IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MEINA GABALLA SHAKER SOLIMAN, Petitioner, v. JOHN DOE, in his official capacity as Moshannon Valley ICE Processing Center; BRIAN McSHANE, ICE FOD ERO Philadelphia; PAM BONDI, in her official capacity as Attorney General of the United States; and KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security, Respondents.	)	CIVIL ACTION NO. 3:26-cv-90 JUDGE CHRISTY CRISWELL WIEGAND *(Electronic Filing)*

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

AND NOW COME Respondents, by their attorneys Troy Rivetti, United States Attorney for the Western District of Pennsylvania, and Heidi M. Grogan, Assistant United States Attorney for said District, and hereby submit this Response to Petition for Writ of Habeas Corpus (Dkt. No. 1, the "Petition"). Respondents respectfully submit that the Court should dismiss the Petition.

RELEVANT FACTS AND PROCEDURAL HISTORY

Mr. Meina Gaballa Shaker Soliman is a native and citizen of Egypt present in the United States without lawful immigration status. *See* Ex. A. On or around July 19, 2023, Mr. Soliman, entered the United States illegally near Lukeville, AZ. *Id.* On August 29, 2023, Mr. Soliman reported to ERO York and was enrolled into ICE's Alternatives to Detention (ATD). *Id.* DHS initiated removal proceedings by filing a Notice to Appear dated July 20, 2023 charging the

respondent as removable under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). Ex. B. On January 19, 2024, the respondent filed an I-589 application. Ex. A.

BI York Office reported numerous ATD violations. Ex. A. On November 26, 2025, Mr. Soliman reported, as scheduled, to the ERO York office. *Id.* ERO York arrested Mr. Soliman and processed and transferred him to Moshannon Valley Processing Center ("MVPC") pending a hearing and removal from the United States per INA § 212(a)(6)(A)(i). Exs. A & C; *see also* 8 U.S.C. § 1182(a)(6)(A)(i).

On December 9, 2025, ICE filed additional charges of Inadmissibility/Deportability in Removal proceedings under Section 240 of the INA. Ex. D. ICE alleged that Petitioner is subject to being taken into custody and deported per Section 212(a)(7)(A)(i)(I), as an immigrant who at the time of application was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. *Id.; see also* 8 U.S.C. § 1182(a)(7)(A)(i).

On December 10, 2025, at a custody redetermination hearing before an Immigration Judge, release/bond was denied due to "Lack of jurisdiction – see Matter of Q. Li". Ex. E. Petitioner reserved the right to appeal, which was due on January 9, 2026, but he did not appeal. *See id.*

On December 12, 2025, the respondent filed an amended I-589 application with the immigration court requesting asylum, withholding of removal, and deferral of removal under the convention against torture. Ex. A. On February 3, 2025, in advance of a hearing before an IJ, ICE filed a Motion to Pretermit Petitioner's Protection Applications. Ex. H. ICE's brief explained that, on December 15, 2025, at a master calendar hearing, Mr. Soliman "admitted to the allegations, conceded the charges and removability was sustained." *Id.* At that time, ICE requested that the IJ enter an order pretermitting Mr. Soliman's applications for asylum, statutory

withholding, and CAT protection because under INA § 208(a)(2)(A), an alien like Mr. Soliman, is ineligible to apply for asylum if he may be removed pursuant to a bilateral or multilateral agreement (an "ACA") where the alien's life or freedom would not be threatened and an ACA between the United States and Uganda was published in the Federal Register on September 3, 2025 that applied to Mr. Soliman. *Id.* On February 23, 2026, an IJ judge Ordered Petitioner removed to Uganda. Ex. G. Petitioner has until March 25, 2026 to appeal the IJ's removal decision.

JURISDICTION AND BURDEN OF PROOF

"The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotation marks omitted). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas cases. The petitioner carries the burden of proving he is entitled to habeas corpus relief. *See Anderson v. Attorney General of Pennsylvania*, 2018 WL 9944052, *2 (W.D. Pa. Feb. 21, 2018) (citation omitted).

ARGUMENT

A. Petitioner has not exhausted his administrative remedies.

Habeas petitioners are generally required to exhaust their administrative remedies before seeking relief from the court. *See, e.g., O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). In the immigration context, a detainee must exhaust remedies with the appropriate appellate authorities or otherwise with DHS. *See, e.g., Okonkwo v. I.N.S.*, 69 F. App'x 57, 59 (3d Cir. 2003) ("Because [petitioner] has not exhausted the available administrative remedies in seeking parole, no relief is available to him in federal court."); *Umarbaev v. Lowe*, 453 F. Supp. 3d 698, 705 (M.D. Pa. 2020) ("The Third Circuit has noted that requiring exhaustion of administrative remedies for habeas petitions fosters important goals because: (1) allowing the appropriate agency to develop a factual

record and apply its expertise facilitates judicial review; (2) permitting agencies to grant the relief requested conserves judicial resources; and (3) providing agencies the opportunity to correct their own errors fosters administrative autonomy.") (internal quotation marks omitted).

Here, Petitioner requested a custody redetermination before an Immigration Judge ("IJ"). *See* Ex. 5. On December 10, 2025, the IJ denied the request finding that it lacked jurisdiction pursuant to *Matter of Q. Li*. Ex. 5. Petitioner had thirty days (until January 9, 2026) to appeal. *Id.* He does not claim to have appealed, and undersigned counsel was informed that he did not. As such, he has not fully exhausted his administrative remedies prior to filing his habeas Petition, and the Petition should be denied on that basis. Respondents note that courts in this district have found exhaustion futile in some prior cases involving challenges to ICE's detention of aliens under § 1225. *See Del Cid v. Bondi*, No. 3:25-cv-00304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025) (Haines, J.); *Silva Cova v. Rose*, No. 3:26-cv-101 (W.D. Pa.), Feb. 11, 2026, Memo. Order (Stickman, J.; ECF No. 9); *Aguirre-Guevara v. Oddo*, No. 3:26-cv-70 (W.D. Pa.) (Stickman, J.; ECF No. 8); *Garcia-Zamora v. Jamison*, Civ. Action No. 25-6656, 2025 WL 3642088, at *3 (E.D. Pa. Dec. 16, 2025). Respondents submit, however, that exhaustion should be required here. Exhaustion is *de rigueur* because agency expertise is required. "[T]he BIA is the subject-matter expert in immigration bond decisions." *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise").

B. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) as an alien arrested and detained while arriving in the United States.

Even if this Court finds that Petitioner has exhausted his administrative remedies, he cannot prevail on his claims because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. An alien, like Petitioner, who is arrested and detained without a warrant while arriving in the United States, and thereafter placed in removal proceedings, is detained under § 1225(b)(2)(A). *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). As the Board of Immigration Appeals noted in *Q. Li*:

> An "applicant for admission" is defined, in relevant part, as an alien "who arrives in the United States []whether or not at a designated port of arrival." INA § 235(a)(1), 8 U.S.C. § 1225(a)(1). An alien, like the respondent, "who tries to enter the country illegally is treated as an 'applicant for admission." *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting INA § 235(a)(1), 8 U.S.C. § 1225(a)(1)). The Supreme Court of the United States has clarified that "an alien 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. *Id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).
>
> Similarly, we have held, in other contexts, that the term "arriving" applies to aliens, like the respondent, "who [are] apprehended" just inside ""the southern border, and not at a point of entry, on the same day [they] crossed into the United States." *Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020). Thus, the respondent is an alien "who arrives in the United States" under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1).

Q. Li, 29 I. & N. Dec. at 68.

Here, Petitioner was encountered and arrested by a Border Patrol Agent on July 19, 2023, near Lukeville, Arizona, on the U.S.-Mexico border. Ex. A. On August 29, 2023, he was enrolled into ICE's ATD and released. *Id.* Petitioner was placed in removal proceedings and issued a Notice to Appear on July 20, 2023. Ex. B.

Thus, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Q. Li*, 29 I. & N. Dec. at 67–69 ("[W]e hold that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and

subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”). This Court has in some decisions declined to adopt the reasoning in *Q. Li*. *See, e.g.*, *Romero v. Noem*, Civ. No. 3:25-524, 2026 WL 116379, at *1–2 (W.D. Pa. Jan. 15, 2026) (Haines, J.); *Del Cid v. Bondi*, No. 3:25-CV-304, 2025 WL 2985150, at *5–7 (W.D. Pa. Oct. 23, 2025) (Haines, J.); *Silva Cova v. Rose*, No. 3:26-cv-101 (W.D. Pa.), Feb. 11, 2026, Memo. Order (Stickman, J.; ECF No. 9); *Aguirre-Guevara v. Oddo*, No. 3:26-cv-70 (W.D. Pa.). But those decisions are not binding, and the government respectfully submits that the BIA’s reasoning in *Q. Li* is correct.

Petitioner’s release on ATD while his case proceeds is provided for by INA § 236(a), 8 U.S.C. § 1226(a). Similar to releasing an alien on his own recognizance, Petitioner’s release on ATD, a program permitting release with monitoring for select participants identified by ICE, did not change Petitioner’s mandatory detention classification. *See Yinxiao Chen v. Almodovar*, 25 Civ. 9670 (JPC), 2026 WL 100761, at *14 (S.D.N.Y. Jan. 14, 2026) (finding petitioner was detained under § 1225(b)(2)(A) “even though [he] was initially detained—shortly after crossing the border—and released on his own recognizance, purportedly under Section 1226”); *Gudino v. Almodovar*, No. 1:26-cv-00402-MKV, 2026 WL 251887, at *2 (S.D.N.Y. Jan. 30, 2026) (citing cases); *Garcia v. United States*, No. 2:25-cv-1053-KCD-DNF, 2025 WL 3537592, at *1 (M.D. Fla. Dec. 10, 2025) (“The fact that [petitioner] spent time in the United States after being released on an order of recognizance—and was eventually apprehended in the country—does not change his classification.”).”[1]

[1] Some courts have found that release on ATD or on an order of recognizance indicates that detention is not under § 1225(b)(2)(A). *See, e.g.*, *Gonzales v. Bondi*, Civ. Action No. 26-0747,

The Court's decision in *Calzado Diaz v. Noem*, No. 3:25-cv-458, 2025 WL 3628480, at *3–7 (W.D. Pa. Dec. 15, 2025), *vacated as moot*, Dkt. No. 22 (Dec. 17, 2025), does not apply here. That decision's reasoning is inapposite to arriving aliens, like Mr. Soliman, "detained under § 1225(b) of the INA . . ." *A.L.*, 761 F. Supp. 3d at 825. Rather, the relevant decision from the Board of Immigration Appeals is *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), which held:

> (1) An applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018).
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> (2) An alien detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), who is released from detention pursuant to a grant of parole under section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A) (2018), and whose grant of parole is subsequently terminated, is returned to custody under section 235(b) pending the completion of removal proceedings.

29 I. & N. Dec. at 66; *cf. Del Cid v. Bondi*, No. 25-304, 2025 WL 2985150, at *6 (W.D. Pa. Oct. 23, 2025) (discussing *Q. Li* decision). In this case, the government respectfully submits that Mr. Soliman remains subject to mandatory detention under § 1225(b) pending removal proceedings, notwithstanding *Calzado Diaz*.

C. Petitioner's Due Process claim is meritless.

Congress broadly crafted the term "applicants for admission" to include undocumented aliens, like Petitioner, who are present within the United States. *See* 8 U.S.C. § 1225(a)(1). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until

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2026 WL 323355, at *3 (D.N.J. Feb. 6. 2026); *Anirudah v. McShane*, Civ. No. 25-6458, 2025 WL 3527528, at *5–6 (E.D. Pa. Dec. 9, 2025); *Gomes*, 804 F. Supp. 3d, at 276.

certain proceedings have concluded").

The Supreme Court has repeatedly recognized this profound interest. Petitioner's mandatory detention pursuant to §1225(b) will last only for the duration of his removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (Because "the statutory provision at issue governs detention of deportable criminal aliens *pending their removal proceedings*," the "detention necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings"); *see also Jennings*, 583 U.S. at 304. In light of Congress's interest in regulating immigration, including by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns without engaging in the test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976); *see generally Demore*, 538 U.S. at 531.

The Court should therefore reject Petitioner's argument that he has not been afforded sufficient process. As a general matter, "applicants for admission are entitled only to those rights and protections Congress set forth by statute," and "[t]he due process clause requires 'nothing more.'" *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (citing *Thuraissigiam*, 591 U.S. at 140). That is because "the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Thuraissigiam*, 591 U.S. at 139 (citations, internal quotation marks omitted); *see also id.* ("[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border.") (internal quotation marks omitted). Here, once the government determined that Petitioner entered the United States without admission, it follows that he is an "applicant for admission" and subject to

mandatory detention.

Petitioner's current detention also comports with due process. Although the due process clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), some amount of detention is generally permissible. *Demore*, 538 U.S. at 511. Petitioner's immigration proceedings have now resulted in an order of removal (albeit the order is not final; Petitioner may appeal by March 25, 2026). Still, the available process in his current removal proceedings demonstrates no lack of procedural due process—nor any deprivation of liberty that is "sufficiently outrageous," as required to establish a substantive due process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles*, 244 F.3d 623, 628 (8th Cir. 2001). Congress simply made the decision to detain him pending removal, which is a "constitutionally permissible part of that process." *Demore*, 538 U.S. at 531. Moreover, Petitioner can request release on parole under § 1225. 8 U.S.C. § 1182(d)(5)(A). With this option available to him, he cannot show entitlement to relief.

Finally, even where mandatory detention becomes "unreasonable" under the Due Process Clause, the appropriate remedy is a bond hearing, rather than immediate release. *See, e.g.*, *Akhmadjanov v. Oddo*, No. 25-35, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025) (Haines, J.); *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at *3 (E.D. Va. June 24, 2025). Respondents respectfully submit that if the Court finds that Petitioner's detention is unreasonable, it should order a bond hearing in immigration court, instead of release. *Cf. Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 278–79 (3d Cir. 2018); *Coto-Henriquez v. Dep't of Homeland Sec.*, No. 23-271, 2023 WL 2333309, at *2 (M.D. Pa. Mar. 2, 2023) ("His argument that the government must bear the burden of proof in Section 1226(a) bond hearings likewise fails under *Borbot*.").

D. Petitioner's Administrative Procedure Act (APA), Equal Protection Clause, and Suspension Clause claims are also meritless.

As he has presented them, Petitioner's assertions that his detention violates the Administrative Procedure Act (APA), the Equal Protection Clause, and the Suspension Clause depend entirely upon the rectitude of his claim that he is being wrongfully detained under § 1225(b)(2)(A), rather than § 1226(a). *See* Dkt. No. 1 at 8-13. If Petitioner is properly detained under § 1225(b)(2)(A), as the United States contends, then this Court's rejection of Petitioner's § 1226(a) argument would require it to reject his APA, Equal Protection Clause, and Suspension Clause arguments, as well. *See Cruz v. Noem*, 2:26-cv-1112 (NJC), 2026 WL 555038, at *6 (E.D.N.Y. Feb. 27, 2026) (granting habeas relief in the form of release and finding additional arguments concerning violations of substantive due process, the Suspension Clause, and the APA moot).

1. Administrative Procedure Act (APA)

Nevertheless, Petitioner's APA claim is meritless. The APA permits judicial review for "[a] person suffering legal wrong because of agency action," 5 U.S.C. § 702, and provides that an agency action is reviewable if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). However, the APA explicitly excludes any such review "to the extent that—(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." 5 U.S.C. § 701(a). Here, the government's decision to release Petitioner on ATD, then re-detain him, is discretionary, 8 U.S.C. § 1182(d)(5)(A), and judicial review of such a decision is precluded. *See* 8 U.S.C. § 1252(a)(2)(B); *Tokhi v. Noem*, No. 24-8952, 2025 WL 2526391, at *5 (D.N.J. Sept. 3, 2025) ("Review of decisions made pursuant to the parole statute, 8 U.S.C. § 1182(d)(5)(A), is plainly precluded by Section 1252."); *see generally Khalil v. President, United States*, 164 F.4th 259, 265 (3d Cir. 2026).

Additionally, this Court's jurisdiction has been limited by Congress, limitations that squarely apply to an APA claim, just as they do to habeas. If this Court rejects those review limitations, it is a habeas claim, not an APA claim, that can be pursued here because Petitioner is challenging the legality of his detention, a core habeas claim. *Trump v. J.G.G.*, 604 U.S. 670, 672-73 (2025) (the Supreme Court held that where immigration detainees' claims "necessarily imply the invalidity of [] confinement," those claims "must be brought in habeas."); s*ee also Fuentes v. Choate*, No. 24-CV-01377-NYW, 2024 WL 2978285, at *11 (D. Colo. June 13, 2024) ("In the Tenth Circuit, a detainee "who challenges the fact or duration of h[er] confinement and seeks immediate release or a shortened period of confinement, must do so through an application for habeas corpus.") (quoting *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012)); 5 U.S.C. § 704.

2. Equal Protection Clause

Additionally, Petitioner is incorrect that he is being treated differently from other [*similarly situated*] individuals in removal proceedings. Dkt. No. 1 at 10 (emphasis added). In short, Petitioner is challenging disparate treatment of different *groups* of aliens, which merely triggers a rational basis review. *See Mejia v. Ashcroft*, 360 F. Supp. 2d 647, 653 (D.N.J. 2005). Congress is justified in treating aliens who present themselves for inspection upon admission differently from those who enter without inspection. Petitioner's equal protection claim is baseless.

3. Suspension Clause

Moreover, because the Suspension Clause merely guarantees aliens *access* to the federal courts to pursue a habeas claim, Petitioner's Suspension Clause challenge fails. Petitioner "has not been precluded from bringing this habeas petition and asserting constitutional and statutory challenges to his detention, nor has this Court been precluded from reviewing and ruling on it."

Fleurimond v. Noem, No. CV-26000037-PHX-MTL(CDB), 2026 WL 507542 (D. Ariz. Feb. 24, 2026) (citing cases).

CONCLUSION

For the reasons stated, the Court should deny the Petition for a Writ of Habeas Corpus.

However, if the Court believes that Petitioner is entitled to relief, it should be limited to an individualized bond hearing before an immigration judge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 2026, a true and correct copy of the foregoing Notice of Entry of Appearance was served electronically, to and upon the following:

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