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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SMIT PATEL, *Petitioner*, v. JUDITH ALMODOVAR, *et al.*, *Respondents*.	HON. SUSAN D. WIGENTON Civil Action No. 25-15345 (SDW)

ANSWER TO THE VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

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PRELIMINARY STATEMENT

On September 4, 2025, U.S. Immigration and Customs Enforcement ("ICE") detained Petitioner pending removal proceedings for his presence in the United States without admission or parole. Petitioner now brings a habeas action under 28 U.S.C. § 2241 alleging that his detention without a bond hearing violates due process. The Petition should be dismissed because Petitioner's detention is lawful under 8 U.S.C. § 1225(b) and comports with due process. Further, even if the Court were to conclude that his detention falls under 8 U.S.C. § 1226(a), as Petitioner argues, the appropriate remedy is a bond hearing before an Immigration Judge.

BACKGROUND

I. Relevant Statutory and Regulatory Background

We discuss the relevant statutory and regulatory backdrop for the two detention provisions at issue—8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(a)—as well as the framework for adjudicating removal proceedings under 8 U.SC. § 1229a.

A. Detention Under 8 U.S.C. § 1225(b)

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

Section 1225(b)(1) applies to "arriving aliens" and aliens who "ha[ve] not been admitted or paroled into the United States." "Arriving aliens" are defined by

regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry …" 8 C.F.R. § 1.2. These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does not indicate an intent to apply for asylum, express fear of persecution, or does not "have such a fear" after inquiry by an officer, the alien is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. Indeed, it "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'"). Still, the U.S. Department of Homeland Security ("DHS") has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A).

B. Detention Under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention on a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C.

§ 1226(a). Under § 1226(a), immigration officials may detain an alien during removal proceedings, release the alien on bond, or release the alien on conditional parole.[1] By regulation, immigration officers can release an alien if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request that an Immigration Judge conduct a custody redetermination hearing any time before a final order of removal is issued for the alien. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination hearing, the Immigration Judge may continue detention or release the alien on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration Judges have broad discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for Immigration Judges to consider). But an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

C. Removal Proceedings Under 8 U.S.C. § 1229a

Removal proceedings under § 1229a are commonly referred to as "full removal proceedings" or "240 removal proceedings" due to the statutory section of the INA in which they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before

[1] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

an Immigration Judge. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a proceedings have an opportunity to apply for relief from removal. *See*, *e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1255 (adjustment of status). The proceedings are adversarial, allowing the alien the right to counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the Immigration Judge's decision to the Board of Immigration Appeals ("BIA"). 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. And, if the BIA issues a final order of removal, an alien may also seek judicial review at a U.S. court of appeals through a petition for review. 8 U.S.C. § 1252.

II. Petitioner's Immigration History

Petitioner is a native and citizen of India. Ex. A (Dec. 8, 2023 NTA) at 1.[2] On December 8, 2023, at approximately 3:50 a.m., U.S. Customs and Border Protection ("CBP") were advised that individuals were walking on railroad tracks in Rouses Point, New York. Ex. B (2023 I- 213) at 2. CBP conducted an immigration inspection and learned that the individuals were from India "illegally present in the United States without any documents to enter or remain in the United States legally." *Id.* CBP took the individuals, including Petitioner, into custody and transported them to Champlain Border Patrol Station for processing. *Id.*

[2] Respondents attach Petitioner's relevant immigration records as exhibits to this Answer under Federal Rule of Civil Procedure 10(c), which is incorporated by Rule 12 of the Rules Governing Section 2254 Cases in the U.S. District Courts (which is applicable to this § 2241 petition through Rule 1(b)).

CBP served charging documents on Petitioner, *id.* at 3, including a Notice to Appear charging him with removability for being "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 designated by the Attorney General," in violation of Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). Dec. 8, 2023 NTA at 1. After he was processed, including receiving notice that he was to appear before an Immigration Judge on May 9, 2024 "to show why [he] should not be removed from the United States" pursuant to § 212(a)(6)(A)(i), Dec. 8, 2023 NTA at 1, CBP released Petitioner on his own recognizance under INA § 236, 8 U.S.C. § 1226, Ex. C (Notice of Custody Determination Dec. 8, 2023), "due to the lack of bed space," I-213 at 3. On August 6, 2025, U.S. Citizenship and Immigration Services ("USCIS") granted Petitioner Special Immigrant Juvenile Status. Verified Petition ("Pet.") ¶ 2. Petitioner filed an asylum application with USCIS on August 29, 2025. *Id.* ¶ 3.

ICE arrested Petitioner on September 4, 2025, while he was waiting for his hearing in Immigration Court. Ex. D (2025 I-213) at 2. Since then, ICE has detained Petitioner pursuant to INA § 235(b), 8 U.S.C. § 1225(b), which requires detention of aliens not lawfully admitted into the United States "until removal proceedings have concluded." Ex. E (IJ Sept. 17, 2025 Order) at 2 (quoting *Jennings*, 583 U.S. at 299).

On September 12, 2025, the Immigration Court issued an oral decision denying Petitioner's request for bond under § 1226, finding that his detention is mandatory under § 1225(b). *Id.* at 1; Ex. F (Sept. 12,2025 IJ Order) at 1. On September 16, 2025,

Petitioner filed a corrected Notice of Appeal of the custody decision after the Board of Immigration Appeals rejected the September 12, 2025 filing because Petitioner did not provide proof of service on the government. Ex. G (Corrected Filing of Appeal). On September 17, 2025, the Immigration Court issued a written decision denying bond in accordance with *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." Sept. 17, 2025 IJ Order at 3 n.1 (quoting *Hurtado*, 29 I. & N. Dec. at 225). As the Immigration Judge held, Petitioner is subject to mandatory detention under § 1225(b)(2)(a) and ineligible for bond because, under *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), Petitioner is an "applicant for admission" as defined under § 1225(a)(1). *Id.* at 2-3. And, based on *Matter of Hurtado*, "applicants for admission, such as [Petitioner], are not eligible for release from detention" under § 1226(a). *Id.* at 3 n.1. Petitioner is detained at the Orange County Correctional Facility in Goshen, New York, while his immigration proceedings are pending. Sept. 17, 2025 IJ Order at 1. He is scheduled to appear for a master hearing before the Immigration Court in Goshen, New York on October 30, 2025. Ex. H (Oct. 9, 2025 Notice of Internet-Based Hearing). At Petitioner's immigration counsel's request, the October 9, 2025 hearing was adjourned.

III. Petitioner's Habeas Petition and OTSC

On September 4, 2025, Petitioner filed a Verified Petition for Writ of Habeas Corpus Pursuant to § 2241 and an Application for Issuance of Order to Show Cause. ECF 1. Petitioner did not assert any cause of action in the Petition. *Id.* However,

Respondents read the Petition to assert a due process claim "because ICE detained [Petitioner] without notice, an opportunity to respond, or an individualized determination that he poses a flight risk or a danger to the community." Pet. ¶ 24. Petitioner argues that he is properly detained under § 1226(a) and, thus, should be permitted to demonstrate that his release does not pose a flight risk or danger. Pet. ¶ 28. Petitioner argues that ICE has now decided to detain him "pursuant to a new ICE policy without an individualized assessment, notice, or opportunity to be heard." *Id.* ¶ 29. Petitioner seeks to prohibit Respondents from transferring him outside the jurisdiction of the Southern District of New York as well as an order compelling Respondents to immediately release him from detention. Pet., Prayer for Relief, at 8.

The Court in New York transferred the habeas action to this Court on September 5, 2025, ECF 12, and this Court entered an order on September 17, 2025, providing a briefing schedule on the Petition and prohibiting Respondents from transferring Petitioner "outside of New York, New Jersey, or Pennsylvania during the pendency of this matter," ECF 15. For the reasons discussed below, the Court should deny the Petition and dissolve the temporary restraints.

ARGUMENT

I. Petitioner's Detention is Lawful Under the Plain Text of § 1225

Where, as here, the question is one of statutory interpretation, "we start where we always do: with the text of the statute." *Van Buren v. United States*, 593 U.S. 374, 381 (2021). Section 1225(b)(2) provides, "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" pending removal proceedings. This provision, then, has three key components. The alien must be: (1) an "applicant for admission"; (2) who is "seeking admission"; and (3) an examining immigration officer has determined the alien "is not clearly and beyond a doubt entitled to be admitted." Petitioner meets all three elements.

Petitioner is an "applicant for admission" under the INA. An "applicant for admission" means any "alien present in the United States who has not been admitted" or "who arrives in the United States." 8 U.S.C. § 1225(a)(1). Here, CBP charged Petitioner with being "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 designated by the Attorney General," in violation of § 1182(a)(6)(A)(i). Dec. 8, 2023 NTA at 1. Petitioner meets the statutory definition of an "applicant for admission" under § 1225(a)(1).

Petitioner is also "seeking admission." 8 U.S.C. § 1101(a)(13)(A) defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." When it comes to interpreting "seeking admission" in § 1225(b)(2), the phrase must contextualized with "applicant for admission," as defined by § 1225(a). *See Abramski v. United States*, 573 U.S. 169, 179 (2014) (instructing courts to "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history and purpose.'" (quotation omitted)). As noted above, Congress defined 'applicant for admission' under § 1225(a)

to include both those who arrive in the United States *and* those present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under § 1225(a)(1). As the BIA has recognized:

> 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 . . . In other words, 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.

Matter of Lemus, 25 I. & N. 734, 743 (BIA 2012). As such, the phrase "seeking admission" in § 1225(b)(2)(A) should be read to include an "applicant for admission." Therefore, aliens who are "applicants for admission" are also aliens who are "seeking admission."

This is not to say the words "seeking admission" and "applicant for admission" are identical. The former is broader than the latter. For example, the INA contemplates that "stowaways" may seek admission by requesting asylum, yet stowaways are excluded from the definition of "applicant of admission." 8 U.S.C. § 1225(a)(2). In addition, an applicant for admission must be physically present in the United States, while an alien can "seek admission" in the United States *or* outside of it, such as in an embassy before a consular officer. *See Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (although ruling against ICE, noting terms have slightly different breadth). That is why, in § 1225(a)(3), immigration officers must inspect all aliens "who are applicants for admission *or otherwise* seeking admission." 8 U.S.C. § 1225(a)(3) (emphasis added).

The relevant phrases play out in a commonsense way in § 1225(b)(2). The statute begins with a limiting clause: the subsection applies to "any applicant for admission," which means only those physically present and who can be detained. This avoids the conclusion that § 1225(b)(2) applies to those "seeking admission" from abroad; say, in an embassy. Having made clear that § 1225(b)(2) applies only to those present, it continues with a second clause" mandating detention if the immigration officer finds the "alien seeking admission" is not entitled to it. *See Adamowicz v. I.R.S.*, 552 F. Supp. 2d 355, 367–68 (S.D.N.Y. 2008) ("'[A] limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.'").

Here, Petitioner is an applicant for admission who is present in the United States without being admitted. He satisfies the second element, "seeking admission," under § 1225(b)(2).

An examining immigration officer charged Petitioner with being inadmissible under the INA. Petitioner also meets the final element under § 1225(b)(2), which is that an examining immigration officer determined he "is not clearly and beyond a doubt entitled to be admitted." Here, an examining officer from CBP made that determination and issued a Notice to Appear charging Petitioner with being inadmissible under § 1182(a)(6)(A)(i). Dec. 8, 2023 NTA.

Accordingly, as the Immigration Court properly held, Petitioner is an "applicant for admission" under the plain meaning of § 1225(a)(1) and subject to mandatory detention under the text of § 1225(b)(2)(A). *See* IJ Sept. 17, 2025 Order;

see also Vargas Lopez v. Trump, No. 25-526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (finding alien properly detained under § 1225(b)(2) because he was present in United States without having been admitted, and thus an applicant for admission under § 1225(a)); *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (same); *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (same); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding detention under § 1225(b)(2) of alien "present in the country but [who] has not yet been lawfully granted admission"); *but see Mugliza Castillo v. Lyons, et al.*, No. 25-16219 (MEF), ECF 11, (D.N.J. Oct. 10, 2025) (rejecting argument that petitioner charged as being present without admission or parole is detained under § 1225(b)(2), and instead finding detention under § 1226(a)); *Rivera Zumba v. Bondi,* No. 25-14626 (KSH), 2025 WL 2753496, at *7–9 (D.N.J. Sept. 26, 2025) (holding noncitizen residing in the United States for 20 years was not affirmatively "seeking admission" and therefore not subject to § 1225(b)(2)).

For the reasons above, Respondents respectfully submit that the Court should dismiss the Petition.

II. The Supreme Court's Decision in *Jennings* and Recent BIA Decisions Support Applying § 1225(b)(2)

Respondents' reading of the statutory text is supported by Supreme Court and BIA precedent. As the Supreme Court has recognized, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. The former, which is not relevant here, applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible

due to fraud, misrepresentation, or lack of valid documentation." *Id*. But the latter provision—§ 1225(b)(2), which is at issue here—is a "broader … catchall provision" applying to "all applicants for admission not covered by § 1225(b)(1)." *Id.* Here, Petitioner falls within the "catchall provision" in § 1225(b)(2).

The BIA is the highest-level administrative body for interpreting immigration law. It recently adopted this understanding of § 1225(b)(2) in a decision that binds all Immigration Judges and is persuasive authority here. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (interpreting § 1225(b)(2)(A) to require detention of aliens present in the United States without admission); *Matter of Q. Li,* 29 I & N. Dec. 66, 69 (BIA 2025) ("[A]n 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 should "defer to the BIA's interpretation" because it is not "arbitrary, capricious, or manifestly contrary to the statute." *See Ahmed v. Ashcroft*, 341 F.3d 214, 217 (3d Cir. 2003).

Indeed, the BIA's interpretation of § 1225(b)(2) flows directly from the plain text. As discussed above, § 1225(b) requires ICE to detain aliens "who ha[ve] not been admitted." 8 U.S.C. §§ 1225(a)(1), 1225(b)(2). Aliens "have not been admitted" if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). Here, Petitioner falls into that category because he is present in the United States without admission or parole. *See Jennings*,

583 U.S. at 287 (noting § 1225(b)(2) is a "broader," "catchall provision" that "applies to all applicants for admission not covered by § 1225(b)(1)").

III. Petitioner Cannot Re-Write § 1225's Plain Meaning

Petitioner contends that § 1226(a) provides the sole authority for his detention, and thus any detention under § 1225(b)(2) must violate the Due Process Clause. *See* Pet. ¶¶ 24-31. Petitioner is mistaken for several reasons.

First, § 1225 is much narrower than § 1226; it covers only "applicants for admission," which, as noted above, is a specifically defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not been admitted." 8 U.S.C. § 1225(a). Petitioner fits squarely within that definition. And where, as here, there is any arguable overlap between two statutory provisions, the "commonplace rule of statutory interpretation is that the specific governs the general, particularly when Congress has targeted specific solutions in the context of a general statute." *Aristy-Rosa v. Attorney Gen.*, 994 F.3d 112, 116 n.4 (3d Cir. 2021) (quotations omitted). The specific detention authority in § 1225 governs over the general authority in § 1226.

Second, § 1225(b)(2)(A) is not cabined to aliens arriving at U.S. ports of entry. Indeed, any such argument ignores half the definition of "applicant for admission." Congress defined an applicant for admission to mean two things: (1) an arriving alien; *or* (2) an alien present without being admitted. *See* 8 U.S.C. § 1225(a)(1). The former is someone "coming or attempting to come into the United States at a port of entry. 8 C.F.R. § 1.2 (defining "arriving alien"); *see also Thuraissigiam*, 591 U.S. at 139

(finding § 235(a) applied to aliens "taken into custody the instant [they] attempted to enter the country (as would have been the case had he arrived at a lawful port of entry)" and those who "succeeded in making it [a short distance] into U. S. territory before [being] caught").

But there is also a second category of alien covered under § 1225(b)(2)—an alien present without being admitted—which must mean something else. Petitioner falls in this "broader" or "catchall" category. *See Jennings*, 583 U.S. at 287. He is an alien present in the United States without being admitted within the definition of § 1225(a)(1), so the "catchall provision" in § 1225(b)(2), which "applies to all applicants for admission not covered by § 1225(b)(1)," governs his detention. *Id.*[3]

When the plain text of a statute is clear, that meaning controls, and courts "need not consider … extra-textual evidence" like legislative "history, purpose, and post-enactment practice." *N.L.R.B. v. SW General, Inc.*, 580 U.S. 288, 305 (2017). But

[3] Even though § 1225(b) requires the detention of both types of applicants for admission, immigration officials did not always interpret it that way. Specifically, DHS's predecessor agency, the U.S. Immigration and Naturalization Service ("INS"), read § 1225(b) to apply only to those who have arrived in the United States seeking admission. That is, while INS detained arriving aliens, INS chose whether to detain aliens who have not been admitted. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131, (Mar. 6, 1997) ("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."). Aliens present without admission were detained under § 1226(a). *See id.* As of July 8, 2025, however, ICE has taken the position that all applicants for admission, including those who are present without admission, are subject to mandatory detention under § 1225(b)(2). ICE takes this position because it accords with the plain language of § 1225(b)(2) and is consistent with recent BIA precedent. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *see also Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025).

to the extent legislative history is relevant, it supports Respondents. Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). It "intended to replace certain aspects of the [then] current 'entry doctrine,' 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 port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). Respondents' reading of § 1225(b)(2) makes sense. It would not put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Otherwise, aliens who presented at a port of entry would be subject to mandatory detention, but those who crossed illegally, like Petitioner, would be eligible for bond.

In the end, Petitioner's argument may be premised on the notion that § 1225(b) and § 1226(a) are mutually exclusive provisions. They are not. *See Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351, at *7-9 (D. Neb. Sept. 30, 2025) (rejecting argument that two provisions apply to distinct groups and concluding alien may properly be detained under § 1225(b)(2) even if also subject to § 1226(a)). Indeed, nothing in the text of the INA supports the reading that detention under § 1225(b)(2) and § 1226(a) are mutually exclusive. *See id.* And "the Supreme Court's decision in *Jennings* does not state that § 1225(b) and § 1226(a) apply to distinct groups of

aliens." *Id.* at *9 n.5. Here, then, "[e]ven if [Petitioner] might fall within the scope of § 1226(a), he certainly fits," for the reasons discussed above, "within the language of § 1225(b)(2) as well." *Id.* at *9.

For the reasons above, the Court should dismiss the Petition.[4]

IV. Petitioner's Detention Does Not Violate the Due Process Clause

Section 1225(b)(2) authorizes Petitioner's detention, and he has received all process required under the Fifth Amendment. An applicant for admission who remains in the country unlawfully is entitled to due process rights. *See Pena*, 2025 WL 2108913, at *2 (citing *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993). But those rights are coterminous "only to those rights and protections Congress set forth by statute"; the Due Process Clause "'requires nothing more.'" *Id.* (quoting *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

[4] If the Court holds that § 1226(a) applies to Petitioner, the appropriate remedy is a bond hearing conducted by an Immigration Judge, not release. *See Valeriano v. Bondi*, No. 25-16100 (MAS), ECF No. 4 (D.N.J. Oct. 1, 2025), at 2 ("As Petitioner acknowledges, even under his reading of the relevant immigration statutes, he is still subject to detention under 8 U.S.C. § 1226(a), albeit with an entitlement to seek bond from an immigration judge. Should Petitioner prevail in this matter, the proper relief would constitute an order directing the Government to provide Petitioner with the bond hearing to which he contends he is entitled under § 1226(a)."); *cf. Barbot v. Warden Hudson Cnty. Corr. Facility,* 966 F.3d 274, 278–79 (3d Cir. 2018); *but see, e.g.*, *Rivera Zumba*, 2025 WL 2753496, at *10–11 (ordering release and "temporarily enjoin[ing] respondents from re-arresting petitioner under . . . 8 U.S.C. § 1226(a) for 14 days after her release").

admitted." *Thuraissigiam*, 591 U.S. at 139 (citation omitted) (cleaned up). Those procedures authorize detention pending removal proceedings, which is a "constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

As discussed above, Petitioner is an "applicant for admission" under the plain text of § 1225(b)(2). "And because Petitioner's detention complies with the relevant statutes, namely Section 1225(b), 'the Due Process Clause provides nothing more.'" *Pipa-Aquise*, 2025 WL 2490657, at *2 (quotation omitted); *see also Thuraissigiam*, 591 U.S. at 138 (recognizing as to aliens who have never "been admitted into the country pursuant to law, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." (quotation omitted)).

CONCLUSION

For the foregoing reasons, the Court should dismiss the Petition.

Respectfully submitted,

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Dated: October 15, 2025