

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HARDIKKUMAR PATEL,

Petitioner,

v.

No. 1:25-cv-01261-KG-GBW

KRISTI NOEM, Secretary,
Department of Homeland Security;
and JOEL GARCIA, Director, El Paso Field Office,
Immigration and Customs Enforcement,

Respondents.

**RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS (DOC. 1)**

INTRODUCTION

Respondents, the Secretary of the Department of Homeland Security (“DHS”) and the El Paso Field Office Director of the Immigration and Customs Enforcement (“ICE”) (collectively “Respondents”), hereby submit this Response to Petitioner’s Writ of Habeas Corpus (Doc. 1).

Petitioner is a noncitizen of the United States and national of India, who entered the country unlawfully and without inspection. Petitioner is currently detained pending removal proceedings before the U.S. Immigration Court under 8 U.S.C. § 1229a. Petitioner asks the Court to grant him immediate release from custody pending ruling on his Petition and order Respondents to schedule a bond hearing before an Immigration Judge. *See* Doc. 1 at 18. Petitioner alleges he is not subject to mandatory detention under Section 1225(b)(2) and should be eligible for bond review under Section 1226(a). *See* Doc. 1 at 17; *see also* 8 U.S.C. §§ 1225(b)(2), 1226(a). Petitioner argues Respondents’ application of Section 1225(b)(2) violates the Immigration and Nationality Act (“INA”) and the Fifth Amendment. *See* Doc. 1 at 15-17.

Respondents request the Court deny the Petition (Doc. 1). Petitioner is correctly classified under Section 1225(b)(2) based on the plain language of that statute and the recent precedential decision by the Board of Immigration Appeals (“BIA”) in *Matter of Yajure Hurtado*. See 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Petitioner is an “arriving alien” under Section 1225(b)(2)(A), and thus not entitled to any additional due process beyond that specifically prescribed by statute. Alternatively, should the Court find Section 1226 applies, the appropriate relief would be a bond review before the U.S. Immigration Court, rather than immediate release.

FACTUAL BACKGROUND

Petitioner Hardikkumar Patel is a noncitizen of the United States and citizen of India, without lawful status in the United States. See Doc. 1 at 4; Exhibit A (Notice to Appear). On or about August 30, 2022, Petitioner entered the United States without inspection at or near San Ysidro, California. See Exhibit A. On December 8, 2025, Petitioner was charged with removability under INA Sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). See Exhibit A; see also 8 U.S.C. § 1225(b).

LEGAL BACKGROUND

I. Detention of “Arriving Aliens” Under Section 1225.

Generally, when a noncitizen arrives in the United States they are “an applicant for admission,” who must “be inspected by immigration officers” to ensure that they may be admitted into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as “arriving aliens” and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; see also 8 U.S.C. § 1225(b)(1)(A)(i). Even if an arriving alien is not determined to be inadmissible pursuant to Section 1225(b)(1), they may still be subject to mandatory detention. See e.g., 8 U.S.C. § 1225(b)(2)(A).

An applicant who is not determined to be inadmissible nonetheless “*shall be detained* for a [removal] proceeding” unless the examining immigration officer determines that the noncitizen is “clearly and beyond a doubt entitled to be admitted.” *Id.* (emphasis added).

II. Statutory Framework and History.

Prior to 1996, the Immigration and Nationality Act (“INA”) treated noncitizens differently based on whether they had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see also Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Noncitizens who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. §§ 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, noncitizens who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been

lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of a noncitizen into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the “*pivotal factor in determining an alien’s status*” would be “whether or not the alien has been *lawfully* admitted.” See House Rep., at 226 (emphasis added); see also *Hing Sum v. Holder*, 602 F.3d at 1100. IIRIRA effected these changes through several provisions codified in Section 1225 and Section 1226. Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. That provision states that a noncitizen “present in the United States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant for admission.” 8 U.S.C. § 1225(a)(1). Section 1225(b) divides removal proceedings into two tracks—expedited removal and non-expedited “240” proceedings—and mandates that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].”¹ *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the

¹ Section 1225(b)(1) provides for “expedited removal” proceedings, *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of noncitizens—those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).

alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”). While Section 1225(b)(2) does not allow for release on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

Section 1226, on the other hand, addresses the arrest, detention, and release of noncitizens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of noncitizens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General “may” either “continue to detain the arrested alien” or release the noncitizen on bond or conditional parole. *Id.* §§ 1226(a)(1)-(2). That “default rule,” however, does not apply to certain criminal noncitizens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c).

For many years after IIRIRA, DHS treated noncitizens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under Section 1226(a) rather than mandatory detention under Section 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. On July 8, 2025, DHS revisited its legal position on detention

and release authorities and issued interim guidance that brought practices in line with the statute’s plain text. Specifically, DHS concluded that all noncitizens who enter the country without being admitted (or who otherwise arrive in the United States without proper documentation) are subject to detention under INA Section 235(b) and may not be released from ICE custody except by INA Section 212(d)(5) parole.

On September 5, 2025, the Board of Immigration Appeals (“BIA”) adopted this interpretation through a precedential opinion, *Matter of Yajure Hurtado*, clarifying that aliens apprehended in the interior of the United States, even after prolonged presence in the United States, are also considered to be “arriving aliens” and are properly detained under Section 1225(b)(2). 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure Hurtado*, 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.” *Id.* at 220.

ARGUMENT

I. Section 1225(b)(2) Mandates Detention of Aliens Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of Section 1225(b)(2), DHS is required to detain all noncitizens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen has been in the United States or how far from the border they ventured. Section 1225(a) defines “applicant for admission” to encompass a noncitizen who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA refers to lawful entry after inspection by immigration officials, *not* physical entry. 8 U.S.C. § 1101(a)(13)(A);

Mejia Olalde v. Noem, No. 1:25-cv-00168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (finding that petitioner—a foreign national who entered the United States without inspection almost 40 years ago—was an “applicant for admission” under the plain language of Section 1225 and therefore subject to mandatory detention). Thus, a noncitizen who enters the country without permission is, and remains, an applicant for admission, regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border.² As the geographic and temporal limits in the neighboring provision, Section 1225(b)(1), demonstrate, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*, 2025 WL 3131942, at *4.

Petitioner argues his detention under Section 1225(b)(2) is based on an “erroneous interpretation” of the INA and BIA’s decision in *Matter of Yajure Hurtado* “defies the plain text of 8 U.S.C. §§ 1225 and 1226.” Doc. 1 at 9. It cannot be disputed that Respondents previously operated under a different understanding of Section 1225(b)(2)(A), such that noncitizens present in the interior of the United States who had entered without admission have historically been detained under Section 1226(a). However, past practice does not justify disregard of clear statutory language. *See, e.g., Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 329 (2015). For example, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that were later deemed incompatible with statutory text. *See, e.g.,*

² This reading is consistent with the everyday meaning of the statutory terms. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (*to* someone *for* something)”), *with id.* at 1299 (“seek” means “to request, ask for”). For example, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking admission” to the United States.

Pereira v. Sessions, 585 U.S. 198, 204-05, 208-09 (2018). A court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). A “nontextual” practice, even longstanding ones, cannot upend plain statutory meaning upon review. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the Government’s prior understanding as “nontextual” and unsupported by any “thorough, reasoned analysis”).

Also, Petitioner relies on the Supreme Court’s discussion in *Jennings* when arguing that Section 1226—not 1225—applies to Petitioner. Doc. 1 at 8-9. Specifically, Petitioner states that the *Jennings* Court “noted that section 1226 ‘applies to aliens already present in the United States.’” *Id.* at 8. The Supreme Court described the detention authorities in Section 1225(b) and Section 1226 as follows:

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). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings, 583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens “once inside the United States”). Respondents do not view this argument as inconsistent with that language: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of noncitizens who were admitted into the United States (and so are “in the country”) but are now removable. *Jennings* refers to noncitizens who are “in and admitted to the United States.” 8 U.S.C. § 1227(a). The opinion’s reference to noncitizens “present in the country” specifically cites § 1227(a), which covers only *admitted* noncitizens. *See Jennings*, 583 U.S. at 288. Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority that applies to “aliens already in the country.”

Petitioner further asserts that all noncitizens present without admission or parole could not be subject to mandatory detention under Section 1225(b)(2) because the recent amendments to

Section 1226(c) in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), codified at 8 U.S.C. § 1226(c)(1)(E), would be rendered “redundant.” *See* Doc. 1 at 10. In other words, an overlap in statutory language makes the United States’s position untenable. However, “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 v. Barr*, 590 U.S. 222, 239 (2020) (compiling cases where the Court did not disturb overlapping statutory language). The Court should decline to adopt Petitioner’s proposed standard of statutory review.

II. Petitioner is Appropriately Classified under Section 1225(b)(2).

Petitioner entered the United States without being inspected. *See* Exhibit A; INA § 212(a)(6)(A)(i). Because Petitioner entered the United States without inspection, he is an “applicant for admission” to the United States, i.e., alien present in the United States who has not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress’s broad language here is intentional, an undocumented alien is to be “deemed for purposes of this chapter an applicant for admission.” *Id.* Petitioner is “deemed” an applicant for admission based upon 1) his undocumented status and 2) that he has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted,” making detention mandatory under Section 1225. *See* 8 U.S.C. § 1225(b)(2)(A); *Hurtado*, 29 I. & N. Dec. at 220. In short, Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)’s mandatory detention requirement.

At least six courts have adopted this general interpretation in recent months. *See Peña v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an “applicant for admission” upon the straightforward application of the statute); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding

that Section 1225(b) applied despite alien’s presence in the country for over ten years, noting “overlap” between Section 1225 and Section 1226 authorities); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding BIA’s recent decision in *Matter of Yajure Hurtado* supported by the plain language of the statute, and that such an interpretation does not render Section 1226, nor additions thereto by the Laken Riley Act, superfluous); *Mejia Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (finding that a foreign national, who had been in the country for approximately forty years but never lawfully “admitted” into the United States, was an “applicant for admission” based on the plain meaning of Section 1225); *see also Suarez v. Noem*, No. 1:25-cv-00202, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550-WBS-JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (denying petitioner’s motion for temporary restraining order because petitioner, a foreign national living in the United States for 29 years and taken into ICE custody following a traffic stop, was unlikely to succeed on the merits of his statutory arguments that he was not an “applicant for admission” under Section 1225); *Coronado v. Secretary, Dept. of Homeland Security*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (finding that Section 1225(b)(2) applied to petitioner, a foreign national who entered the United States without inspection and resided within the country for several years); *see also Lucero v. Field Office Dir.*, No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025). Respondents acknowledge that this district and many others have reached different conclusions on this emergent issue. *See* Doc. 1 at 11-15.

Petitioner contends that after Congress amended the INA through IIRIRA, the Executive Office for Immigration Review (EOIR) drafted new regulations “explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the

Attorney General.” Doc. 1 at 6-7. Petitioner relies on the following phrase from Volume 62 of the Federal Register:

Despite 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. 10312, 10323, 1997 WL 93131 (Mar. 6, 1997). But this sentence must be read within the context of the paragraph from which it was taken. The full paragraph reads as follows:

The IIRIRA extended the mandatory detention provisions to additional classes of inadmissible and deportable aliens but provided an exception for certain witnesses. It also allowed the Attorney General the option of a transition period for implementation of mandatory detention. The Service exercised this discretion and implemented the transition period custody rules on October 9, 1996, effective for 1 year. This interim rule amends the regulations to comply with the amended Act by removing the release from custody provisions for aliens who may no longer be released. These amendments to the regulations will take effect upon the termination of the transition period. As for non-criminal aliens, the rule reflects the new \$1,500 minimum bond amount specified by IIRIRA. Despite 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.

Id. The language in this paragraph demonstrates that a transition period was contemplated when implementing the broader mandatory detention provisions. But, in light of the policy change implemented by DHS on July 8, 2025, Petitioner’s reliance on an outdated interim rule is unavailing.

Because Petitioner is appropriately classified under Section 1225(b)(2), he is subject to that statute’s mandatory detention provisions. The Court should therefore deny the Petition (Doc. 1).

III. Petitioner’s Due Process Rights Have Not Been Violated Because He is Appropriately Classified Under Section 1225(b)(2).

Petitioner, as an applicant for admission, is entitled only to those rights and protections Congress has set forth under Section 1225(b)(2). For “more than a century” the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 131 (2020); *see also Nishimura Ekiu v.*

United States, 142 U.S. 651, 660 (1892) (“the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law”). *Thuraissigiam* dealt with habeas action involving a noncitizen, like Petitioner, detained under Section 1225(b) who raised Fifth Amendment Due Process challenges. *Thuraissigiam*, 591 U.S. at 106–107. The Supreme Court reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other than those expressly provided by statute. *Id.* at 107 (a noncitizen seeking initial entry “has no entitlement to procedural rights other than those afforded by statute”). Accordingly, Congress may authorize detention, even for prolonged periods of time, and such detention does not deprive Section 1225(b) aliens “of any statutory or constitutional right.” *Id.* An alien who enters the country illegally is treated as an “applicant for admission” and has only those rights that Congress has provided by statute. *Thuraissigiam*, 591 U.S. at 140. The due process clause requires “nothing more.” *Id.*

Here, the governing statute defining the contours of Petitioner’s due process rights is Section 1225(b)(2)(A):

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, 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 section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate). Because Petitioner is an “applicant for admission” and therefore subject to Section 1225, his detention is both authorized and required by that statute. Petitioner’s mandatory detention thus comports with due process. *See Thuraissigiam*, 591 U.S. at 140; *see also Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987) (holding that the detention of an alien seeking admission to the United States does not violate the due process clause).

IV. Should Section 1226 Apply, Bond Review is the Only Appropriate Remedy.

Should the Court agree with Petitioner’s contention that classification under Section 1226, rather than Section 1225, is appropriate, the subsequent relief, if any, would be to return Petitioner to that status: classification under Section 1226 with eligibility for a bond review in the normal course.

For example, in the context of noncitizens detained under Section 1226(c), courts have repeatedly held that they lack authority to order a mandatory detainee’s release pending conclusion of his immigration proceedings. *See generally Nyamekye v. Oddo*, 2023 WL 9271844, at *5 (W.D. Pa. Mar. 28, 2023) (denying request for immediate release and noting lack of authority to support such a request); *Davis v. Warden of Pike Cnty. Corr. Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022) (“The only remedy for an alien challenging their mandatory detention is a bond hearing”) (citing *Hernandez T. v. Wolf*, 2020 WL 634235, at *3 (D.N.J. Feb. 11, 2020)). Thus, even if a bond hearing was an available remedy for Petitioner, granting immediate release is not warranted. This Court should not circumvent the U.S. Immigration Court by ordering release, unilaterally shifting the burden of proof at future proceedings or imposing additional restrictions upon Respondents. The appropriate relief would be an order granting classification under Section 1226, from which the U.S. Immigration Court would then adjudicate as any other Section 1226 case (starting with an evidentiary bond review proceeding).

This position is further supported by the jurisdictional bar of 8 U.S.C. § 1226(e), which strips the Court of jurisdiction to review “discretionary judgment[s] regarding the application of [§1226]. *See* 8 U.S.C. § 1226(e). Section 1226(e) further directs that “[n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the revocation or denial of bond or parole.” *Id.* Had Respondents initially classified Petitioner as eligible for bond review under Section 1226, the result of that bond review would not be subject

to judicial review. It would therefore make little sense for the Court to impose its own judgement on bond (or release) upon the U.S. Immigration Court. The appropriate remedy would be to remand the case back to the U.S. Immigration Court to conduct an evidentiary bond hearing under Section 1226.

CONCLUSION

The Court should deny the Petition for Writ of Habeas Corpus (Doc. 1) because Petitioner is appropriately classified under Section 1225 and Petitioner's due process rights have been met as a matter of law. Should the Court agree with Petitioner that Section 1226 applies, the only appropriate remedy is to remand the matter for a Section 1226 evidentiary bond proceeding before the U.S. Immigration Court in the normal course.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 6, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Jean M. Trenbeath
JEAN M. TRENBEATH
Assistant United States Attorney