UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE MARIANO MIGUEL, Petitioner, v. KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, Respondents.	)	No. 25 C 11137 Judge Alonso

MEMORANDUM IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS

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Introduction

This case involves petitioner Jose Mariano Miguel, a foreign national who has never been lawfully admitted.[1] *See* Dkt. 1 ("Pet.") at ¶¶ 15, 21. He is currently detained by U.S. Immigration and Customs Enforcement ("ICE") while that agency initiates administrative removal proceedings against him. Miguel thus seeks habeas relief from his mandatory detention while those proceedings play out before an immigration judge. Pet. ¶¶ 4–8, 15–16; *see also* Exhibit 1. Hoping to undermine this process, he filed his habeas petition the same day he was placed into those proceedings. *See id.* But Miguel's habeas petition should be denied for numerous reasons.

First, to the extent he now seeks to use case law regarding bond determinations to force his relief, such an argument is unripe because Miguel has no idea how his removal proceedings will progress—or if he will be detained throughout those proceedings. Second, this court should dismiss the Secretary of Homeland Security from this lawsuit, leaving the ICE Field Office Director as the sole respondent, because the latter is the only relevant custodian of Miguel. Third, this court lacks jurisdiction to entertain Miguel's habeas challenge because 8 U.S.C. § 1252(g) strips district courts of jurisdiction to intervene in ongoing removal proceedings, including the method by which those proceedings are conducted and decisions related to bond or release from custody during those proceedings—which is how those proceedings are adjudicated. Fourth, the court should reject petitioner's due process claim because an "arriving alien's" due process rights are coextensive with whatever process Congress chooses to provide. Here, Miguel is receiving all such procedures while he remains in removal proceedings. Fifth, Miguel is properly detained by ICE under 8 U.S.C. § 1225(b)(2)'s plain text. Finally, the court should require that petitioner

[1] This memorandum uses the term "foreign national" as equivalent to the statutory term of "alien" within the Immigration and Nationality Act ("INA").

address his challenge to an immigration judge and from there, with the Board of Immigration Appeals ("BIA"), before addressing it to this court.

Background

Miguel is a Mexican national who arrived in the United States at an unknown location "in 2000 without inspection." Pet. ¶ 21. He "has remained in th[is] country since that time." *Id.* He was arrested by ICE officers and detained at ICE's Broadview detention facility. *See id.* at ¶ 22. ICE issued him a Notice to Appear ("NTA") on September 15, 2025, placing him into removal proceedings under 8 U.S.C. § 1229a. *See* Exhibit 1 at 1. His first hearing before an immigration judge is scheduled for September 29, 2025. *Id.* Instead of waiting for his first hearing, Miguel filed his habeas petition on September 15, 2025. *See* Dkt. 1. His petition brings two claims: (1) an assertion that his detention is unconstitutional under the Fifth Amendment's Due Process Clause, Pet. ¶¶ 52–59; and (2) a similar statutory challenge alleging that any detention of him during his removal proceedings is unlawful under the INA, *id.* at ¶¶ 60–101.[2]

Since the filing of his petition, this court ordered that Miguel not be removed from this country or detained outside of Illinois, Indiana, or Wisconsin. Dkt. 9.

Legal Standard

Section 2241 confers jurisdiction on this court to order the release of any person who is held in the custody of the United States in violation of the "laws . . . of the United States" or the United States Constitution. 28 U.S.C. § 2241(c). The burden rests on the person in custody to prove their detention is unlawful. *See, e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

[2] For whatever reason, the petition jumps from paragraph 64 to 100. Pet. at 15–16.

Argument

I. This Case Is Not Yet Ripe.

As a threshold matter, this case is not yet ripe because Miguel is essentially arguing that he may not ever be detained during his removal proceedings—no matter how long (or not) they may go and before they even truly begin. "Much like standing, ripeness gives effect to Article III's Case or Controversy requirement by 'preventing the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.'" *Sweeney v. Raoul*, 990 F.3d 555, 559–60 (7th Cir. 2021) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)). A claim is unripe—and therefore non-justiciable—when it would require the court to issue an advisory opinion. *Wis. Cent., Ltd. v. Shannon*, 539 F.3d 751, 759 (7th Cir. 2008); *see also Evers v. Astrue*, 536 F.3d 651, 662 (7th Cir. 2008) (a claim is unripe if it depends on "contingent future events that may not occur as anticipated, or indeed may not occur at all"). In this case, Miguel is attempting to use habeas to challenge his detention during his removal proceedings because he *assumes*—albeit with good reason—that he will not be afforded a bond hearing.

Another problem with Miguel's approach is that it runs directly against how the Supreme Court has already held that detention during removal proceedings is reasonable and does not violate a detainee's Fifth Amendment rights. *See Demore v. Kim*, 538 U.S. 510, 529 (2003). Miguel tries to ignore this background and argues that he must at least receive a bond hearing to comport with due process. *See, e.g.*, Pet. ¶¶ 8, 26. But this entire argument is wrong because it omits how the Seventh Circuit rejected the argument that due process is violated by not affording a foreign national a bond hearing. *See Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999). In *Parra*, the court of appeals held that the prospect of a foreign national ultimately avoiding removal was so remote that he had no liberty interest meriting protection:

> An alien in Parra's position can withdraw his defense of the removal proceeding and return to his native land, thus ending his detention immediately. He has the keys in his pocket. A criminal alien who insists on postponing the inevitable has no constitutional right to remain at large during the ensuing delay, and the United States has a powerful interest in maintaining the detention in order to ensure that removal actually occurs.

Parra, 172 F.3d at 958; see also *Velez-Lotero v. Achim*, 414 F.3d 776, 782 (7th Cir. 2005).

These cases mean there is no constitutional or statutory impediment to detaining Miguel during his removal proceedings, and his claims of such an entitlement can be plausible only where he may begin to endure unconstitutionally prolonged detention (such as where no prospect for deportation exists). *See, e.g.*, *Lopez Santos v. Clesceri*, No. 20 C 50349, 2021 WL 663180, at *3–7 (N.D. Ill. Feb. 19, 2021). The problem with analogizing Miguel's situation to such a case is that he has been detained only for weeks because his removal proceedings have just begun. *See* Exhibit 1. It is therefore impossible to argue that his detention pending those proceedings are now unconstitutionally prolonged or "indefinite." Any argument to the contrary is simply speculative and, therefore, unripe. Hence, the Seventh Circuit's background precedent should control in this situation—meaning Miguel's detention is entirely lawful.

II. The Court Should Dismiss the Secretary of Homeland Security.

As alluded to above, another jurisdictional flaw here is that the petition names an improper respondent. This is important because "standing is not dispensed in gross," and simply lumping defendants together is improper. *TransUnion v. Ramirez*, 594 U.S. 413, 431 (2021). Instead, a party "'must demonstrate standing for each claim that they press' against *each defendant*, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (emphasis added) (quoting *TransUnion*, 594 U.S. at 431). That rule dictates dismissal of the Secretary of Homeland Security since a writ of habeas corpus may be issued only "to the person having custody of the person detained." 28 U.S.C. § 2243. Thus, except in extraordinary circumstances, the only proper

respondent in a habeas case is the detainee's immediate custodian. *See, e.g.*, *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Because Miguel was detained at the Broadview ICE facility at the time of filing, only the ICE Field Office Director is the proper respondent. *See Kholyavskiy v. Achim*, 443 F.3d 946, 953 (7th Cir. 2006).

III. Petitioner Is Now in Removal Proceedings and This Court Lacks Jurisdiction to Intervene in Those Ongoing Proceedings.

To the extent Miguel is attempting to use his petition to undermine his nascent removal proceedings, doing so is equally erroneous. This is because even though under 8 U.S.C. § 1252(a)(1), a petitioner may challenge a removal order at a court of appeals, 8 U.S.C. § 1252(g) strips *all* federal courts of jurisdiction over challenges to executive branch decisions to commence removal proceedings. *See* 8 U.S.C. § 1252(g) ("'Except as provided in this section and notwithstanding any other provision of law . . . including section 2241 of Title 28, *or any other habeas corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings*, *adjudicate cases*, or execute removal orders against any alien under this chapter." (emphases added)); *see also E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). More specifically for the purposes of this case, § 1252(g) bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings (including the decision to detain a foreign national pending removal) and adjudicate cases—which includes bond determinations during the course of those removal cases. *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" or from reviewing "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Here, Miguel is challenging ICE's decision to detain him during his removal proceedings.

That detention arises from the decision to commence such proceedings against him, as well as the immigration judge's adjudication that he is not entitled to bond and is therefore barred by § 1252(g). *See, e.g.*, *Albarran v. Wong*, 157 F.Supp.3d 779, 784–85 (N.D. Ill. 2016), (court lacked jurisdiction to hear challenges to discretionary denials of requests for stay of removal, rescission of reinstatement order, and release on order of supervision); *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[.]"). This is because "Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion" regarding removal decisions. *Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999); *see also Fathers of St. Charles v. USCIS*, No. 24 C 13197, 2025 WL 2201013, at *5 (N.D. Ill. Aug. 1, 2025): *Koleda v. Jaddou*, No. 23 C 15064, 2024 WL 1677408, at *3 (N.D. Ill. Apr. 18, 2024).

As to this issue, *Sissoko v. Mukasey*, 509 F.3d 947 (9th Cir. 2007) ("*Sissoko III*") is directly on point. In that case, the plaintiff had overstayed his visa and then traveled out of the United States for his father's funeral. *See Sissoko v. Mukasey*, 440 F.3d 1145, 1149 (9th Cir. 2006) ("*Sissoko II*"). Upon his return to the United States after the funeral, an immigration inspection officer took him into custody as an "arriving alien" without proper documentation. *Id.* The officer decided to initiate expedited removal proceedings against the plaintiff but later issued a Notice to Appear and placed him in regular removal proceedings. *Sissoko III*, 509 F.3d at 949. He was thereafter subject to mandatory detention for nearly three months during the pendency of his removal proceedings, and then he and his wife brought a false arrest claim against the arresting immigration officer, alleging that the detention was in violation of the Fourth Amendment. *See Sissoko II*, 440 F.3d at 1149. The court of appeals held that the plaintiff's claim was barred by

§ 1252(g) because his detention *arose from* the decision to commence expedited removal proceedings. *Id.*; *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms," § 1252(g) "bars us from questioning [the government's] discretionary decisions to commence removal" of a foreign national, which include the "decision to take him into custody *and to detain him during his removal proceedings*." (emphasis added)); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067–68 (N.D. Ill. 2007) (claim challenging arrest and detention during removal proceedings was barred under § 1252(g) because "'when removal proceedings are initiated against an inadmissible alien by issuing a removal order, the alien is automatically arrested and detained.' The arrest/detention arose from the decision to commence proceedings, and Plaintiff's Fourth Amendment claim arose from the arrest/detention. Thus, . . . the Fourth Amendment claim arose from the decision to commence proceedings.").

The decision to commence removal proceedings against a foreign national includes the detention of that foreign national pending the removal determination. *See* 8 U.S.C. § 1226(a). Consequently, the decision to detain is a "specification of the decision to 'commence proceedings' which . . . § 1252(g) covers." *AADC*, 525 U.S. at 474, 485 n.9; *see also Herrera-Correra v. United States*, No. 08-cv-2941, 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) ("For the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court."). At that point, the "Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings," and review of claims arising from that choice is thus barred under § 1252(g). *Id.*

Similarly, under 8 U.S.C. § 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 proper only 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); *AADC*, 525 U.S. at 483. Section 1252(b)(9) is thus 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 also Lopez v. Barr*, No. 20-cv-1330, 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)). This jurisdictional bar works in tandem with § 1252(a)(5), which provides that a petition for review is the *exclusive* means for judicial review of immigration proceedings. "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 PFR [(petition-for-review)] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see also id.* at 1035 ("§§ 1252(a)(5) and 1252(b)(9) channel review of all claims . . . through the PFR process whenever they 'arise from' removal proceedings"); *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007) (similar).

These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removals, including decisions to detain for purposes of removal or for removal proceedings. While these jurisdictional bars may still allow foreign nationals to challenge the conditions of their confinement during those removal proceedings, the statutes do not permit the use of habeas to challenge "the decision to *detain them* in the first place or to seek removal." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion) (emphasis added). Yet that is *precisely* what Miguel is requesting here, as adjudicating whether bond should be given to a foreign national in removal proceedings is part and parcel of "adjudicat[ing a] case" before each immigration judge. 8 U.S.C. § 1252(g).

The petition here seeks to sidestep these jurisdictional bars by arguing about futility and pointing to the Board of Immigration Appeals ("BIA") precedent in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), in which it concluded ICE could treat undocumented immigrants already present in the United States as arriving aliens subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Pet. ¶¶ 37, 46. But the problem with that argument is how § 1252(b)(9) provides that "[j]udicial review of *all* questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order." (Emphasis added.) While § 1252(b)(9) may not bar claims challenging the conditions or scope of detention of foreign nationals in removal proceedings, it *does* bar claims "challenging the decision to detain them in the first place." *Jennings*, 583 U.S. at 294 (plurality opinion).[3] By making such a challenge, the habeas claims here require a court to answer "legal questions" that arise from "an action taken to remove an alien," so Miguel's claims "fall within the scope of § 1252(b)(9)." *Jennings*, 583 U.S. at 295 n.3 (plurality opinion).

Alternatively, § 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B). That provision is

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[3] *See also Jennings*, 583 U.S. at 317 (Thomas, J., concurring in part and concurring in the judgment) ("Section 1252(b)(9) is a 'general jurisdictional limitation' that applies to 'all claims arising from deportation proceedings' and the 'many decisions or actions that may be part of the deportation process.' Detaining an alien falls within this definition—indeed, this Court has described detention during removal proceedings as an 'aspect of the deportation process.' . . . The phrase 'any action taken to remove an alien from the United States' must at least cover congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien's removal." (alterations and citation omitted) (quoting *AADC*, 525 U.S. at 482–83; *Kim*, 538 U.S. at 523; and 8 U.S.C. § 1252(b)(9))).

relevant here because even if there were any remaining ambiguity as to whether a foreign national could challenge the decision to detain him during removal proceedings—on the dubious theory that the detention was somehow neither part of the decision to commence removal proceedings nor an action taken to adjudicate that case—Congress added this third jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA.

The statute that Miguel insists his detention should be analyzed under (8 U.S.C. § 1226(a)) authorizes detention pending removal proceedings but clearly confers discretion: "On 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." 8 U.S.C. § 1226(a) (emphasis added). Except when detention is mandatory based on the alien's criminal history, "pending such decision, the Attorney General . . . *may* continue to detain the arrested alien." *Id.* (emphasis added). This discretionary language within § 1226(a) means Miguel's detention is specified as a discretionary decision under the INA that is therefore insulated from judicial review by the plain text of 8 U.S.C. § 1252(a)(2)(B)(ii). *See, e.g.*, *Bouarfa v. Mayorkas*, 604 U.S. 6, 13–14 (2024) ("As 'this Court has repeatedly observed,' 'the word may *clearly* connotes discretion.'" (emphasis in original) (quoting *Biden v. Texas*, 597 U.S. 785, 802 (2022) (cleaned up)).

In sum, this court should dismiss this case for lack of jurisdiction, as Miguel must first present his arguments to the immigration judge, the Board of Immigration Appeals ("BIA"), and then to the appropriate court of appeals, not this court. *See id.*

IV. Miguel's Detention Does Not Violate Due Process.

Setting aside the jurisdictional problems, Miguel's due process claim, Pet. ¶¶ 52–59, is off-base because he admittedly never effected a lawful entry, *see Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that, despite nine years of physical presence on parole, a foreign national "was

still in theory of law at the boundary line and had gained no foothold in the United States"). Without a lawful entry or admission, he has no more due process rights than what processes Congress chooses to provide him. *See DHS v. Thuraissigiam*, 591 U.S. 103, 114, 139–40 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process[.]"); *cf. also Licea-Gomez v. Pilliod*, 193 F. Supp. 577, 580 (N.D. Ill. 1960) ("Nor does the fact that the excluded alien is paroled into the country . . . change his status or enlarge his rights. He is still subject to the statutes governing exclusion and has no greater claim to due process than if he was held at the border.").

To this end, the Supreme Court has also long applied the so-called "entry fiction" that all "aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139. Indeed, that is so "even [for] those paroled elsewhere in the country for years pending removal." *Id.* The Supreme Court has applied the entry fiction to foreign nationals with highly sympathetic claims to having "entered" and developed significant ties to this country. *See, e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a mentally disabled girl paroled into the care of U.S. citizen relatives for nine years should be "regarded as stopped at the boundary line" and "had gained no foothold in the United States"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214–215 (1953) (holding that a foreign national with 25 years' of lawful residence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"). With these cases in mind, it follows that Congress intended for an

unlawful entrant who violates immigration laws and evades detection must, once found, be "treated as if stopped at the border." *See Mezei*, 345 U.S. at 215.

Indeed, Supreme Court precedents indicate that foreign nationals who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. *See Thuraissigiam*, 591 U.S. at 138–40. While foreign nationals who have been *admitted* may claim due-process protections beyond what Congress has provided even when their legal status changes (such as a foreign national who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that foreign nationals who have "entered the country clandestinely" are entitled to such additional rights, *see Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903). Congress has instead codified this distinction by treating all foreign nationals who have not been admitted—including unlawful entrants who have evaded detection for years—as "applicants for admission." 8 U.S.C. § 1225(a)(1). In line with these cases, and as will be discussed in more detail below, Congress created a detention system where applicants for admission, including those who entered the country unlawfully, are detained for removal proceedings under § 1225 and foreign nationals who have been admitted to the country are detained under § 1226.

This background is critical here because, as discussed above, the Court has confirmed that statutes denying bond during removal proceedings do not violate due process when such proceedings have a definite end point. *See Kim*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process."); *see also Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (even after foreign national is ordered removed and detention may be indefinite, detaining him for up to 180 days is presumptively valid). In this regard, Miguel has not

submitted any evidence that he is being detained for any purpose beyond the resolution of his removal proceedings, or that he might be detained any longer than it might take to effect his removal to Mexico if he losses before the immigration judge. *Cf. Chaviano v. Bondi*, No. 25-cv-22451, 2025 WL 1744349, at *8 (S.D. Fla. June 23, 2025) (noting how hearings before an immigration court and opportunities for credible-fear interviews, together with a one-month detention, was not a sufficient basis for finding a due process violation, particularly where "detention, even for far longer periods, pending immigration proceedings" did not violate due process). And any argument that Miguel "entered the U.S.," Pet. ¶ 21, is incorrect under the Supreme Court's decision that foreign nationals intercepted shortly after crossing the border are still considered to be "on the threshold" and have *only* the procedural rights that Congress has provided them by statute. *Thuraissigiam*, 591 U.S. at 140.

In this case, Miguel admittedly entered the country without inspection and evaded detection for decades. *See* Pet. ¶ 21. At this point, he has been given notice of the charges against him, has access to counsel, may attend hearings with an immigration judge, can request bond at that time, and has the right to appeal the denial of any request for bond. *See* Exhibit 1; 8 U.S.C. § 1362. The fact that he does not want to appeal any potentially adverse bond order by an immigration judge through the procedures provided to him by Congress does not make those procedures constitutionally deficient. *See Thuraissigiam*, 591 U.S. at 138–40. Instead, Miguel's only plausible challenge to his detention is that he is detained under the wrong statute, which, even if true, would make his detention unlawful, but it would not make it unconstitutional. *See id.*; *cf. also Al-Shabee v. Gonzales*, 188 F. App'x 333, 339 (6th Cir. 2006) (Petitioner's "disagreement with the Immigration Judge's order, however, does not constitute a violation of the Due Process Clause"). Therefore, the court should reject Miguel's due process claim.

V. Miguel Is Properly Detained Under 8 U.S.C. § 1225(b)(2).

Turning to Miguel's statutory claim under the Immigration and Nationality Act ("INA"), Pet. ¶¶ 60–101, the court should also hold that Miguel is properly detained under § 1225(b)(2) because he unambiguously meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support respondents' interpretation. The statute here, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous:

> Subject to subparagraphs (B) and (C) [not relevant here], 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.

8 U.S.C. § 1225(b)(2)(A). Even with its definitions, 8 U.S.C. §§ 1101(a)(13)(A) and 1225(a)(1), it is only three sentences long. The first relevant term is "applicant for admission," which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any foreign national "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, under its plain terms, all unadmitted foreign nationals in the United States are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. *See id.* While this may seem like a counterintuitive way to define an "applicant for admission," "[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, under the plain text of the statute, Miguel is unambiguously an "applicant for admission" because he is a foreign national, he was not admitted, and he was present in the United States when he was apprehended by ICE. *See* Exhibit 2.

The next relevant portion of the statute is whether an examining immigration officer determined that Miguel was "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines

"admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Therefore, the inquiry is whether an immigration officer determined that Miguel was seeking a "lawful entry." *See id.* A foreign national's past unlawful physical entry has no bearing on this analysis. *See id.* This element of "lawful entry" is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021); *Gomez v. Lynch*, 831 F.3d 652, 658 (5th Cir. 2016) (distinguishing "admission," which is "an occurrence" where an individual "presents himself at an immigration checkpoint" and gains entry, with status, which "describes [an individual's] type of permission to be present in the United States"). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he did not enter lawfully. *See* 8 U.S.C. § 1182(a)(6). Indeed, one of the charges of removal against Miguel is based on his unlawful entry. Exhibit 1. So, unless Miguel obtains a lawful admission in the future, he will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6).

The INA provides two examples of foreign nationals who are not "seeking admission." The first is someone who withdraws his application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). This means even in removal proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the

United States who have not been lawfully admitted and who do not agree to immediately depart are seeking lawful entry and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). In removal proceedings, if an unlawfully admitted foreign national does not accept removal, he can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b. Accordingly, Miguel is still "seeking admission" under § 1225(b)(2) because he has not agreed to depart, he has not yet conceded his removability or allowed his removal proceedings to play out—he wants to be admitted via his removal proceedings. *See Thuraissigiam*, 591 U.S. at 108–09 (discussing how 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)" is deemed "an applicant for admission").

The court should likewise reject any argument that Miguel is not "seeking admission" as it is not a reasonable interpretation of § 1225(b)(2)'s text. *See* Pet. ¶¶ 42–44. This is because Miguel ignores how he has not agreed to immediately depart, so logically he must be seeking to remain in this country, which (for him) requires an "admission" (which is, as discussed above, a lawful entry). It also defies the legal presumption created by the definition of "applicant for admission," which characterizes *all* unlawfully present foreign nationals as applying for admission until they are either removed or successfully obtain a lawful entry, regardless of their own intent. *See* 8 U.S.C. § 1225(a)(1).

The final textual requirement here is that Miguel "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). In this case, Miguel is not in expedited removal at all. He has instead been placed in full removal proceedings where he will receive the benefits of the procedures (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. *See* Exhibit 1. Therefore, he also meets this element within § 1225(b)(2)(A)'s text. "Where the language is plain and admits of no more than one meaning, the duty of interpretation

does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies even where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g.*, *Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts "must adopt the plain meaning of a statute, however severe the consequences"). Therefore, no further exercise in statutory interpretation is necessary or permissible in this case and the court should conclude that Miguel's detention under § 1225(b)(2) is lawful.

To the extent the court finds § 1225(b)(2)(A)'s text potentially ambiguous or is interested in the policy arguments Miguel makes against the BIA's recent decision in *Yajure Hurtado*, those arguments are equally meritless. Pet. ¶ 50. First, it is important to note that not all decisions have been resolved against the government on the issue of properly interpreting 8 U.S.C. § 1225(b)(2). *See Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States." (quoting 8 U.S.C. § 1225(b)(2)(A))); *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1274–75 (N.D. Fla. 2023).

As the Supreme Court itself has previously explained, 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. "Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants of admission until certain proceedings have concluded." *Id.* at 297. Despite the clear direction from the Supreme Court, Miguel (along with the cases he cites) argue that there is some third category of applicants for admission who are not subject to mandatory detention. *See* Pet.

¶ 50. Section 1225(b)(1) covers which applicants for admission, including arriving aliens or foreign nationals who have not been admitted and have been present for less than two years, and directs that both of those classes of applicants for admission are subject to expedited removal. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2) "serves as a catchall provision that applies to all applicants not covered by 1225(b)(1) (with specific exceptions not relevant here)."[4] *Jennings*, 583 U.S. at 287. And *Jennings* recognized that 1225(b)(2) mandates detention. *Id.* at 297; *see also Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission . . . whether or not at a port of entry, and subsequently placed in removal proceedings is detained under . . . 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond."). Thus, § 1225(b) should apply to Miguel because he is present in the United States without being admitted and is thus still an applicant for admission. *See Yajure Hurtado*, 29 I. & N. Dec. at 221.

Any argument that "seeking admission" limits the scope of § 1225(b)(2)(A) is unpersuasive. Courts "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history and purpose.'" *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The BIA has long recognized that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language "is known by the company it keeps." *McDonnell v. United States*, 579 U.S. 550, 569 (2016). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of "applicant for admission" in § 1225(a)(1). Applicants for admission includes arriving aliens and foreign nationals present without admission.

[4] The two exceptions are crewmen and stowaways. *See* 8 U.S.C. §§ 1225(a)(2), 1281, and 1282(b). Neither is relevant to this case.

See 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. at 743. Congress made clear that all foreign nationals "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *See United States v. Woods*, 571 U.S. 31, 45 (2013).

Miguel's preferred interpretation reads "applicant for admission" out of 1225(b)(2)(A). "[O]ne of the most basic interpretive canons" instructs that a "statute should be construed so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009). "Applicant" is defined as "[s]omeone who requests something; a petitioner, such as a person who applies for letters of administration." *Black's Law Dictionary* (12th ed. 2024). Applying the definition of "applicant" to "applicant for admission," an applicant for admission is a foreign national "requesting" admission, defined by statute as "the lawful entry of the alien into the United States after inspection." 8 U.S.C. § 1101(a)(13)(A). With this definition in mind, "seeking admission" does not have a different meaning from applicant for admission ("requesting admission"); the terms within § 1225(b)(2)(A) are thus synonymous.

This reading also comports with one of the central purposes behind IIRIRA—which was to stop treating foreign nationals who had evaded immigration authorities better than foreign nationals who correctly applied for admission at ports of entry. *See, e.g., Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). The "IIRIRA amendments sought to ensure sensibly enough, that those who enter the country illegally, without proper inspection, are not treated more favorably under the INA than those who seek admission through proper channels, but are denied access." *Wilson v. Zeithern*, 265 F. Supp. 2d 628, 631 (E.D. Va. 2003). Miguel's reading of the statute

ignores the context and purpose of IIRIRA in the treatment of foreign nationals present without inspection. *See Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991) (noting that interpretive canons must yield "when the whole context dictates a different conclusion); *see also U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.").

The petition also points to the recent passage of the Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025) ("LRA"), arguing that the LRA indicates that § 1225(b)(2)(A) cannot mean what it says because its specification provisions of mandatory detention for foreign nationals charged with certain crimes would be redundant. *See* Pet. ¶ 47. But nothing in the LRA changes the analysis outlined above. Redundancies in statutory drafting are "common . . . sometimes in a congressional effort to be doubly sure." *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible alien "was paroled into this country through a shocking abuse of that power." 171 Cong. Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it out of a specific concern that the executive branch "ignore[d] its fundamental duty under the Constitution to defend its citizens." 171 Cong. Rec. at H269 (statement of Rep. Roy). Based on this concern, "Congress . . . simply intended to remove any doubt" as to the propriety of mandatory detention pending removal proceedings. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 226 (2008).

Indeed, one member of Congress even expressed frustration that "every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims," but nothing was being done by the Executive to give effect to the statutory language. 171 Cong. Rec. at H278 (statement of Rep. McClintock). The LRA thus reflects a "congressional effort to

be doubly sure" that such unlawful aliens are detained. *Barton*, 590 U.S. at 239. And the LRA does *not* change what Congress intended in IIRIRA. *See Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998) ("These later-enacted laws, however, are beside the point. They do not declare the meaning of earlier law. . . . or a change in the meaning of an earlier statute."); *see also S. Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998) ("'[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" (quoting *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 348–349 (1963))). In short, nothing in the LRA requires that a foreign national who falls under § 1225(b)(2) be treated as if they are detained under § 1226(a). *Yajure-Hurtado*, 29 I. & N. Dec. at 221–22.

Further, any argument that prior agency practice applying § 1226(a) to Miguel, *see* Pet. ¶ 25, is unavailing because under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the plain language of the statute and not prior practice controls, *cf. Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. *Loper Bright* recognized that courts often change precedents and "correct[their] own mistakes," 603 U.S. at 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), and overturned a decades-old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years, *id.* at 380. This means that longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Id.* at 432–33 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

Relatedly, Miguel points to 62 Fed. Reg. at 10323, where the agency provided no analysis of its reasoning. Pet. ¶ 50. In contrast, the BIA's recent precedent decision in *Yajure-Hurtado*

includes thorough reasoning. 29 I. & N. Dec. at 221–22. In that case, the BIA analyzed the statutory text and legislative history. *Id.* at 223–25. It highlighted congressional intent that foreign nationals present without inspection be considered "seeking admission." *Id.* at 224. The BIA concluded that rewarding foreign nationals who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an "incongruous result" unsupported by the plain language "or any reasonable interpretation of the INA." *Id.* at 228. The petition has nothing to say about this fundamental purpose of IIRIRA.

To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," courts must "independently interpret the statute and effectuate the will of Congress." *Loper Bright*, 603 U.S. at 395. But "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up). No amount of policy argumentation or agency prior practice will change the plain language of the statute.

VI. Alternatively, The Court Should Require Administrative Exhaustion.

Finally, when Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs" whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* Here, the court may require that Miguel at least attempt to request bond before an immigration judge, or appeal any denial of bond to the BIA, before considering the merits of his claims here. *See, e.g.*, *Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 876–77 (E.D. Wis. 2007).

As alluded to above, Congress has provided a robust administrative hearing and appeal process for foreign nationals in removal proceedings that include evidentiary hearings, motion

practice, and appeals. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). Requiring Miguel to exhaust that process before seeking review in federal court may reduce the number of similar cases filed in this court, even though Miguel may be unlikely to obtain the relief he seeks through the administrative process based on *Yajure Hurtado*, which is currently binding on the agency and the immigration courts, and which rejects Miguel's statutory arguments in this case, *see* 29 I. & N. Dec. at 228 (concluding that foreign nationals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer" because "[r]emaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission'").

However, the BIA's decision from earlier this month may not be the last word in that matter. This is because there is still the possibility that *Yajure Hurtado* might be subject to en banc review. *See* 8 C.F.R. § 1003.1(a)(5). In addition, the Attorney General may exercise her "referral and review power" in that matter, which allows her to review and overrule decisions made by the BIA. *See* 8 U.S.C. § 1103(g)(2) ("The Attorney General shall . . . review such administrative determinations in immigration proceedings . . . as the Attorney General determines to be necessary."); 8 C.F.R. § 1003.1(h)(1) ("The [BIA] shall refer to the Attorney General for review of its decision all cases that . . . (i) The Attorney General directs the [BIA] to refer to h[er].").
Miguel's petition completely ignores these potential pathways for further review.

Conclusion

For the foregoing reasons, the court should deny the petition.

Respectfully submitted,

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