through the filing of a Form I-485, Application to Register Permanent Residence or Adjust Status. *See Richards v. Napolitano*, 642 F. Supp. 2d 118, 124 (E.D.N.Y. 2009) (“An alien seeking adjustment of status must file an I-485 application, which may be filed concurrently with an I-130 or I-360 petition or thereafter. 8 U.S.C. § 1255(a); 8 C.F.R. §§ 245.1(a), 245.2(a)(2)(i)(B) & (C). Approval of the I-485 application, which is within the discretion of USCIS, results in the conferral of LPR status.”). Thus, the SIJ classification is of no real matter in this action.

In June 2025, Paqui was taken into ICE Custody. ECF No. 1 at ¶ 1. He thereafter requested a custody redetermination and was denied bond. *Id.* There is no evidence in the record that he has appealed the denials of bond to the Board of Immigration Appeals (“BIA”),

¹ Given the expedited briefing schedule for this matter, the alien file has not been received by this Office yet. As such, I cannot provide the typical documents and records that I would ordinarily provide in opposition to a habeas petition. The facts here are taken from the Petition and the truth of the facts is not admitted.

which may reverse the immigration judge and order that bond be granted or remand with similar instructions.

Paqui is scheduled for an immigration hearing on November 18, 2025. ECF No. 1 at ¶ 39.

He brings this action challenging his detention, removal, and transfer.

LEGAL BACKGROUND

Detention under 8 U.S.C. § 1225

Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, or is “found not to have such a fear,” he is detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “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); see *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). Still, DHS has the sole discretionary 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)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

Detention under 8 U.S.C. § 1226

Section 1226 provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.² By regulation, immigration officers can release aliens if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely

² Being “conditionally paroled under the authority of [8 U.S.C.] § 1226(a)” is distinct from being “paroled into the United States under the authority of [8 U.S.C.] § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under 8 U.S.C. § 1255(a)).

to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the immigration judge may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider). But regardless of the factors immigration judges consider, an alien “who presents a danger to persons or property should not be released during the pendency of removal proceedings.” *Id.* at 38.

ARGUMENT

I. THE PETITION SHOULD BE DISMISSED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

There is no evidence in the record that Paqui has ever sought appealed the denial of bond by an immigration judge to the BIA. Instead, he filed this action seeking such relief. Accordingly, the Petition should be dismissed and he should be required to first appeal the bond decision and allow the BIA to reach a decision before filing suit in federal district court.

Although “[t]here is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus . . . such exhaustion is generally required as a prudential matter.” *Blandon v. Barr*, No. 6:18-CV-06941 EAW, 2019 WL 7759228, at *4 (W.D.N.Y. Oct. 28, 2019), enforcement granted, 434 F. Supp. 3d 30 (W.D.N.Y. 2020) (quoting *Paz Nativi v. Shanahan*, No. 16-CV-8496 (JPO), 2017

WL 281751, at *1-2 (S.D.N.Y. Jan. 23, 2017)). Courts generally require exhaustion if relaxing the requirement would encourage bypass of the administrative scheme, or if administrative review is likely to resolve the issue and preclude the need for judicial review. *Ramraj v. Barr*, No. 6:19-CV-06723-MAT, 2020 WL 470615, at *3 (W.D.N.Y. Jan. 29, 2020). Both of these factors weigh in favor of requiring exhaustion here: by failing to appeal to the BIA at all and coming straight to federal court, Paqui is bypassing the administrative scheme. And, had he appealed the bond order he may have received the relief he now seeks in this action, and there would have been a better administrative record from which this Court could make a decision.

Indeed, requiring Paqui to appeal the bond order before resorting to federal litigation may not only provide the relief he seeks in his Petition, it may obviate the need for this litigation entirely. This is exactly why Chief Judge Wolford required administrative exhaustion in the *Resheroop* matter:

Because Plaintiff has failed to show that any exception to the requirement that Petitioner exhaust administrative remedies prior to challenging his detention applies, the Court will not waive the prudential requirement that Plaintiff must exhaust the administrative remedies available to him before challenging his detention through a habeas corpus petition. Accordingly, Petitioner's procedural due process claim must be dismissed.

Resheroop, 577 F. Supp. 3d at 188. This Court should likewise dismiss the instant Petition, and require Paqui to pursue administrative remedies which may offer him the relief he seeks prior to resorting to federal litigation.

II. PAQUI IS DETAINED UNDER 8 U.S.C. § 1225(b) AND HIS DETENTION IS MANDATED BY STATUTE

Because Paqui was never lawfully admitted to the United States he remains an applicant for admission (even if found within the borders of the country), and his detention is

mandated by statute. Thus, the Petition should be dismissed for failing to state a claim upon which relief can be granted.

Beginning with the actual and plain language of the text, it is clear that Paqui is detained under 8 U.S.C. § 1225. Section 1225(a)(1) states that “[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission.” There is no argument here that Paqui has not been admitted, and thus he is an applicant for admission. As noted above, applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. And, regardless of what category they fall under, aliens under § 1225(b) must be detained until proceedings have concluded. *Jennings*, 583 U.S. at 297.

The Board of Immigration Appeals (“BIA”), tasked with determining appeals from immigration courts, has held that aliens present in the United States without being lawfully admitted are applicants for admission. *See, e.g., Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). Indeed, the BIA has pointed to the “legal conundrum” that would result if a contrary reading were adopted:

The respondent's argument is not supported by the plain language of the INA, and actually creates a legal conundrum. If 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? The respondent provides no legal authority for the proposition that after some 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 section 236(a) of the INA, 8 U.S.C.A. § 1226(a).

Matter of Jonathan Javier Yajure Hurtado, Respondent, 29 I. & N. Dec. 216, 221 (BIA 2025).

“[O]ne of the most basic interpretive canons” instructs that a “statute should be construed so that effect is given to all its provisions.” *Corley v. United States*, 556 U.S. 303, 314

(2009). “Applicant” is defined as “[s]omeone who requests something; a petitioner, such as a person who applies for letters of administration.” Black’s Law Dictionary (12th ed. 2024). Applying the definition of “applicant” to “applicant for admission,” an applicant for admission is an alien “requesting” admission, defined by statute as “the lawful entry of the alien into the United States after inspection.” 8 U.S.C. § 1101(a)(13)(A). Thus, “seeking admission” does not have a different meaning from applicant for admission (“requesting admission”); the terms are synonymous.

Likewise, any argument by Paqui that the phrase “seeking admission” limits the scope of § 1225(b)(2)(A) would be unpersuasive. Courts “interpret the relevant words not in a vacuum, but with reference to the statutory context, ‘structure, history and purpose’.” *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The BIA has long recognized that “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 immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of “applicant for admission” in § 1225(a)(1). Applicants for admission includes arriving aliens and aliens present without admission. See 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under §1225(a)(1). See *Lemus*, 25 I. & N. at 743. Congress made clear that all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s]

an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” See *United States v. Woods*, 571 U.S. 31, 45 (2013).

Importantly, a contrary reading of the statute would also incentive unlawful entry into the United States, and penalize aliens who followed the proper, lawful method of admission. Aliens who present at the border will have limited rights since they never were admitted to the United States. But aliens who unlawfully enter the United States will then—at some nebulous point in time—no longer be “seeking admission” and will instead have greater rights than an alien following the lawful process. This cannot be. The Supreme Court has long held that “the due process rights of an alien seeking initial entry” are no greater than “[w]hatever the procedure authorized by Congress.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020) (citation omitted). For unadmitted aliens, like Paqui, “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); accord *Thuraissigiam*, 591 U.S. at 138–140.⁸ To this end, the Supreme Court has also long applied the so-called “entry fiction” that all “aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139. Indeed, that is so “even [for] those paroled elsewhere in the country for years pending removal.” *Id.* The Supreme Court has applied the entry fiction to aliens with highly sympathetic claims to having “entered” and developed significant ties to this country. See, e.g., *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a mentally disabled girl paroled into the care of relatives for nine years must be “regarded as stopped at the boundary line” and “had gained no foothold in the United States”); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214–215 (1953) (holding that an alien with 25 years’ of lawful presence who sought to reenter enjoyed “no

additional rights” beyond those granted by “legislative grace”). With the backdrop of these cases, it follows that Congress intended for an unlawful entrant who violates immigration laws and evades detection must, once found, be “treated as if stopped at the border.” See *Mezei*, 345 U.S. at 215.

Courts have also long recognized the difference between being lawfully admitted and being physically present in the United States without lawful admission. See, e.g., *Augustin v. Sava*, 735 F.2d 32, 36 (2d Cir. 1984) (recognizing the distinction between lawful admission and physical presence or entry into the United States) (citing *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958)). Nonetheless, Supreme Court precedent indicates that aliens who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. See *Thuraissigiam*, 591 U.S. at 138–140. While aliens who have been admitted may claim due-process protections beyond what Congress has provided even when their legal status changes (e.g., an alien who overstays a visa, or is later determined to have been admitted in error), see *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that aliens who have “entered the country clandestinely” are entitled to such additional rights. *The Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903). Congress has codified that distinction by treating all aliens who have not been admitted—including unlawful entrants who evade detection for years—as “applicants for admission.” 8 U.S.C. § 1225(a)(1). In line with these cases and the statute, Congress created a detention system where applicants for admission, including those who entered the country unlawfully, are detained for removal proceedings under § 1225 and aliens who have been admitted to the country are detained under § 1226. It does not matter whether an alien was apprehended “25 yards into U.S. territory” or 25 miles, nor does it matter if he

was here unlawfully and evades detection for 25 minutes or 25 years; when an alien has never been admitted to the country by immigration officers, his detention is no different from an alien stopped at the border. *See Thuraissigiam*, 591 U.S. at 139.

Additionally, any argument that prior agency practice applying § 1226(a) to Paqui is unavailing because under *Loper Bright*, the plain language of the statute and not prior practice controls. *Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[] our own mistakes” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). To be sure, “when the best reading of the statute is that it delegates discretionary authority to an agency,” the Court must “independently interpret the statute and effectuate the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support a position that the plain language mandates detention under § 1226(a). This applies equally to any argument regarding the prior designation by ICE of Paqui as being detained under § 1226.

Paqui also seems to be arguing that unless this Court orders his release (or a bond hearing) it is possible that he will not be able to secure a visa under his SIJ classification because he will be ordered removed before a visa becomes available. ECF No. 1 at ¶¶ 40-42. Firstly, there is no right to a visa, so while Paqui is in an unfortunate situation, it is not one that this Court can act on. Visas are numerically limited and there are multitudes of noncitizens who are waiting for visas and may suffer adverse immigration consequences while waiting for a visa to be available. This is not a reason to order a bond hearing in this case. Additionally, Paqui's alleged harm in not getting a visa and being ordered removed is entirely hypothetical. As this Court is aware, it can take months, if not years, for immigration proceedings to reach their conclusion. Even if Paqui were ordered removed in November, he would have recourse through appeal to the BIA and then the filing of a Petition for Review with the Second Circuit before his removal would occur. Either the BIA or the Second Circuit, or both, could also remand the matter to the immigration judge and then Paqui would have more appellate rights after that. It is purely speculation to state that he may be removed prior to a visa becoming available. This Court should not grant a bond hearing on speculation.

Because Paqui is detained under 8 U.S.C. § 1225(b)(2), his detention is mandated by statute. Therefore, the Petition should be dismissed in its entirety.

CONCLUSION

For the foregoing reasons, this Court should dismiss the Petition in its entirety.

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DATED: October 28, 2025
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