

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DAVITI PHURTSKHVANIDZE,	Case No. 1:25-cv-00827
Petitioner,	
v.	District Judge Douglas R. Cole
KRISTI NOEM, Secretary, United States Department of Homeland Security, <i>et al.</i> ,	Magistrate Judge Stephanie K. Bowman
Respondents.	

RETURN OF WRIT

Table of Contents

INTRODUCTION	2
FACTUAL AND PROCEDURAL BACKGROUND.....	3
ARGUMENT.....	5
I. PETITIONER’S CLAIMS SHOULD BE DISMISSED PURSUANT TO THE CONTROLLING OPINION AND ORDER IN LEANDRO PABLO CORONADO V. DHS, ECF NO. 15	5
II. PETITIONER’S CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(b)(1)	7
A. Petitioner has not started the administrative remedy process, much less exhausted efforts in seeking bond or a bond hearing.....	13
III. THE COURT SHOULD DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS AS PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225.....	18
A. Applicants for admission are subject to detention under 8 U.S.C. § 1225.....	18
B. Applicants for Admission in Expedited Removal Proceedings Are Detained Pursuant to 8 U.S.C. § 1225(b)(1).	20
C. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A).....	21

D. Applicants for Admission May Only Be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.....33

INTRODUCTION

Petitioner Daviti Phurtskhvanidze (“Petitioner”) seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement (“ICE”) under the Due Process Clause of the 5th Amendment to the U.S. Constitution and Immigration and Nationality Act (“INA”). (Petition, ECF 1, PageID 3, 11-15, Claims For Relief.) He seeks “a Writ of Habeas Corpus requiring that Respondents release Mr. Phurtskhvanidze or, in the alternative, provide Mr. Phurtskhvanidze with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days.” (*Id.* at PageID 15, Prayer for Relief.) His petition must be denied.

The Court must deny the petition as Petitioner has failed to exhaust administrative remedies. In fact, Petitioner has not availed himself of even the threshold of administrative remedies available to him. Mr. Phurtskhvanidze, nor anyone on his behalf has made a motion to an Immigration Judge (“IJ”) of the U.S. Department of Justice (“DOJ”), Executive Office for Immigration Review, (“EOIR”), Immigration Court, Cleveland, Ohio, for a bond hearing, thus, there has been no denial of bond by an IJ let alone an appeal of said denial of bond to the Board of Immigration Appeals (“BIA”).

Additionally, Petitioner is currently detained under 8 U.S.C. § 1225(b)(2)(A) and is therefore ineligible for release under 8 U.S.C. § 1226(a). (Petition, ECF 1, PageID 3, 11-15, Claims For Relief.) He seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing to which he is not entitled. Petitioner argues that contrary to the plain language of 8 U.S.C. § 1225(b)(2)(A), the authority for his detention is better understood to arise under 8 U.S.C. § 1226(a), a detention statute that allows for release on bond or conditional parole. That argument fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, a native and citizen of Georgia, entered the United States without admission or parole at or near San Luis, Arizona, on or about December 16, 2022. (“Department of Homeland Security, (‘DHS’), Notice to Appear, (‘NTA’), dated December 18, 2022, attached hereto and hereinafter referred to as 2022 NTA, Form I-862, Exhibit A; “You are Ordered to appear before an Immigration Judge of the United States Department of Justice...Cleveland, Ohio...on September 26, 2023 at 02:00 AM to show why you should not be removed from the United States based on the charges set forth above.”; *see also* Petition, ECF 1, PageID 4, 10, ¶¶ 15, 41, 43.)

In his report dated December 18, 2022, the arresting Border Patrol Agent attested that Petitioner “was apprehended for illegally entering the United States,” whereupon Petitioner “admitted that [he] had unlawfully entered the United States of America from Mexico” and that he “illegally crossed the international boundary without being inspected by an Immigration Officer at a designated Port of Entry [‘POE’].” (DHS, Record of Deportable/Inadmissible Alien, Subject ID: 382084349, Form I-213, dated December 18, 2022, attached hereto and hereinafter referred to as Form I-213, Exhibit C.)

Therefore, on the same date, December 18, 2022, an immigration officer served Petitioner a NTA for removal proceedings based on his presence in the United States without being admitted or paroled, subject to removal from the United States pursuant to the following provision(s) of law;

- 1) § 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designed by the Attorney General; and
- 2) § 212(a)(7)(A)(i)(I) of the Act, as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

See 2022 NTA, Exhibit A; DHS, ICE, Additional Charges of Inadmissibility/Deportability, Form I-261, "Dated 10-24-2025," attached hereto and hereinafter referred to as 2025 Form I-261, Exhibit B.

Petitioner "was released on recognizance on December 27, 2022, with the obligation to present himself to ICE Check-ins when required." (*quoting* Petition, ECF 1, PageID 10, ¶ 44)

"In April 2023," Petitioner filed for asylum with the USDOJ, EOIR, Cleveland Immigration Court. (*Id.*, ¶ 45). On October 20, 2025, Petitioner was arrested upon his "ICE Check-in appointment[]," and "is now detained at the Butler County jail, in Hamilton, Ohio." (*quoting* Petition, ECF 1, PageID 10, ¶ 42).

In writing to Petitioner's counsel, on November 13, 2025, the DOJ/EOIR, Cleveland Immigration Court, rescheduled Petitioner's removal proceedings or merits hearing for January 9, 2026, before the IJ. ("Notice of Internet-Based Hearing," RE: 246-242-992 Phurtskhvanidze, Daviti, DATE: Nov 13, 2025, attached hereto and hereinafter referred to as Exhibit D). Also on November 13, 2025, Petitioner filed this Petition for Writ of Habeas Corpus on. (Petition, ECF 1.)

Until Petitioner filed in habeas before this Court, just four weeks ago, on November 13, 2025, he does not allege to have ever requested a bond hearing in any forum (i.e., IJ, BIA, etc.) The Court must deny the petition as Petitioner has failed to exhaust administrative remedies and because he is properly detained under 8 U.S.C. § 1225(b)(2)(A).

Pursuant to this Court's convening a telephone conference on December 16, 2025, to include counsel for Petitioner and counsel for Respondents, his Honor tasked counsel with addressing in their briefing the substance of his Opinion and Order in *Leandro Pablo Coronado v. DHS*, Case No. 1:25-cv-831, a habeas action for which counsel for Petitioner, Daviti Phurtskhvanidze, is likewise counsel for Petitioner, Leandro Pablo Coronado. (ECF No. 15).

Just two days after the parties' telephone conference, on December 18, 2025, Judge McFarland of this Court issued an Order and Opinion in *Ronaldo Velasquez Bartolon v. Pam Bondi, et al.*, Case No. 1:25-cv-747, yet another petition for writ of habeas corpus dismissed because of petitioner's failure to exhaust administrative remedies pursuant to seeking bond. (ECF No. 19, PageID 199-221). The following Respondents' Return of Writ invokes Judge McFarland's reasoning and ruling from *Bartolon* to their "failure to exhaust administrative remedies" at argument III, below.

ARGUMENT

I. PETITIONER'S CLAIMS SHOULD BE DISMISSED PURSUANT TO THE CONTROLLING OPINION AND ORDER IN LEANDRO PABLO CORONADO V. DHS, ECF NO. 15

A. This Petitioner and Mr. Coronado's interactions with Respondents are factually identical, and therefore this Court should deny this Petitioner's petition.

In response to this Court's question amidst the parties' December 16, 2025 telephone conference Petitioner's counsel recited that Mr. Phurtskhvanidze, having been detained on December 18, 2022, and released on his own recognizance on December 27, 2022, pursuant to 8 U.S.C. § 1226(a), Respondents are now estopped or, in the alternative, violate Petitioner's due process rights under the 5th Amendment to the United States Constitution when Respondents detained Petitioner again on October 20, 2025 pending BIA ruling on IJ denial of withholding and asylum petition and order of removal, this time pursuant to 8 U.S.C. § 1225(b)(2). (*See also* 2022 NTA, Exhibit A; Petition, ECF 1, PageID 10, ¶ 44)

Petitioner's counsel, the same counsel for petitioner, Mr. Coronado, stated that this Court's Opinion and Order in *Leandro Pablo Coronado v. DHS*, Case No. 1:25-cv-831 is distinguishable from Mr. Phurtskhvanidze's circumstances because Mr. Coronado was not detained and released on

his own recognizance before being detained pursuant to removal present day. On that basis, Petitioner's counsel declares that Mr. Phurtskhvanidze petition in habeas should be granted.

However, at PageID 156, page two, of this Court's Opinion and Order denying Mr. Coronado's petition for writ of habeas corpus, his Honor cited to petitioner's petition for the following facts:

At some point, ICE detained him and placed him in removal proceedings. (Doc. 1, #11). But they later released him on his own recognizance. (*Id.* at #10). It appears that during his original removal proceeding, he raised an asylum claim, and that an appeal of that claim remains pending. (*Id.* at #11). He further contends that, while it is pending, any removal proceedings would be subject to an automatic stay. (*Id.*).

While ICE released Coronado in 2019, a condition of that release required him to appear for regular check-in appointments. (*Id.* at #10). On November 10, 2025, during one of those check-in appointments, ICE detained Coronado in connection with his still-outstanding removal proceedings. (*Id.*; Doc. 8-2, #81).

Leandro Pablo Coronado v. DHS, Case No. 1:25-cv-831, Op. & Order, ECF No. 15.

The foregoing citations from Mr. Coronado's petition are identical in all relevant facts to this Petitioner's:

- 1) Mr. Phurtskhvanidze was detained by ICE on December 18, 2022, upon unlawfully entering the United States, without inspection, outside of a port-of-entry, and was thereafter released on his own recognizance on December 27, 2022, but not until he was placed in removal proceedings, having been issued a Notice to Appear for a removal hearing on September 26, 2023, and being ordered to present himself to ICE Check-ins when required. (*See* 2022 NTA, Form I-862, Exhibit A; Petition, ECF 1, PageID 4, 10, ¶¶ 15, 41, 43-44; Form I-213, Exhibit C).
- 2) On October 20, 2025, Petitioner was arrested upon his "ICE Check-in appointment[]," and "is now detained at the Butler County jail, in Hamilton, Ohio." (*quoting* Petition, ECF 1, PageID 10, ¶ 42).
- 3) In writing to Petitioner's counsel, on November 13, 2025, the DOJ/EOIR, Cleveland Immigration Court, rescheduled Petitioner's removal proceedings or merits hearing for January 9, 2026, before the IJ. (*See* Exhibit D).

This Court found no significance in Mr. Coronado's prior detention and release under 8 U.S.C. § 1226(a), much less prohibiting the application of 8 U.S.C. § 1225(b)(2) upon his second detention as somehow worthy of estoppel or stating a claim of a violation of that petitioner's due

process rights under the 5th Amendment. Respondents ask simply for an identical application of law for the very same facts evidenced in this Return of Writ, pursuant to *Leandro Pablo Coronado v. DHS*, Case No. 1:25-cv-831, Op. & Order, ECF No. 15.¹

II. PETITIONER'S CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(b)(1)

A. 8 U.S.C. § 1252(e)(3) bars review of Petitioner's claims.

Section 1252(e)(3) deprives this court of jurisdiction, including habeas corpus jurisdiction, over Petitioner's challenge to his detention under § 1225(b)(2)(A). Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Unlike other provisions within 1252(e), section 1252(e)(3) applies broadly to judicial review of section 1225(b), not just determinations under section 1225(b)(1). *Compare* 8 U.S.C. § 1252(e)(1)(A), (e)(2), *with* 8 U.S.C. § 1252(e)(3)(A). *See*

¹ Respondents likewise request application of *Leandro Pablo Coronado v. DHS*, Case No. 1:25-cv-831, Op. & Order, ECF No. 15, PageID 184-5, to Petitioner's "Motion for Declaratory Judgement...", ECF No. 6, wherein this Petitioner separately seeks relief under *Maldonado Bautista* on the allegation that the Petitioner is classified as a member of a "nationwide Bond Eligible Class." *Maldonado Bautista v. Santacruz*, 5:25-cv-01873 (C.D. Cal. Nov. 25, 2025). As this Court aptly determined under an identical plea in *Coronado*:

The problem with that argument is that it misunderstands how separate actions work. If another federal district court in another district has ordered a party (e.g., ICE) to do something, and the party is failing to follow that order, the relief for that failure primarily lies before the court that entered the order in the first instance. In other words, if Coronado or his attorneys contend that ICE (or some other government agency or official) is defying the *Bautista* order, they should raise that matter before the presiding judge in that action. They cannot simply ask this Court to enforce that court's order. Indeed, if their belief is that the subject matter of the instant litigation is already pending before another court, perhaps the more appropriate path would be for them simply to dismiss this action in favor of that earlier-pending proceeding. In any event, the Court denies Coronado's request for declaratory relief.

(Citations to record omitted; *see also Ronaldo Velasquez Bartolon v. Pam Bondi, et al.*, Case No. 1:25-cv-747, Order & Op., ECF No. 19, PageID 219-221, quoting *Coronado*.)

Russello v. United States, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) (“‘[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.’ ... We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.”).

Here, Petitioner challenges the determination, set forth in writing by both the DOJ, and the DHS, that aliens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). (Petition, ECF 1, PageID 5-10, ¶¶21-40.) Petitioner thus seeks judicial review of a written policy or guideline implementing § 1225(b), which is covered by § 1252(e)(3)(A)(ii). (*Id.*)

B. 8 U.S.C. § 1252(g) bars review of Petitioner’s claims.

Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (“*AADC*”). The Sixth Circuit distinguishes detention-based challenges from removal-based challenges. *Hamama v. Adducci*, 912 F.3d 869, 877-80 (6th Cir. 2018) (district court jurisdiction over detention-based claims independent of jurisdiction over removal-based claims).

The Secretary of Homeland Security’s decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly “*aris[es] from*” the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016)

(“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. 08-cv-2943, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]”) (emphasis added); *Wang v. United States*, No. 10-cv-0389, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007)) (“[Plaintiff’s] detention necessarily *arises from* the decision to initiate removal proceedings against him.”) (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)) (“The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. . . . Thus, an alien’s detention throughout this process *arises from* the [Secretary]’s decision to commence proceedings[.]” and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). Put in the Supreme Court’s words, detention pending removal is a “specification” of the decision to commence proceedings. *See Reno*, 525 U.S. at 485 n.9 (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”).

Significantly, Petitioner is not without a remedy. As the Sixth Circuit explained in *Hamama v. Adducci*, “[w]hen Congress stripped the courts of jurisdiction to grant habeas relief in § 1252(g),

it provided an aliens with an alternative method to challenge the legality an alien's detention” 912 F.3d at 876. Moreover, the Suspension Clause is not violated when courts are stripped of “habeas jurisdiction so long as it provides a substitute that is adequate and effective to test the legality of a person’s detention.” *Id.* As such, judicial review of the Petitioner’s claims is barred by § 1252(g).

C. 8 U.S.C. § 1252(b)(9) bars review of Petitioner’s claims.

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno*, 525 U.S. at 483. Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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

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

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”);

accord Ruiz v. Mukasey, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

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

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here, Petitioner challenges the decision and action to detain his, which arises from DHS’s decision to

commence removal proceedings, and is thus an “action taken . . . to remove his from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner’s claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, the Petitioner *does* challenge the government’s decision to detain in the first place. (*See, e.g.,* Petition, ECF 1, PageID 5-7, ¶¶22-31.) Although the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS’s decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9). (*Id.*)

The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring) (emphasis in original); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the

government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

III. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

A. Petitioner has not started the administrative remedy process, much less exhausted efforts in seeking bond or a bond hearing.

The Court should dismiss the petition for writ of habeas corpus 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. The exhaustion requirement “aims to provide the agency with a chance to correct its own errors, ‘protect[] the authority of administrative agencies,’ and otherwise conserve judicial resources by ‘limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.’” *Guzman v. Joyce*, 786 F.Supp.3d 865, 869 (S.D. New York June 17, 2025) (quoting, *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)).

“When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused.” *Ba v. Director, Detroit Field Office of ICE*, Case No. 4:25-cv-2208, 2025 WL 2977712, at *2 (N.D. Ohio Oct. 22, 2025) (citing *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011)) (requiring exhausting administrative remedies by appealing IJ decision to BIA before filing in district court); *see also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003).

Courts within the Sixth Circuit have applied the Ninth Circuit's test for requiring prudential exhaustion. *See, e.g., Mendoza v. Raycraft*, Case No. 4:25-cv-2183, 2025 WL 3157796, at *9 (N.D. Ohio Nov. 12, 2025); *Espinoza v. Dir. of Detroit Field Off, U.S. Immigr. & Customs Enft*, No. 4:25-CV-2107, 2025 WL 2878173, at *2 (N.D. Ohio Oct. 9, 2025); *Hernandez Torrealba v. U.S. Dep't of*

Homeland Sec., Case No. 1:25-cv-1621, 2025 WL 2444114, at *8-9 (N.D. Ohio Aug. 25, 2025); *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528, 530 (N.D. Ohio 2025); *Lopez-Campos v. Raycraft*, Case No. 2:25-cv-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025) (citing *Shweika v. DHS*, Case No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015)). That is, courts will require prudential exhaustion when:

- (1) Agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
- (2) Relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
- (3) Administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Puga v. Chertoff, 488 F.3d 812, 815 (9th Cir. 2006) (quoting *United States v. California Care Corp.*, 709 F.2d 1241, 1248 (9th Cir. 1983) (citing *McGee v. United States*, 402 U.S. 479, 484 (1971); *McKart v. United States*, 395 U.S. 185, 193–95 (1969))); *see also Espinoza v. Director, Detroit Field Office, ICE*, Case No. 4:25-cv-2107, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025) (petition dismissed for failure to exhaust); *Guerra v. Woosley*, Case No. 4:25-cv-119, 2025 WL 3046187 (W.D. Ky. Oct. 31, 2025).

Not 72 hours from the December 19, 2025, filing of this Return of Writ, Judge McFarland of this Court adopted the foregoing rationale and jurisprudence from both the Sixth Circuit and District Court decisions and dismissed petitioner's petition for writ of habeas for his failure to abide the prudential exhaustion requirement. *Ronaldo Velasquez Bartolon v. Pam Bondi, et al.*, Case No. 1:25-cv-747, Order & Op., ECF No. 19, pgs 14- 21, PageID 212-219.

Much of Judge McFarland's exhaustion analysis in *Bartolon* is controlling in the petition before this Court and thus worthy of quotation here:

In his Reply, Petitioner argues that even if he appealed to the BIA and won, it would be a largely pyrrhic victory as the process can take over a year and he would remain detained until then. But, the Court finds this argument unpersuasive. At this point, it is “speculative to make any assumptions regarding when the BIA will resolve” a potential bond appeal by Petitioner, as “[t]here is insufficient information before the Court at this time to demonstrate that exhaustion of Petitioner[’s] administrative remedies will be unduly prolonged.” *Mendoza*, 2025 WL 3157796, at *13. Further, even if the BIA appeals process were to create additional delay, the Court has insufficient evidence before it to conclude that “the risk of irreparable harm to Petitioner[] outweighs the importance of requiring exhaustion under the circumstances presented.” *Id.*

Petitioner’s apparent failure to timely file a notice of appeal with the BIA regarding his first bond denial is also insufficient to deem exhaustion futile, as “exhaustion may not be achieved through a litigant’s procedural default of his or her available remedies.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Moreover, waiver is inappropriate here because, if the exhaustion requirement were waived in every case where a party failed to timely file for an administrative appeal, then “any party could obtain judicial review of initial agency actions simply by waiting for the administrative appeal period to run and then filing an action in district court.” *Stock W. Corp. v. Lujan*, 982 F.2d 1389, 1394 (9th Cir. 1993).

Importantly, though, Petitioner has now received a second bond determination. And, notably, Petitioner reserved his right to appeal that determination. Thus, requiring Petitioner to exhaust his administrative remedies by appealing his second bond determination is not futile, as he is well within the time to lodge that appeal in the BIA.

Petitioner further argues that exhaustion would be futile given the BIA’s decision in *Matter of Hurtado*. Such futility must be “clear and positive,” as a petitioner “must show that it is certain that his claim will be denied on appeal, not merely that he doubts that an appeal will result in a different decision.” *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 419 (6th Cir. 1998) (quotation omitted). The Court would note that a flurry of litigation has ensued since *Matter of Hurtado*, including—as the immigration judge observed in the bond redetermination hearing—a class action ruling in *Bautista v. Santacruz*, No. 5:25-CV-1873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). And, “even where there is a high probability of denial of a petitioner’s appeal of an Immigration Judge’s bond decision, such a probability does not weigh in favor of waiving exhaustion.” *Espinoza*, 2025 WL 2878173, at *3 (quotation omitted); *see also Beharry*, 329 F.3d at 62 (explaining that merely because an “argument would likely have failed is not tantamount to stating that it would have been futile to raise it”).

Moreover, Petitioner expresses concern as to the delay that would result from requiring administrative exhaustion. Courts have discretion to waive the exhaustion requirement and rule on a matter when the “legal question is ‘fit’ for resolution and delay means hardship.” *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (citation omitted). While some courts in this circuit have chosen to waive exhaustion because of the delay caused by a potentially lengthy appeal process, such a decision remains in the Court’s discretion. *See Alvarez-Lopez v. U.S. Dep’t of Homeland Security*, No. 25-CV-13098, 2025 WL 3525956, at *2 (E.D. Mich. Dec. 9, 2025) (surveying intra-circuit split on the issue). And, the Court notes that, in many of those cases, the district courts supported their decision to waive exhaustion with both a finding of futility and undue hardship, not just the latter.

By comparison, the Court finds here that Petitioner has not made a showing of futility. Absent binding precedent to the contrary, this Court therefore declines to find that the risk of delay alone warrants a waiver of exhaustion.

Bartolon, Order & Op., ECF No. 19, pgs 19-21, PageID 217-219, (citations to record omitted).

Petitioner has not availed himself of even the threshold of administrative remedies available to him. There has been no denial of bond by an Immigration Judge let alone an appeal of said denial of bond to the BIA. The Petitioner in this district's *Alonso-Portillo v. Bondi* decision, was excused from the prudential exhaustion requirement because he, *inter alia*, "diligently pursued all available administrative remedies" by appealing to BIA. Case No. 1-25-cv-306, 2025 WL 2483393, at *6 (S.D. Ohio Aug. 28, 2025).

Until Petitioner filed in habeas before this Court, just four weeks ago, on November 13, 2025, he does not allege to have ever requested a bond hearing in any forum (i.e., IJ, BIA, etc.), and there is nothing preventing him from filing such a request for bond from the Immigration Judge now. (Petition, ECF 1, PageID 3, ¶ 7, "Accordingly, Mr. Phurtskhvanidze seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.").

Here, Petitioner offers the *illusion* that he has requested of the IJ the opportunity for a bond hearing without alleging or offering evidence that Petitioner has ever requested a bond hearing.

The Petition says:

Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Mr. Phurtskhvanidze's bond request.

And that:

Following Mr. Phurtskhvanidze's arrest and transfer to the Butler County jail, ICE issued a custody determination to continue Mr. Phurtskhvanidze's detention without an opportunity to post bond or be released on other conditions.

(*Id.*, PageID 11, ¶¶ 47-48; *see also id.* PageID 4, ¶ 15).

Translating paragraphs 47 and 48 of the petition as quoted, Petitioner assumes that *Matter of Yajure Hurtado* prohibits an IJ's consideration of a bond request, and that it is the IJ who must affirmatively offer a bond hearing to Petitioner. However, pursuant to controlling regulation:

8 CFR 1003.19(b) – Application for an initial bond redetermination by a respondent, or his or her attorney or representative, may be made orally, in writing, or, at the discretion of the Immigration Judge, by telephone.

Again, without alleging this Petitioner's attempt or effort whatsoever to appeal "the immigration judge[']s inability] to consider [Petitioner's] bond request," to the BIA, Petitioner asserts simply that "the BIA adopted [ineligibility for IJ bond hearings] in a published decision, *Matter of Yajure Hurtado*." (*Id.*, PageID 7, 11, ¶¶ 31, 48). By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). Petitioner's failure to request a bond hearing of the IJ forum, much less appeal to the BIA here counsels requiring exhaustion. An appeal to the BIA will allow the agency's expertise to generate a proper record and reach a proper decision, in the first instance. *See e.g., Espinoza*, 2025 WL 2878173, at *2 (petition dismissed for review of "interpretation and application of the governing removal regime" by the BIA "in the first instance").

In fact, not requiring the Petitioner to at the very least afford the deference to the IJ forum to which it is statutorily obliged to independently consider and adjudge bond, looking over what might then be an appeal to the BIA encourages the deliberate bypass of the entire administrative scheme, which Petitioner did here. 8 CFR 1003.19(b). Although Petitioner will argue exhaustion will be futile given the BIA's recent decision in *Matter of Yahure Hurtado*, 29 I. & N. Dec. 216, Interim Decision, 4125, 2025 WL 2674169 (Sept. 5, 2025), Petitioner is slated for a merits hearing pursuant to removal proceedings on January 9, 2026, which weighs in favor of requiring exhaustion. (Exhibit D; *Ba*, at *2 (N.D. Ohio)). "[A]llowing the BIA to evaluate Petitioner's

appeal[] regarding the . . . denial of bond w[ill] permit the agency to correct its own mistakes, if any, and preclude the need for judicial review if Petitioner is successful . . .” See e.g., *Hernandez Torrealba v. U.S. Dep’t of Homeland Sec.*, No. 1:25-cv-1621, 2025 WL 2444114, at *10 (N.D. Ohio Aug. 25, 2025). In fact, not requiring the Petitioner to appeal to the BIA encourages the deliberate bypass of the administrative scheme, which, Petitioner did here. Indeed, the BIA should be permitted to “apply its experience and expertise without judicial interference.” *Id.* (citation omitted). Even, an allegedly “high probability” that [a] bond appeal to the BIA will fail is not a proper basis for waiving the exhaustion requirement.” *Id.* at *11.

Because Petitioner has not alleged even the attempt of exhaustion, much less some basis for excusing all steps in the exhaustion process, and on the basis that the petitioner in the *Bartolon* Order & Op. had failed only to await ruling on the very end stage of the administrative process, yet he too was found to have failed to exhaust administrative remedies, this Petition should be denied.

IV. THE COURT SHOULD DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS AS PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225.

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

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). 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).

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).

Here, Petitioner, a native and citizen of Georgia, “was apprehended for illegally entering the United States,” whereupon Petitioner “admitted that [he] had unlawfully entered the United States of America from Mexico” and that he “illegally crossed the international boundary without being inspected by an Immigration Officer at a designated Port of Entry [‘POE’].” (Form I-213, Exhibit C.)

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)² or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings*, 583 U.S. at 287 (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)).

B. Applicants for Admission in Expedited Removal Proceedings Are Detained Pursuant to 8 U.S.C. § 1225(b)(1).

Applicants for admission whom DHS places into expedited removal under 8 U.S.C. § 1225(b)(1) are subject to detention under 8 U.S.C. § 1225(b)(1); such aliens (including those

² 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 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]”).

referred for 8 U.S.C. § 1229a removal proceedings after establishing a credible fear of persecution or torture) are ineligible for a custody redetermination hearing before an IJ. 8 U.S.C. § 1225(b)(1)(B)(ii) (providing for detention of any alien who is found to have established a credible fear of persecution in expedited removal proceedings for further consideration of their asylum application), (iii)(IV) (“Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); *see also* 8 C.F.R. § 235.3(b)(2)(iii) (“An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal.”), (b)(4)(ii) (“Pending the credible fear determination by an asylum officer and any review of that determination by an [IJ], the alien shall be detained.”); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that aliens present without admission, placed in expedited removal, and transferred to 8 U.S.C. § 1229a removal proceedings after establishing a credible fear of persecution or torture are subject to detention under 8 U.S.C. § 1225(b)(1) and are ineligible for release under 8 U.S.C. § 1226).

Petitioner, an applicant for admission, has never been subject to expedited removal proceedings and is therefore not subject to detention under 8 U.S.C. § 1225(b)(1). However, as discussed below, Petitioner is an applicant for admission in 8 U.S.C. § 1229a removal proceedings and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A).

C. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A).

Applicants for admission whom DHS places in § 1229a removal proceedings are similarly 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.

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)).

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),³ 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).

On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). 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

³ As discussed more below, the preamble language of the 1997 Interim Rule states that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10,323. However, preambular language is not binding and “should not be considered unless the regulation itself is ambiguous.” *El Comite Para El Bienestar de Earlimart v. Warmerdam*, 539 F.3d 1062, 1070 (9th Cir. 2008); *see also Wards Cove Packing Corp. v. Nat’l Marine Fisheries Serv.*, 307 F.3d 1214, 1219 (9th Cir. 2002) (“[T]he plain meaning of a regulation governs and deference to an agency’s interpretation of its regulation is warranted only when the regulation’s language is ambiguous.”) (citing *Christensen v. Harris Cnty.*, 529 U.S. 576, 588 (2000)).

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 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.

The BIA 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.*

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)).

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 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General

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.

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.

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,” *Jennings*, 583 U.S. at 301–03, IJs do not have authority to redetermine the custody

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.*

status of an alien present without admission. *See, e.g., Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025).

Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed directly into removal proceedings under 8 U.S.C. § 1229a. He 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).

Aliens 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”).

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated “applicants for admission” with aliens “seeking admission.” *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, the Supreme Court in *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 (emphasis 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.

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).

Petitioner falls under 8 U.S.C. § 1225(b)(2)(A) not only because he is an applicant for admission, but also more specifically because he “was apprehended for illegally entering the United States,” whereupon Petitioner “admitted that [he] had unlawfully entered the United States of America from Mexico” and that he “illegally crossed the international boundary without being inspected by an Immigration Officer at a designated Port of Entry [‘POE’].” (Form I-213, Exhibit C.) The Board’s holding in *Q. Li* applies to Petitioner because he was apprehended, on or about December 18, 2022, after entering the United States illegally near San Luis, Arizona, on or around December 16, 2022, not at a POE. (2022 NTA, Form I-862, Exhibit A; Petition, ECF 1, PageID 4, 10, ¶¶ 15, 41, 43.)

As the Supreme Court has explained, an alien such as Petitioner, “‘who is detained shortly after unlawful entry cannot be said to have effected an entry,’ and is in the same position as an alien seeking admission at a port of entry.” 29 I&N Dec. at 68 (quoting *Thuraissigiam*, 591 U.S. at 140). DHS detained the Petitioner and placed him into removal proceedings as an alien “who arrives in the United States.” 8 U.S.C. § 1225(a)(1). Accordingly, 8 U.S.C. § 1225(b)(2)(A) governs his detention. *See Q. Li*, 29 I&N Dec. at 68; *see also Mejia Olalde v. Noem*, Case No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, Case No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Barrios Sandoval v. Acuna*, Case No. 6:25-cv-1467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025).

The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) bolsters the understanding that under the current statutory scheme, all applicants for

admission are subject to detention under 8 U.S.C. § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at POEs. *See* 8 U.S.C. § 1225(a) (1995) (discussing “aliens arriving at ports of the United States”); *id.* § 1225(b) (1995) (discussing “the examining immigration officer at the port of arrival”). Relatedly, any alien who was “in the United States” and within certain listed classes of deportable aliens was deportable. *Id.* § 1231(a) (1995). One such class of deportable aliens included those “who entered the United States without inspection or at any time or place other than as designated by the Attorney General.” *Id.* § 1231(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were “seeking admission” at a POE or had been paroled into the United States. *See id.* §§ 1182(a), 1225(a) (1995). Deportation proceedings (conducted pursuant to former 8 U.S.C. § 1252(b) (1995)) and exclusion proceedings (conducted pursuant to former 8 U.S.C. § 1226(a) (1995)) differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the “important distinction” between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms commencing deportation, exclusion, or removal proceedings). The placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an “entry” within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1995) (defining “entry” as “any coming of an alien into the United States, from a foreign port or place or from an outlying possession”); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has made an “entry” into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a “meaningfully interruptive” departure).

Former 8 U.S.C. § 1225 provided that aliens “seeking admission” at a POE who could not demonstrate entitlement to be admitted (“excludable” aliens) were subject to mandatory detention, with potential release solely by means of parole under 8 U.S.C. § 1182(d)(5) (1995). 8 U.S.C. § 1225(a)-(b) (1995). “Seeking admission” in former 8 U.S.C. § 1225 appears to have been understood to refer to aliens arriving at a POE.⁶ See *id.* The legacy Immigration and Naturalization Service (“INS”) regulations implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a POE had to be detained without parole if they had “no documentation or false documentation,” 8 C.F.R. § 235.3(b) (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c) (1995). With regard to aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231, such aliens were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. See 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); 8 C.F.R. § 242.2(c)(1) (1995).

As a result, “[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ while [aliens] who actually presented themselves to authorities for inspection were restrained by ‘more summary exclusion proceedings.’” *Martinez v. Att’y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). “To remedy this unintended and undesirable consequence, the IIRIRA substituted ‘admission’ for ‘entry,’ and replaced deportation

⁶ Given Congress’s overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, Congress clearly did not intend for the former understanding of “seeking admission” to be retained in the new removal scheme. Generally, “[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative and judicial interpretations as well.” *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior construction canon of statutory interpretation “is of little assistance here because, . . . this is not a case in which ‘Congress re-enact[ed] a statute without change.’” *Public Citizen Inc. v. U.S. Dep’t of Health and Human Servs.*, 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption “of congressional ratification” of a prior statutory interpretation “applies only when Congress reenacts a statute without relevant change.” *Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 349 (2005)).

and exclusion proceedings with the more general ‘removal’ proceeding.” *Id.* Consistent with this dichotomy, the INA, as amended by IIRIRA, defines *all* those who have not been admitted to the United States as “applicants for admission.” IIRIRA § 302.

Moreover, Congress’s use of the present participle—seeking—in 8 U.S.C. § 1225(b)(2)(A) should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”). By using the present participle “seeking,” 8 U.S.C. § 1225(b)(2)(A) “signal[s] present and continuing action.” *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase “seeking admission” “does not include something in the past that has ended or something yet to come.” *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that “having” is a present participle, which is “used to form a progressive tense” that “means presently and continuously”) (citing Bryan A. Garner, *Garner’s Modern American Usage* 1020 (4th ed. 2016)). The present participle “expresses present action in relation to the time expressed by the finite verb in its clause,” *Present Participle*, MerriamWebster, <http://www.merriamwebster.com/dictionary/present%20participle> (last visited Dec. 5, 2025), with the finite verb in the same clause of 8 U.S.C. § 1225(b)(2)(A) being “determines.” Thus, when pursuant to 8 U.S.C. § 1225(b)(2)(A) an “examining immigration officer determines” that an alien “is not clearly and beyond a doubt entitled to be admitted” the officer does so contemporaneously with the alien’s present and ongoing action of seeking admission. Interpreting the present participle “seeking” as denoting an ongoing process is consistent with its ordinary usage. *See, e.g., Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (alien inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but “seeking to remain in the country lawfully” applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th Cir. 2025) (“USCIS requires all U visa holders seeking permanent resident status under 8

U.S.C. § 1255(m) to undergo a medical examination . . .”). Accordingly, just as the alien in *Samayoa* is not only an alien present without admission but also seeking to remain in the United States, Petitioner in this case is not only an alien present without admission, and therefore an applicant for admission as defined in 8 U.S.C. § 1225(a)(1), but also an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A).

Lastly, Congress’s significant amendments to the immigration laws in IIRIRA support DHS’s position that such aliens are properly detained pursuant to 8 U.S.C. § 1225(b)—specifically, 8 U.S.C. § 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at POEs. A rule that treated an alien who enters the country illegally, such as Petitioner, more favorably than an alien detained after arriving at a POE “would ‘create a perverse incentive to enter at an unlawful rather than a lawful location.’” *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (quoting *Thuraissigiam*, 591 U.S. at 140) (rejecting such a rule as propounded by the defendant). Such a rule reflects “the precise situation that Congress intended to do away with by enacting” IIRIRA. *Id.* (quoting *Torres*, 976 F.3d at 927–28). “Congress intended to eliminate the anomaly ‘under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]’” by enacting IIRIRA. *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

As discussed by the BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. at 222-24, during IIRIRA’s legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* H.R. Rep. 104-469, pt. 1, at 107 (noting a “crisis at the land border” allowing aliens to illegally enter the United States). As

alluded to above, one goal of IIRIRA was to “reform the legal immigration system and facilitate legal entries into the United States” H.R. Rep. No. 104-828, at 1 (1996). Nevertheless, after the enactment of IIRIRA, the DOJ took the position—consistent with pre-IIRIRA law—that “despite being applicants for admission, aliens who are present without being admitted or paroled . . . will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10,323. Affording aliens present without admission, who have evaded immigration authorities and illegally entered the United States bond hearings before an IJ, but not affording such hearings to arriving aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to that goal. *Cf.* H.R. Rep. No. 104-469, pt. 1, at 225 (noting that IIRIRA replaced the concept of “entry” with “admission,” as aliens who illegally enter the United States “gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]”).

Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ.

D. Applicants for Admission May Only Be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS’s discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized

that “[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . .” *Id.* at 288.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor IJs have authority to parole an alien into the United States under 8 U.S.C. § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that “parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS” and “reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security”); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that “neither the [IJ] nor th[e] Board has jurisdiction to exercise parole power”). Further, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an IJ or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

Importantly, parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), and an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see* 8 C.F.R. §§ 1.2 (providing that “[a]n arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked”), 1001.1(q) (same). Parole does not place the alien “within the United States.” *Leng May Ma*, 357 U.S. at 190. An alien who has been paroled into the

United States under 8 U.S.C. § 1182(d)(5) “is not . . . ‘in’ this country for purposes of immigration law” *Abebe*, 16 I&N Dec. at 173 (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan*, 267 U.S. at 228). Following parole, the alien “shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States,” 8 U.S.C. § 1182(d)(5)(A), including that they remain subject to detention pursuant to 8 U.S.C. § 1225(b)(2).

E. Section 1226 Does Not Impact the Detention Authority for Applicants for Admission.

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are deportable who are subject to removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. §§ 1226, 1227(a), and 1229a, and does not impact the directive in 8 U.S.C. § 1225(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [8 U.S.C. § 1229a],” *id.* § 1225(b)(2)(A).⁷ As the Supreme Court explained, 8 U.S.C. § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a “permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225); *See Vargas Lopez v.*

⁷ The specific mandatory language of 8 U.S.C. § 1225(b)(2)(A) governs over the general permissive language of 8 U.S.C. § 1226(a). “[I]t is a commonplace of statutory construction that the specific governs the general” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is “most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission” and in order to “eliminate the contradiction, the specific provision is construed as an exception to the general one”); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that “[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones”). Here, 8 U.S.C. § 1225(b)(2)(A) “does not negate [8 U.S.C. § 1226(a)] entirely,” which still applies to admitted aliens who are deportable, “but only in its application to the situation that [8 U.S.C. § 1225(b)(2)(A)] covers.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

Trump, Case No. 8:25-cv-526, 2025 WL 2780351, at *6 (D. Neb. Sept. 30, 2025) (“[O]ne express requirement to fall within § 1226(a) . . . is that the alien [be] arrested on a warrant issued by the Attorney General.”).⁸

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to release on bond; rather, both DHS and IJs have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns under 8 U.S.C. § 1226(c). *See* 8 U.S.C. § 1226(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i); *see also id.* § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* 8 U.S.C. § 1226(c)(2).

Notably, 8 U.S.C. § 1226(c) references certain grounds of inadmissibility, 8 U.S.C. § 1226(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to 8 U.S.C. § 1226. 590 U.S. 222, 235 (2020); *see also Nielsen v. Preap*,

⁸ Importantly, a warrant of arrest is not required in all cases. *See* 8 U.S.C. § 1357(a). For example, an immigration officer has the authority “to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation” or “to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest” *Id.* § 1357(a)(2); 8 C.F.R. § 287.3(a), (b) (recognizing the availability of warrantless arrests); *see Q. Li*, 29 I&N Dec. at 70 n.5. Moreover, DHS may issue a warrant of arrest within 48 hours (or an “additional reasonable period of time” given any emergency or other extraordinary circumstances), 8 C.F.R. § 287.3(d); doing so does not constitute “post-hoc issuance of a warrant,” *Q. Li*, 29 I&N Dec. at 69 n.4. While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to 8 U.S.C. § 1226(a) detention authority under a plain reading of 8 U.S.C. § 1226(a), there is nothing in *Jennings* that stands for the assertion that aliens processed for arrest under 8 U.S.C. § 1225 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

586 U.S. 392, 416–19 (2019) (recognizing that aliens who are inadmissible for engaging in terrorist activity are subject to 8 U.S.C. § 1226(c)). However, in interpreting provisions of the INA, the Board does not view the language of statutory provisions in isolation but instead “interpret[s] the statute as a symmetrical and coherent regulatory scheme and fit[s], if possible, all parts into an harmonious whole.” *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010) (internal quotation marks omitted) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). As the Supreme Court in *Barton* also noted, “redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton*, 590 U.S. at 239. “Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text” *Id.*; see also *Matter of Yajure Hurtado*, 29 I&N Dec. at 222 (“Interpreting the provisions of section [1226(c)] as rendering null and void the provisions of section [1225](b)(2)(A) (or even the provisions of section... 1225(b)(1)), would be in contravention of the ‘cardinal principle of statutory construction,’ which is that courts are to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.”) (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)). The statutory language of 8 U.S.C. § 1226(c)—including the most recent amendment pursuant to the Laken Riley Act, see 8 U.S.C. § 1226(c)(1)(E), merely reflects a “congressional effort to be doubly sure” that certain aliens are detained. *Barton*, 590 U.S. at 239.

To reiterate, to interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded 8 U.S.C. § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change

if 8 U.S.C. § 1226 was meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

CONCLUSION

Petitioner has failed to exhaust administrative remedies. He is properly detained under 8 U.S.C. § 1225(b). And Petitioner is not entitled to declaratory judgment because he is not a member of the *Maldonado Bautista* “nationwide Bond Eligible Class.” Accordingly, the Court should deny Petitioner’s habeas petition, and motion for declaratory judgment.

Respectfully submitted,

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