IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

HENRI WALKER PALACIOS ZEPEDA, *Petitioner,* v. JEFFREY CRAWFORD, *et al.* *Respondents.*	Case No. 1:25-cv-1561 (PTG/IDD)

FEDERAL RESPONDENTS' OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner Henri Walker Palacios Zepeda, a native and citizen of El Salvador, challenges the legality and constitutionality of his *less than two (2) month* detention as well as United States ("U.S.") Immigration and Customs Enforcement's ("ICE's") established authority to civilly detain him pending his removal from the country. As "[a]n alien present in the [U.S.] who has not been admitted[,]" Petitioner is defined *by law* as an applicant for admission. 8 U.S.C. § 1225(a)(1). And because Petitioner is an applicant for admission who "seek[s] admission [and] is not clearly and beyond a doubt entitled to be admitted" to the U.S., "[he] *shall* be detained[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Despite the plain language of these statutes, Petitioner contends that he is subject to discretionary detention under 8 U.S.C. § 1226(a), and such detention without bond violates the Immigration and Nationality Act ("INA"), its implementing bond regulations, the Fifth Amendment's Due Process Clause, and the Eighth Amendment.

As to the merits of Petitioner's claims, the INA clearly defines an "alien present in the U.S. who has not been admitted" as an "applicant for admission." And because Petitioner is present in the U.S., has not been admitted, is seeking admission, and not clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention pursuant to § 1225(b)(2)(A). As for Petitioner's constitutional claims, the due process afforded to applicants for admission is that which is provided by the INA. And since no additional process is due to the Petitioner, the Department of Homeland Security's ("DHS's") detention of Petitioner does not violate Petitioner's due process rights or his Eighth Amendment rights. Therefore, Federal Respondents respectfully request this Court deny the instant Petition.

But even if this Court were to conclude that the BIA's statutory construction was in error, and that Petitioner is thus detained pursuant to § 1226(a) (as opposed to § 1225(b)(2)), Petitioner is not entitled to outright release by this Court. To the contrary, the sole relief that this Court can provide

is an order compelling the Immigration Court to hold a bond hearing at which Petitioner may advocate for an exercise of discretion in favor of his release on bond.

Federal Respondents recognize that other jurists of this Court have recently rejected Federal Respondents' arguments on the issues presented below. *See, e.g., Luna Quispe v. Crawford*, 1:25-cv-1471, Dkt. 17, Memorandum Opinion ("Mem. Op."), at 7-11 (E.D. Va. Sep. 29, 2025) (Trenga, J.); *Hasan v. Crawford*, --- F. Supp. 3d ---, 2025 WL 2682255, at *5 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Ortiz Ventura v. Noem*, 1:25-cv-1429, Dkt. 16, Order, at 3-5 (E.D. Va. Oct. 2, 2025) (Nachmanoff, J.); *Quispe-Ardiles v. Noem*, 1:25-cv-1382, Dkt. 17, Memorandum Opinion and Order ("Mem. Op."), at 10-14 (E.D. Va. Sep. 30, 2025) (Nachmanoff, J.). Federal Respondents respectfully make these arguments to reserve for appeal.

BACKGROUND

A. Statutory and Regulatory Background

Before proceeding to the factual and legal premise of the instant habeas petition, it is important to explain the statutory and regulatory provisions governing Petitioner's civil immigration detention. Such provisions have been the subject of extensive judicial discussion. *See generally DHS v. Thuraissigiam*, 591 U.S. 103 (2020); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Key to this statutory scheme is the concept of "admission." An "admission" is "the *lawful* entry of [an] alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A) (emphasis added). The Supreme Court has explained that the Constitution gives "'the political department of the government' plenary authority to decide which aliens to admit." *Thuraissigiam*, 591 U.S. at 132 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). The INA authorizes the removal of certain aliens who have not been admitted to the U.S. through different procedures, and as the Supreme Court has unequivocally held, *requires* federal immigration officials to detain these aliens pending the

conclusion of any necessary proceedings. *See* 8 U.S.C. § 1225(b) (emphasis added).

1. Mandatory Detention – 8 U.S.C. § 1225

Any "alien present in the [U.S.] who has not been admitted or who arrives in the [U.S.]" whether or not at a port of entry is treated as "an applicant for admission." 8 U.S.C. § 1225(a)(1); *see* 8 C.F.R. § 235.1(f)(2). Applicants for admission may be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or through non-expedited removal proceedings under § 1225(b)(2).[1] *Hasan v. Crawford*, --- F. Supp. 3d ---, 2025 WL 2682255, at *5 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *see Rodriguez v. Perry*, 747 F. Supp. 3d 911, 915 (E.D. Va. 2024) (Brinkema, J.); 8 U.S.C. §§ 1225(b)(1) (arriving aliens), (b)(2) (other applicants for admission). Section 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. § 1225(b)(2)(A), (B)) (emphasis added). And applicants 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) (emphasis added).

Although detention pursuant to section 1225(b) is mandatory, it is *not* indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue . . . until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. Further, while section 1225(b) does not provide for bond hearings, *see id.* at 297–303; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218-19 (BIA 2025) (§ 1225(b)(2)), it does contain "a specific provision authorizing release from . . . detention": The Secretary of Homeland Security (hereinafter, the "Secretary") "may 'for urgent humanitarian reasons or significant public benefit'

[1] There are other options not relevant here for removal related to criminal aliens, *see* § 1226(c), and national security and other similar grounds under, *see* § 1225(c).

temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *Jennings*, 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). "[P]arole of such alien[s] *shall not* be regarded as an admission of the alien[s]." 8 U.S.C. § 1182; *see id.* § 1101(a)(13)(B).

2. Discretionary Detention – 8 U.S.C. § 1226(a)

As another jurist in this District has noted, "§ 1226 *generally* governs the process of arresting and detaining aliens present in the [U.S.]." *Rodriguez*, 747 F. Supp. 3d at 916 (citing *Jennings*, 583 U.S. at 288) (emphasis added). In general, § 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the [U.S.]." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. *See id.* 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 a custody redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). Pursuant to 8 U.S.C. § 1226(b), ICE "at any time may revoke a bond or parole authorized under [§ 1226(a)], rearrest the alien under the original warrant, and detain the alien." *Id.*; *see* 8 C.F.R. § 236.1(c)(9), (d)(1).

B. Petitioner's Immigration History

Petitioner is a 46-year-old native and citizen of El Salvador. Federal Respondents Exhibit ("FREX") 1 (Declaration of Justin Richardson) ¶ 5; Pet. ¶ 38. Petitioner entered the United States without being admitted or paroled by an immigration officer. FREX 1 ¶ 6; Pet. ¶ 38. On August 21, 2025, Petitioner was detained by ICE Enforcement and Removal Operations ("ERO") officers. FREX 1 ¶ 7. ERO determined that Petitioner is an applicant for admission pursuant to 8 U.S.C. § 1225(b)(2)(A). FREX 1 ¶ 7. On August 22, 2025, Petitioner was served with a Notice to Appear, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as 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. FREX 1 ¶ 7; FREX 2 (Notice to Appear).

On September 2, 2025, Petitioner filed a Custody Redetermination Request with the Immigration Judge ("IJ"). FREX 1 ¶ 8. The IJ determined that it lacked jurisdiction to consider the request and denied it. FREX 1 ¶ 8. Petitioner had a master calendar hearing in immigration court on October 2, 2025, and his next hearing is scheduled for October 9, 2025. FREX 1 ¶ 9.

C. The Petition

Seeking immediate release, Petitioner filed a Petition for a Writ of Habeas Corpus on September 18, 2025. *See* Dkt. 1. Petitioner brings four claims of relief. *See* Pet. ¶¶ 55-91. Petitioner claims DHS violated the INA by subjecting Petitioner to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶¶ 87-90 (Count III). Petitioner also claims that his detention without a bond hearing violates his due process and Eighth Amendment rights, and that the conditions of his confinement violate the Eighth Amendment as well. *Id.* ¶¶ 57-76 (Counts I, II). Petitioner also seeks attorneys' fees under the Equal Access to Justice Act (Count IV).[2] On September 25, 2025, this Court ordered that Petitioner not be removed or transferred from this District. Dkt. 5. The next day, the Court ordered Federal Respondents to show cause as to why the Petition should not be granted on or before 5:00 p.m. on Friday, October 3, 2025. Dkt. 7. Federal Respondents now respond to the Court's show cause order.

ARGUMENT

I. Petitioner's Detention is Lawful

A. Petitioner is an applicant for admission seeking admission, and is not clearly and beyond a doubt entitled to be admitted; therefore, he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

[2] Petitioner's claim for fees pursuant to the Equal Access to Justice Act is foreclosed. *See Obando-Segura v. Garland*, 999 F.3d 190, 192-93 (4th Cir. 2021).

Before this Court can analyze Petitioner's claims, it must determine what statute authorizes Petitioner's detention. *See Abreu v. Crawford*, 2025 WL 51475, at *3-4 (E.D. Va. Jan. 8, 2025) (Nachmanoff, J.). As a *legal* matter, Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A) as he is an applicant for admission "seeking admission [and] is not clearly and beyond a doubt entitled to be admitted." *Id.*; *see Jennings*, 583 U.S. at 287; *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025); *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (emphasis added). *But see Hasan*, 2025 WL 2682255, at *9; *Luna Quispe v. Crawford*, 1:25-cv-1471, Dkt. 17, Order, at 7-11 (E.D. Va. Sep. 29, 2025) (Trenga, J.).

There is a statutory distinction between aliens who are detained after a lawful admission into the U.S. and those who are present without a lawful admission. An alien who "arrives in the [U.S.]," or is "present" in this county but "has not been admitted," is considered an "applicant for admission" under 8 U.S.C. § 1225(a)(1). *See* 8 C.F.R. § 235.1(f)(2). "Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2)." *Olaya Rodriguez v. Bondi*, 2025 WL 2490670, at *2 (E.D. Va. June 24, 2025) (Trenga, J.); *see Jennings*, 583 U.S. at 287 (section 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)") (emphasis added). "Both provisions require that any applicant for admission remain detained until their asylum application is fully adjudicated or until removal proceedings conclude." *Olaya Rodriguez*, 2025 WL 2490670, at *2 (citing 8 U.S.C. § 1225(b)(1), (2)); *see Pipa-Aquise v. Bondi*, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (Nachmanoff, J.). However, to be detained under § 1225(b)(2)(A), an alien must meet three requirements: (1) be an applicant for admission, (2) be "seeking admission[,]" and (3) "is not clearly and beyond doubt entitled to be admitted into the [U.S.]" *Luna Quispe*, Order, at 8 (quoting 8 U.S.C. § 1225(b)(2)(A) (internal quotations omitted); *see also Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588, at *4-7 (S.D.N.Y. 2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238, at *3-4

(D. Mass. 2025). *But see Romero v. Bondi*, 2025 WL 2490659, at *3 (E.D. Va. July 2, 2025) (Alston, J.) (requiring legal status to be detained under § 1226(a)).

i. Plaintiff is statutorily defined as an applicant for admission.

The factual circumstances of this case make clear Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because he is an applicant for admission and DHS did not elect to utilize expedited removal.[3] *See* Pet. ¶ 38 ("Petitioner . . . entered the United States without inspection"). In analyzing whether an alien is an applicant for admission under the INA, "[w]e begin, as always, with the text." *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017); *see Chavez*, 2025 WL 2730228, at *4 (same). An applicant for admission is defined as "an alien *present* in the [U.S.] who has *not been admitted*." 8 U.S.C. § 1225(a)(1). The only requirements to be an applicant for admission are to be (1) present in the U.S., and (2) have not been admitted. *See id.* And the plain language of the INA defines "admission" as "the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13); *Aremu v. DHS*, 450 F.3d 578, 585 (4th Cir. 2006).

There is no dispute that Petitioner has not been admitted[4] to the U.S. *See* Pet. ¶ 38. In other words, Petitioner *entered* the U.S. *without being inspected or paroled* by an immigration official. *See* 8 U.S.C. § 1101(a)(13)(A) (defining "admission" as "the lawful entry of [an] alien into the [U.S.] after inspection and authorization by an immigration officer.") (emphasis added). Thus, because Petitioner is "an alien *present* in the [U.S.] who has *not been admitted*[,]" he is, *by law*, an "applicant for admission." 8 U.S.C. §

[3] DHS has the discretion to choose between processing for expedited removal under § 1225(b)(1) or standard removal proceedings under 8 U.S.C. § 1229a. *See Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520 (BIA 2011).

[4] "[A]liens who are inadmissible . . . are . . . *ineligible to be admitted* to the [U.S.]." 8 U.S.C. § 1182(a) (emphasis added). As the Second Circuit notes, "[i]f the alien is seeking admission, he is charged in removal proceedings as [] inadmissible[.]" *Cruz-Miguel v. Holder*, 650 F.3d 189, 198 n.13 (2d Cir. 2011); *see also id.* ("[i]f the alien has been admitted, however, he is charged in removal proceedings as a deportable alien under 8 U.S.C. § 1227").

1225(a)(1) (emphasis added); *see Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025).[5]

Petitioner asserts that aliens who entered the U.S. without admission or parole are not subject to § 1225(b)(2)(A) and instead are afforded discretionary detention under § 1226(a), which allows for bond. *See* Pet. ¶¶ 28-36, 58-65. As a matter of statutory construction, however, § 1225(b)(2)(A) governs because it contains specific mandatory language, *see id.* ("the alien *shall* be detained") (emphasis added), as opposed to § 1226(a)'s general discretionary and permissive language, *see id.* ("an alien *may* be arrested and detained") (emphasis added). *See Morales*, 504 U.S. at 384 ("it is a commonplace of statutory construction that the specific governs the general"). And as the Fourth Circuit makes clear, "a general provision should not be applied when doing so would undermine limitations created by a more specific provision." *In re Wright*, 826 F.3d 774, 779 (4th Cir. 2016) (quoting *Coady v. Vaughn*, 251 F.3d 480, 484 (4th Cir. 2001)) (internal quotations omitted). Holding that § 1226(a) governs here "would render mandatory detention under § 1225(b) meaningless." *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023).

Jennings is instructive. 583 U.S. at 288-89. There, the Supreme Court analyzed three different detention provisions in the INA: 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c). *See id.* at 287-89. In analyzing detention under §§ 1226(a), (c), the *Jennings* Court distinguished applicants for admission who are subject to mandatory detention pursuant to § 1225 with those who are "within one or more . . . classes of *deportable* aliens" and thus fall under § 1226 detention. *Id.* at 288 (quoting 8 U.S.C. § 1227(a)(1), (2)) (internal quotations omitted) (emphasis added). Here, Petitioner is not subject to the deportability grounds at 8 U.S.C. § 1227; he is charged with being *inadmissible* under 8 U.S.C. § 1182.

[5] Petitioner's release is not statutorily foreclosed. Rather, the Secretary "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *Jennings* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2).

See FREX 1 ¶ 7. And since he is not charged with any deportability grounds found in § 1227, he cannot be detained under 8 U.S.C. § 1226. *See Cruz-Miguel*, 650 F.3d at 198 n.13 ("[i]f the alien has been admitted, however, he is charged in removal proceedings as a deportable alien under 8 U.S.C. § 1227").

But Petitioner is detained pursuant to § 1225(b)(2)(A) because he is "an *applicant for admission* . . . seeking admission [and] is not clearly and beyond a doubt entitled to be admitted." *Id.* (emphasis added); *see* FREX 1 ¶ 7. Indeed, Congress' intent in enacting the Illegal Immigration Reform and Immigration Responsibility Act, *see* Pub. L. No. 104-208, 110 Stat. 3009 (1996), was to make sure that those who entered the U.S. without inspection did not have more procedural or substantive due process rights than those who present themselves to authorities for inspection. *See Matter of Yajure Hurtado*, 29 I. & N. at 225 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)); *see also Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). Under Petitioner's proposed reading of § 1225(b)(2), aliens who *entered* the U.S. *illegally* and *remain* in the U.S. *illegally* are afforded more due process protections (*i.e.*, a bond hearing) than those who follow U.S. law and seek admission at the border or a port-of-entry. *See* 8 U.S.C. §§ 1225(a)(3) ("All aliens [] who are applicants for admission or otherwise seeking admission . . . *shall* be inspected by immigration officers"), 1325 (criminalizing improper entry by an alien). As the Supreme Court reiterated in *Thuraissigiam*, "foreigners who have never been naturalized . . . *nor even 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.*" 591 U.S. at 138 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted) (emphasis added); *see id.* at 139 (noting the executive has plenary power to decide whether an alien should be *admitted*) (emphasis added). This Court should follow suit.

Therefore, because Petitioner is "an alien present in the [U.S.] who has not been admitted[,]" he "shall be deemed . . . an applicant for admission." 8 U.S.C. § 1225(b)(1).

ii. Petitioner is actively seeking admission to the U.S. and is not clearly and beyond a doubt entitled to be admitted.

In addition to being an applicant for admission, another jurist of this Court recently found that to be detained pursuant to § 1225(b)(2)(A), an applicant for admission must be "actively seeking admission into the [U.S.]." *Luna Quispe*, Order at 9. And because Petitioner is actively seeking admission and is not clearly and beyond a doubt entitled to be admitted, he *shall* be detained pursuant to § 1225(b)(2)(A).

By simply being in the U.S. without being admitted, Petitioner is in fact actively seeking admission into the U.S. Indeed, Fourth Circuit case law supports this reading. *See Lopez-Sorto v. Garland*, 103 F.4th 242, 252 (4th Cir. 2024); *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021). In *Lopez-Sorto*, the Fourth Circuit denied a petition for review of a BIA order affirming an IJ's decision to deny the alien's application for deferral of removal. 103 F.4th at 247. One of the issues in *Lopez-Sorto* was whether the petition was moot when the petitioner was removed from the U.S. *See id.* at 248. The petitioner contended that his removal was not moot because an ICE directive required him to be returned to the U.S because he *resided* in the U.S. *Id.* at 249 (emphasis added). The Fourth Circuit found that he could *not* reside in the U.S. because he was not legally allowed to be *physically present* in the U.S. *Id.* at 250-51 (emphasis added). The Court analyzed the definition of "admission," and found that an alien cannot be physically present in the U.S. without being admitted to the U.S. *Id.* at 252; *see id.* ("in the absence of an entry, the Supreme Court has concluded that an alien can neither dwell nor reside within the [U.S.]") (citing *Kaplan*, 267 U.S. at 229-30). And since Petitioner seeks to establish a life in the U.S., *see* Pet. ¶¶ 38-39, 53-54 (conceding Petitioner has lived in the U.S. for more than 20 years, has established "deep roots in this community," and works to provide a life for his child), he must be actively seeking admission before he can, as a legal matter, be physically present and reside in the U.S. *See Lopez-Sorto*, 103 F.4th at 252; *see also Matter of Lemus*, 25 I. & N. Dec. 734, 743 (recognizing an alien not admitted can be seeking admission by being present in the U.S.).

Jimenez-Rodriguez provides further guidance. 996 F.3d 190. The alien in *Jimenez-Rodriguez* entered the U.S. without inspection and "lived in [the] U.S. ever since." *Id.* at 191. He eventually applied for a U-visa seeking lawful status. *Id.* at 193. To be eligible to for a U-visa, an alien must not be inadmissible, but he may apply for a waiver of inadmissibility if he is "seeking admission" to the U.S. *See* 8 U.S.C. § 1182(d)(3)(A)(ii); 8 C.F.R. § 214.1(a)(3)(I). In determining whether an alien was "seeking admission," the Fourth Circuit looked to § 1225 for guidance. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2; *id.* at 199. Reading the INA and § 1225(a)(1) together, the Fourth Circuit concluded that "[b]ecause Jimenez-Rodriguez was never lawfully admitted, he qualifies as someone "seeking admission[.]" *Id.* at 194 n.2.

Although Federal Respondents recognize that Petitioner here is not seeking U-visas or any waivers of inadmissibility, Petitioner, like the alien in *Jimenez-Rodriguez*, entered the U.S. without inspection and asserts that he has lived here continuously. *See* Pet. ¶ 38. The Fourth Circuit determined that the petitioner in *Jimenez-Rodriguez* was "seeking admission" because he was never lawfully admitted. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2. It follows that "[b]ecause [Petitioner] [was] never lawfully admitted, he qualifies as someone seeking admission[.]" *Jimenez-Rodriguez*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) (internal quotations omitted) (emphasis added). And because Petitioner is seeking admission to the U.S., he is properly detained under § 1225(b)(2)(A). *Pena*, 2025 WL 2108913, at *2.

When Petitioner was detained, Petitioner was "seeking admission [and] [] not clearly and beyond a doubt entitled to be admitted to the U.S." 8 U.S.C. § 1225(b)(2)(A); *see* FREX 1 ¶¶ 6-7. By *law*, he therefore is subject to mandatory detention pursuant to § 1225(b)(2)(A). *See* 8 U.S.C. § 1225(b)(2)(A) ("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") (emphasis added); *Olaya Rodriguez*, 2025 WL 2490670, at *3; *Pipa-Aquise*, 2025 WL 2490657, at *1 n.2; *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("it is a commonplace of statutory construction that the specific governs the general"); *Leiba v. Holder*,

699 F.3d 346, 351 (4th Cir. 2012) (noting that courts cannot ignore the plain meaning of Congress's definition of "admitted"). ICE arrested and detained Petitioner pursuant to its statutory obligations *mandating* his detention and cannot be released on bond. *See* 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2.

Federal Respondents' reading of § 1225(b)(2)(A) does not render § 1226(c)(1) superfluous. *See Chavez*, 2025 WL 2730228, at *5; *see also* Pet. ¶ 61; *but see Hasan*, 2025 WL 2682255, at *8; *Quispe-Ardiles*, Mem. Op., at 12-13; *Luna Quispe*, Mem. Op., at 10-11. Section 1226(c)(1) pertains to the mandatory detention of *criminal* aliens, and is *not* limited to any subset. *See id.* ("[t]he Attorney General shall take into custody *any* alien") (emphasis added). Indeed, lawful permanent residents who are inadmissible at the time of their initial entry to the U.S. or time of adjustment may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A), 1182(a)(6)(A)(i); *Azumah v. USCIS*, 107 F.4th 272, 273 (4th Cir. 2024) (lawful permanent resident challenging his inadmissibility under § 1182(a)(2)). This provision also reaches those who may have been admitted erroneously but are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i); *Lopez-Sorto*, 103 F.4th at 251 ("There is a possibility that inadmissible aliens may be admitted when they are mistakenly authorized to enter the country by an immigration officer.") (citing *In Re Quilantan*, 25 I. & N. Dec. 285, 291 (BIA 2010); *Kanu v. Garland*, 672 F. Supp. 3d 108, 117 (E.D. Va. 2023) (Nachmanoff, J.) (finding a lawful permanent resident's initial admission unlawful because he was inadmissible pursuant to § 1182(a)(6)(C)(i)). The possibility of "admitted but inadmissible" aliens is reflected in the adjustment of status process under 8 U.S.C. § 1255(a), which requires an alien seeking to adjust from a non-immigrant status to lawful permanent residence to have been both admitted and "admissible." Similarly, the INA provides for a waiver of inadmissibility for adjustment applications, which applications are only available to admitted aliens and a small set of applicants for admission not relevant here. *See id.;* 8 U.S.C. § 1182(h); 8 C.F.R. § 245.1(f).

Therefore, because *by law* Petitioner is defined as an applicant for admission who is seeking admission and not clearly and beyond a doubt entitled to be admitted, he *shall* be detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and is properly detained under the INA.

B. The due process awarded to a Petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2) is such process only afforded by the INA

To assess the merits of Petitioner's constitutional claims, it is necessary to determine first what due process rights Petitioner has. The INA *mandates* Petitioner's detention:

> [I]n 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) (emphasis added). And the Supreme Court has held, nowhere in the statutory rubric did Congress mention a bond hearing or state a maximum period of time within which an alien could be held in such mandatory detention without providing a bond hearing. *See Jennings*, 583 U.S. at 297. As Petitioner concedes, *see* Pet. ¶ 38, he has not been admitted to the U.S., and for any alien has "not been admitted into the country pursuant to law," the INA provides the appropriate due process. *See Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted) (emphasis added). Other jurists of this Court have come to similar conclusions that the due process rights for other applicants for admission are only what the INA prescribes. *See Pipa-Aquise*, 2025 WL 2490657 (Nachmanoff, J.); *Olaya Rodriguez*, 2025 WL 2490670 (Trenga, J.); *Aslanturk v. Hott*, 459 F. Supp. 3d 681 (E.D. Va. 2020) (Alston, J.).

While *Thuraissigiam* recently addressed the due process afforded to arriving aliens detained pursuant 8 U.S.C. § 1225(b)(1), such analysis of § 1225(b)(2) has yet to be addressed by the Supreme Court. However, *Nishimura Ekiu* provides guidance. 142 U.S. 651; *see also Thuraissigiam*, 591 U.S. at 130-135 (discussing *Nishimura Ekiu*). There, a Japanese national petitioned for habeas corpus after being "detained at San Francisco upon the ground that she should not be permitted to land in the

[U.S]." *Nishimura Ekiu*, 142 U.S. at 651. Although the petitioner, who had arrived by ship, was not entitled to land, an immigration official had placed her in a mission house in San Francisco with the intent of "keeping her there" until judicial proceedings concluded. *Id.* at 661. After determining that the petitioner had been "restrained of h[er] liberty" and was "doubtless entitled to a writ of *habeas corpus* to ascertain whether the restraint [wa]s lawful," the Supreme Court explained an unadmitted alien's due process rights are closely circumscribed:

> It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the [U.S.], nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government.

Id. at 660. "As to such persons," the court concluded, "the decisions of executive or administrative officers, acting within powers expressly conferred by [C]ongress, *are due process of law*." *Id.* (emphasis added).

Looking to the statute at issue, the Supreme Court held that the immigration officer's decision to prevent the petitioner from landing was made in accordance with that statute; that his determination "was final and conclusive against the petitioner's right to land in the [U.S.]; and that the petitioner therefore was "not unlawfully restrained of her liberty." *Id.* at 663-64. In other words, the government's adherence to the statute authorizing her detention after a determination that she could not land was the only due process right the petitioner could claim. As the Supreme Court stated in *Thuraissigiam*, "a concomitant" of the government's "plenary authority to decide which aliens to admit" is "the power to set the procedures to be followed *in determining whether an alien should be admitted*." 592 U.S. at 139 (emphasis added).

Jennings provides further clarity. 583 U.S. 281 (2018). In *Jennings*, aliens alleged, notwithstanding other statutory detention provisions, that § 1225(b) provided for periodic bond hearings where the government must prove by clear and convincing evidence that such detention remains justified. 583

U.S. at 291. However, the Court found that "nothing in the statutory text imposes any limit on the length of detention. *Id.* And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Id.* at 297. The Court also took note that that the clear exception to detention under § 1225(b) "implies that there are no *other* circumstances under which aliens detained under 1225(b) may be released." *Id.* at 300 (emphasis in the original). The Court's emphasis here thus implies that the Petitioner may not be released on bond. *See id.* Indeed, "the text of [] [§ 1225(b)], when read most naturally, does not give detained aliens the right to periodic bond hearings during the course of their detention." *Id.* at 286.

Zadvydas v. Davis, 533 U.S. 678 (2001) is inapposite to Petitioner's case. *Zadvydas* concerned aliens *admitted* into the country who had obtained *lawful* status, rather than an applicant for admission such as Petitioner. This distinction "ma[kes] all the difference" when it comes to due process. *Zadvydas*, 533 U.S. at 693. Indeed, *Zadvydas* made just this point: Acknowledging that "[t]he distinction between an alien who has effected an entry into the [U.S.] and one who has never entered runs throughout immigration law," the Supreme Court conceded that aliens "who have not yet gained initial admission to this country *would present a very different question.*" 533 U.S. at 682, 693 (emphasis added); *see id.* at 693 ("[C]ertain constitutional protections available to persons inside the [U.S.] are unavailable to aliens outside of our geographic borders."). So even on its own terms, *Zadvydas*'s analysis of the process due to an alien admitted into the country says nothing about the process to which an applicant for admission is entitled. *See also Jennings*, 583 U.S. at 298 ("nothing in the text of § 1225(b)(1) or § 1225(b)(2) even hints that those provisions restrict detention after six months"). Indeed, "*Zadvydas*'s reasoning is particularly inapt here because there is a specific provision authorizing release from § 1225(b) detention whereas no similar release provision applies to § 1231(a)(6)." *Id.* at 300.

* * *

To deny the Petition in this case, this Court need only follow the Supreme Court's pellucid instructions. Granting the Petition, by contrast, would require a reading of the Due Process Clause that the Supreme Court has never endorsed and in fact has repeatedly rejected. *See Jennings*, 583 U.S. at 297 ("nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings"). This Court should decline to do so. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution.").

C. If the Court were to find that Petitioner is owed more due process than the INA provides, Petitioner's detention still does not violate the Due Process Clause.

The discussion above establishes, beyond reasonable dispute, that Petitioner's due process rights extend no further than what the INA provides. In the event this Court finds more process is due, Federal Respondents contend that such due process analysis favors Petitioner's continued detention. Thus, his claim that due process entitles him to something more must fail.

As a threshold matter, "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]" *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). More specifically, recalling the long-standing principle that "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable to citizens," *Demore* held that Congress could "detain" an alien – without any procedure to determine on an "individual[ized] basis whether that alien was "dangerous" or a flight risk – during "his removal proceedings." *Id.* at 521-23; 525 (quoting *Mathews v. Diaz*, 423 U.S. 67, 79-80 (1976)). This was so, the Court continued, because "detention during deportation proceedings [w]as a constitutionally valid aspect of the deportation process." *Id.* at 523; *see also id.* at 531. And it was irrelevant that bond hearings could provide an individualized assessment of an alien's particular proclivity towards being a danger to the community and/or a flight risk without a significant

burden, as Congress could employ "reasonable presumptions and generic rules" in dictating which aliens would be subject to mandatory detention because "the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Id.* at 526 (quoting *Reno v. Flores*, 507 U.S. 292, 313 (1993)); 528. Put simply, as the Fourth Circuit has held, the *Demore* "Court refused to impose its own policy judgment on how best to ensure aliens' attendance at future removal proceedings." *Miranda*, 34 F.4th at 360.

In any sense, the governing procedural due process framework confirms that Petitioner's detention satisfies an applicant for admission's due process. The Fourth Circuit analyzes an alien's due process claim by weighing the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Miranda*, 34 F.4th at 359-65. The three factors relevant to assessing Petitioner's due process claim are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest." *Mathews*, 424 U.S. 319, 335 (1976).

1. Federal Respondents recognize that "[f]reedom from bodily restraint 'lies at the heart of the liberty that [the Due Process] Clause protects.'" Pet. ¶ 69 (quoting *Zadvydas*, 533 U.S. at 630). But as an applicant for admission, Petitioner has a less compelling liberty interest than the aliens in *Zadvydas* and *Demore*, who were lawfully admitted. *See Wilson v. Zeithern*, 265 F. Supp. 2d 628, 635 (E.D. Va. 2003) (detention of inadmissible alien pending removal did not violate due process); *Hong v. U.S.*, 244 F. Supp. 2d 627, 635 (E.D. Va. 2003) ("Hong's liberty interest, as an inadmissible alien seeking admission into the country, is more attenuated than the liberty interest of a deportable alien already present in the country."). The Supreme Court and Fourth Circuit even made clear that an alien who has not been admitted "does not have the same status for due process purposes as an alien who has 'effected entry.'" *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021) (quoting *Thuraissigiam*, 591 U.S. at 139-40 (cleaned up)).

The Supreme Court has emphasized that "detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Indeed, Petitioner's private liberty interest is diminished when his release is available on the condition that he leaves the U.S. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 199) (unlike criminal cases, immigration detention "is not entirely beyond [the alien's] control; he is detained only because of the removal proceedings, and he may obtain his release any time he chooses by withdrawing his application for admission and leaving the [U.S.]").

An alien's private interest is even more diminished when release into the U.S. would be an assistance to an ongoing violation of U.S. law. *See* 8 U.S.C. § 1182(a) (inadmissibility grounds). In addition to these inadmissibility grounds, 8 U.S.C. § 1325 provides that any alien who "enters or attempts to enter the [U.S.] at any time or place other than as designated by immigration officers," "shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both[.]" *Id.* § 1325(a)(1); *see id.* § 1325(b) (civil penalties). Petitioner concedes he entered the U.S. without inspection by an immigration official. *See* Pet. ¶ 38. In fact, such violation has been recognized by other courts, including the Supreme Court. *See AADC*, 525 U.S. at 491 ("in all cases, deportation is necessary in order to bring an end [to] an ongoing violation of [U.S.] law"); *Lopez-Mendoza*, 468 U.S. at 1039 ("The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws"); *Gomez-Chavez v. Perryman*, 308 F.3d 796, 800-01 (7th Cir. 2002) (no liberty interest in remaining in violation of applicable U.S. law).

Accordingly, the first *Mathews* factor weighs in favor of the government.

2. Regarding the second factor, Petitioner has already received more process he is due because his ability to seek parole exceeds the opportunity for release available to other aliens detained pursuant to 8 U.S.C. § 1226(c), who could be released only for narrow, witness-protection purposes. *Id.* § 1226(c)(2); *see* 538 U.S. at 513-14. Petitioner, by contrast, may be paroled for any "urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A). And as Federal Respondents made clear *supra*, at Part I, Petitioner is by law an applicant to admission "seeking admission [and] is not clearly and beyond a doubt entitled to be admitted[,]" and subject to mandatory detention. 8 U.S.C. § 1225(b)(2)(A).

Therefore, the second *Mathews* factor favors the government.

3. Regarding the third factor, the government's interests in mandatory detention pursuant to section 1225(b) are legitimate and significant. "[T]he government interest includes detention." *Miranda*, 34 F.4th at 364. A court "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *Miranda*, 34 F.4th at 364 (same). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]" *Miranda*, 34 F.4th at 364. And for one, Petitioner's argument that the Due Process Clause mandates immediate release flouts the Supreme Court's directive that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Diaz*, 426 U.S. at 81.

Additionally, "[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of [U.S.] law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty."). Mandatory detention remedies this

risk by "increasing the chance that, if ordered removed, [Petitioner] will be successfully removed." *Demore*, 538 U.S. at 528. Petitioner's mandatory detention indisputably serves these interests. Civil immigration detention is "constitutionally valid" as long as it "serve[s] its purported immigration purpose." *Demore*, 538 U.S. at 523, 527.

* * *

For all of these reasons, all three *Mathews* factors favor the government, and this Court should therefore dismiss the instant Petition.[6]

D. If the Court is inclined to grant the Petition, the only relief the Court should offer is a bond hearing pursuant to normal procedures.

If the Court grants the Petition, the Court should order only a bond hearing pursuant to the usual procedures. *See Santos Garcia v. Garland*, 2022 WL 989019, at *7 (E.D. Va. Mar. 31, 2022) (Alston, J.); *Martinez v. Hott*, 527 F. Supp. 3d 824, 837-38 (E.D. Va. 2021) (Alston, J.).

Under the regulations governing bond hearings for detained aliens, the alien bears the burden to show both that his release would not pose a danger to property or persons and that he is likely to appear for future proceedings. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) ("[T]he alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding"); *Matter of Fatahi*, 26 I. & N. Dec. 791, 795 n.3 (BIA 2016); *accord Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 (BIA 2020); *Matter of Siniauskas*, 27 I. & N. Dec. 207, 210 (BIA 2018). The Fourth Circuit has confirmed that such bond procedures outlined in 8 U.S.C. § 1226(a) are constitutional and satisfy due process. *See Miranda*, 34 F.4th at 366

[6] Instead of the *Mathews* analysis, another jurist of this Court has applied a five-factor test outlined in *Portillo v. Hott*, 322 F. Supp. 3d 698, 707 (E.D. Va. 2018) (Brinkema, J.). It remains Federal Respondents' position that *Portillo* is inapplicable. Nonetheless, the only relevant factor here would be the length of Petitioner's detention, which has been for under two months. *See* Pet. ¶ 37. Because Petitioner's detention is not nearly as prolonged as this Court and others have found, no additional due process is afforded to Petitioner. *See Olaya Rodriguez*, 2025 WL 2490670, at *3.

("Supreme Court precedent establishes that the current procedures used for detention under § 1226(a) satisfy due process").

The Supreme Court perceived no constitutional difficulty in assigning the burden of proof to an alien facing prolonged detention to make a case for bond. After the presumptively reasonable six-month detention period following a final order of removal, it is up to *the alien* to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701; *see Ming Hui Lu v. Lynch*, 2016 WL 375053, at *6 (E.D. Va. Jan. 29, 2016). Only then is the government required to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701.

Even the dissent in *Jennings*, which would have interpreted the INA's detention provisions as authorizing bond hearings, concluded that any such bond hearing "should take place in accordance with customary rules of procedure and burdens of proof rather than the special rules" Petitioner seeks. 583 U.S. at 356 (Breyer, J., dissenting). The Fourth Circuit reached a similar conclusion. *See Guzman Chavez v. Hott*, 940 F.3d 867, 874, 882 (4th Cir. 2019) ("The petitioners must carry their burden of proving that they are eligible for conditional release, and agency officials enjoy broad discretion in making detention-related decisions."), *rev'd on other grounds*, *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021). And accordingly, several decisions from jurists of this Court ordering bond hearings for detained aliens have declined to adjust the usual burden-of-proof scheme. *See Cardona Tejada v. Crawford*, 2021 WL 2909587, at *4 n.9 (E.D. Va. May 19, 2021); *Mauricio-Vasquez*, 2017 WL 1476349, at *6.

Therefore, if this Court were to grant the Petition, it should order a bond hearing adhering to the constitutional bond procedures outlined in Title 8 of the Code of Federal Regulations.

E. Petitioner's Eighth Amendment claim fails

And finally, the Federal Respondents are not subjecting Petitioner to detention conditions that amount to "punishment" in violation of the Eighth Amendment. To succeed, Petitioner must show that the particular condition was either: "(1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate nonpunitive governmental objective." *Williamson v. Stirling*, 912 F.3d 154, 174 (4th Cir. 2018) (quoting *Slade v. Hampton Roads Regional Jail*, 407 F.3d 243, 251 (4th Cir. 2005)).

Petitioner claims his custody "has transformed civil immigration detention into cruel and unusual punishment," Pet. ¶ 84, but the Supreme Court has stated that the removal process "has never been held to be punishment." *Carlson v. Landon*, 342 U.S. 524, 538 (1952). Detention and "[removal] proceeding[s] [are] [] purely civil action[s] to determine eligibility to remain in this country, *not* to punish an unlawful entry, though entering or remaining unlawfully in this country is itself a crime." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984). Indeed, "[t]he purpose of [removal] is *not to punish* past transgressions but rather to put an end to a continuing violation of the immigration laws." *Id.* at 1039.

Accordingly, Petitioner must show that the allegedly unconstitutional condition of his detention is not "reasonably related to a legitimate governmental objective,"—*i.e.*, the condition is "arbitrary or purposeless." *Bell*, 441 U.S. at 539; *Seling v. Young*, 531 U.S. 250, 262 (2002) (holding that holding sexually violent predators in civil detention is constitutional because it protects "the public from dangerous individuals with treatable as well as untreatable conditions"). "[I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Bell*, 441 U.S. at 539. And "[o]nce the Government has exercised its conceded authority to detain a person . . . , it obviously is entitled to employ devices that are calculated to effectuate this detention." *Id.* at 537 ("[T]hat such detention interferes with the detainee's understandable desire to live as comfortably as possible . . . does not

convert the conditions or restrictions of detention into 'punishment.'"). Certainly, the Supreme Court cautioned lower courts that whether a condition amounts to punishment does not hinge on "a court's idea of how best to operate a detention facility." *Id.*

Petitioner's continued detention is consistent with a legitimate government objective, which has been expressly recognized by the Supreme Court.[7] The Supreme Court has recognized the Government's legitimate interest in protecting the public and preventing aliens from absconding by detaining aliens pending their immigration proceedings. *See Jennings*, 138 S. Ct. at 836-37; *Demore*, 538 U.S. at 520-522; *Zadvydas*, 533 U.S. at 690-91. Nor is detention pending removal an "excessive" means of achieving those interests. For over a century, the Supreme Court has affirmed detention as a "constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523 (listing cases).[8] Therefore, Petitioner's Eighth Amendment claim fails.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court decline[9] to issue a Writ of Habeas Corpus and deny the Petition.

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[7] Petitioner seeks to challenge the conditions of his confinement through this habeas petition. *See* Pet. ¶¶ 78-80. The writ of habeas may only issue when a petitioner challenges the "validity of any confinement or [the] particulars affecting its duration" and is not permitted for "[a]n inmate's challenge to the circumstances of his confinement." *Hill v. McDonough*, 547 U.S. 573, 579 (2006); *Preiser v. Rodriguez*, 411 U.S. 475, 498-99 (1973). For this reason, federal courts lack jurisdiction over habeas proceedings involving challenges to the conditions of the prisoner's confinement. *Lee v. Winston*, 717 F.2d 888, 892 (4th Cir. 1983) (holding habeas "is primarily a vehicle for attack by a confined person on the legality of his custody" and "the traditional remedial scope of the writ has been to secure absolute release"); *see also Braddy v. Wilson*, 580 F. App'x 172, 173 (4th Cir. 2014) (dismissing § 2241 habeas petition "[b]ecause Braddy's petition alleged constitutional violations regarding only the conditions of his confinement and did not challenge the fact or duration of his sentence, his claims are more properly brought in an action pursuant to *Bivens*").

[8] Petitioner characterizes his detention as "indefinite[]," but it is not. Rather, "detention continue[s] . . . until removal proceedings have concluded." *Jennings*, 583 U.S. at 299.

[9] Other jurists of this Court have previously enjoined Federal Respondents from rearresting an alien released on bond unless they commit a violation of law or fail to attend any court hearing. *See, e.g.*, *Hasan*, Dkt. 16, Order. If the Court were to enjoin Federal Respondents from rearresting

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Respectfully submitted,

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Petitioner, Federal Respondents respectfully request that they be allowed to rearrest Petitioner if he is ordered removed, which is required by law. *See* 8 U.S.C. § 1231(a)(2) ("[d]uring the removal period, the Attorney General *shall* detain the alien") (emphasis added).