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

SIXTO HERNANDEZ HERNANDEZ, *Petitioner,* v. JEFFREY CRAWFORD, *et al.*, *Respondents.*	)	Case No. 1:25-cv-1565 (AJT/WBP)

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

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INTRODUCTION

Petitioner, 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 U.S. 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 a bond hearing violates the Fifth Amendment Due Process Clause and the Eighth Amendment.

Petitioner's challenge fails on several fronts. *First*, this Court lacks jurisdiction over the Petition because the INA precludes judicial review of Petitioner's claims. The INA forbids courts from reviewing any cause or claim arising from a decision or action to commence proceedings or adjudicate cases. Such review of Petitioner's claims may only be reviewable in a final order of removal with the court of appeals. 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, even if he has lived in the U.S. illegally since 2017. Therefore, Federal Respondents respectfully request this Court deny the instant Petition.[1]

Federal Respondents recognize that this Court and others recently rejected Federal Respondents' arguments on the issues presented below. *See 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 on 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). Important to any understanding of this statutory scheme is the concept of "admission." An "admission" (or "admitted") 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 INA authorizes the removal of certain aliens who have not been admitted to the U.S. through different

[1] Even if this Court were to determine 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 from 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.

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 an "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 those handled through non-expedited removal proceedings under § 1225(b)(2).[2] *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

[2] 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).

under § 1225(b) must end as well." *Id.* at 297. Further, while section 1225(b)(2) 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' 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). "[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 the Supreme Court notes, "[s]ection 1226 ***generally*** governs the process of arresting and detaining that group of aliens pending their removal." *Jennings*, 583 U.S. at 288 (emphasis added); *see* 8 U.S.C. § 1226(a); *Rodriguez*, 747 F. Supp. 3d at 916. Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. *See* 8 U.S.C. § 1226(a). By regulation, immigration officers can release aliens 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 26-year-old native and citizen of El Salvador. Federal Respondents Exhibit

("FREX") 1, Declaration of Justin Richardson ¶ 5; Pet. ¶ 5. In February 2017, Petitioner entered the U.S. without being admitted or paroled by an immigration officer, crossing the Rio Grande River with his mother and sister. FREX 1 ¶ 6; Pet. ¶ 34. He was issued a Notice to Appear ("NTA") which charged him with being inadmissible to the U.S. and thus removable from the U.S., *see* 8 U.S.C. § 1229a(e)(2), under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the Attorney General. FREX 1 ¶ 7. Petitioner was subsequently released on an Order of Recognizance. *Id.* ¶ 8. On or about August 10, 2022, the Immigration Court granted dismissal of Petitioner's removal proceedings after ICE exercised its Prosecutorial Discretion. *Id.* ¶ 9.

On August 18, 2025, ERO officers encountered Petitioner in Washington, D.C. and after establishing Petitioner's identification, placed Petitioner under arrest without incident. *Id.* ¶10. Petitioner was subsequently detained placed Petitioner in immigration custody at the Farmville Detention Center pursuant to 8 U.S.C. § 1225(b)(2)(A) as an alien who is an applicant for admission because he is present in the U.S. without admission or parole. FREX 1 ¶ 10. He is not clearly and beyond a doubt entitled to be admitted to the U.S. and is seeking admission to the U.S. *Id.*

On August 19, 2025, Petitioner was issued a Notice to Appear ("NTA"), which charged[3] him with being inadmissible to the U.S. and thus removable from the U.S., *see* 8 U.S.C. § 1229a(e)(2), under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the

[3] ICE also filed a Form I-261, Additional Charges of Inadmissibility/Deportability, which additionally charged Petitioner with being inadmissible to the U.S. under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who, at the time of application for admission to the U.S., was not in possession of any valid entry document. FREX 1 ¶ 11.

Attorney General. *Id.* ¶ 11. Petitioner filed a motion for custody redetermination – *i.e.*, a request for release on bond – with the Immigration Court on September 8, 2025. *Id.* ¶ 13. At the bond hearing on September 11, 2025, the IJ found he lacked jurisdiction to review Petitioner's custody status under 8 U.S.C. § 1225(b)(2)(A), because Petitioner is an applicant for admission into the U.S. and denied bond. *Id.* ¶ 14. Petitioner reserved his right to appeal. *Id.*

On September 18, 2025, Petitioner appeared with his attorney before an IJ for a master calendar hearing. *Id.* ¶ 16. The IJ sustained the charge of removability contained in the NTA, under 8 U.S.C. § 1182(a)(6)(A)(i) and (7)(A)(i)(1), and designated El Salvador as the country of removal. *Id.* The IJ scheduled the merits hearing on October 22, 2025. *Id.* ¶ 16

C. The Instant Petition

Seeking immediate release or a bond hearing, Petitioner filed a Petition for a Writ of Habeas Corpus, and an amended Petition on September 29, 2025. *See* Dkt. 1, 7 (hereinafter "Pet."). Petitioner brings two claims of relief. *See* Pet. ¶¶ 46-61. Petitioner claims that his detention without a bond hearing violates his due process rights. *Id.* ¶¶ 46-53 (Count I).[4] Petitioner further claims that his detention violates the Eighth Amendment. *Id.* ¶¶ 54-61 (Count II).

ARGUMENT

I. This Court Lacks Jurisdiction Over the Petition as Petitioner's claims are barred by the jurisdiction-stripping provisions of the INA (all Counts).

Several provisions in the INA preclude Petitioner's claims. *See* 8 U.S.C. §§ 1252(b)(9), (g). *First*, the INA 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*

[4] Petitioner also seeks attorney's fees and costs under the Equal Access to Justice Act. *See* Pet. ¶ 62. However, this claim is foreclosed. *See Obando-Segura v. Garland*, 999 F.3d 190, 192-93 (4th Cir. 2021).

taken or proceeding brought to remove an alien from the U.S. under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). "This section, known as the 'zipper' clause, consolidates review of matters *arising from* removal proceedings 'only in judicial review of a final order under this section,' and strips courts of habeas jurisdiction over such matters." *Afanwi v. Mukasey*, 526 F.3d 788, 796 (4th Cir. 2008), *vacated on other grounds*, 558 U.S. 801 (2009). In fact, "most claims that even relate to removal" are improper if brought before the district court. *See Reno v. Am.-Arab Anti-Discrimination Comm*, 525 U.S. 471, 483 (1999) (labeling section 1252(b)(9) an "unmistakable zipper clause," and defining a zipper clause as "[a] clause that says 'no judicial review in deportation cases unless this section provides judicial review.'"). Petitioner's claims cannot withstand this jurisdiction-stripping provision of the INA. Because of this precedent, the Court should conclude that Petitioner must bring his claims as a challenge his detention in immigration court, not in federal district court. *See Johnson v. Whitehead*, 647 F.3d 120, 125 (4th Cir. 2011).

Second, section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)." *Id.* Though this section "does not sweep broadly," *Tazu v. Attorney General U.S.*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). The statute was "'directed against a particular evil: attempts to impose judicial constraints upon prosecutorial

discretion,'" to protect "'no deferred action' decisions and similar discretionary decisions." *Tazu*, 975 F.3d at 297 (quoting *AADC*, 525 U.S. at 485). This includes deciding how an alien is detained.

Therefore, this Court lacks jurisdiction over the Petition, and the Court should accordingly dismiss the Petition.

II. Even if the Court Has Jurisdiction Over the Petition, 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).

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; *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.); *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.).

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)." *Id.* "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, according to this Court, an alien must meet three requirements to be subject to § 1225(b)(2)(A) mandatory detention: (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*, Mem. Op., 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). Petitioner meets all three requirements and is thus properly detained under 8 U.S.C. § 1225(b)(2)(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.[5] 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); *see also Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012) ("[T]he best evidence of Congress's intent is the statutory text."). 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 is to be

[5] 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).

(1) present in the U.S., and (2) have not been admitted. *See id.* And 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) (emphasis added); *see Aremu v. DHS*, 450 F.3d 578, 585 (4th Cir. 2006).

There is no dispute that Petitioner has not been admitted to the U.S. *See* Pet. ¶ 34; FREX 1 ¶ 6. Petitioner *entered* the U.S. *without being inspected or paroled* by an immigration official, thus he does not satisfy the definition of "admission." *See* 8 U.S.C. § 1101(a)(13) (requiring a lawful entry and inspection by an immigration officer to be admitted). 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. § 1225(a)(1) (emphasis added); *see Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2 (D. Mass July 28, 2025).

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."[6] *Id.* (emphasis added); *see* FREX 1 ¶¶ 6-7. Indeed, Congress' intent in enacting the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), *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,

[6] Respectfully, the recent decision in *Hasan v. Crawford* failed to analyze whether petitioner was in fact seeking admission and beyond a reasonable doubt not admitted to the U.S. *See* 2025 WL 2682255, at *5-9; *see also 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.) (same). Similarly, the district court's decision in *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *8-10 (D. Md. Aug. 24, 2025) is inconsistent with the definition of "applicant for admission." An "applicant for admission" is either "[a]n alien present in the [U.S.] who has not been admitted *or* who arrives in the [U.S.]" 8 U.S.C. § 1225(a)(1) (emphasis added).

at 229 (1996)); *see also Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). Under this Court's, as well as other courts across the country, *see* Pet. ¶ 33 (citing cases), reading of § 1225(b)(2), aliens who *entered* the U.S. *illegally* and *remain* in the U.S. *illegally* are afforded more due process protection (*i.e.*, a bond hearing) than those who follow U.S. law and seek *lawful entry* 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") (emphasis added); *id.* § 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).

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, this Court recently found that to be detained pursuant to § 1225(b)(2)(A), such applicant for admission must be "actively seeking admission into the [U.S.]." *Luna Quispe*, Mem. Op., 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. *See Jennings*, 583 U.S. at 288 (finding aliens detained under §

1225(b)(2)(A) "'shall be detained for a removal proceedings' if an immigration officer 'determines that they are not clearly and beyond a doubt entitled to be admitted' into the country") (quoting 8 U.S.C. § 1225(b)(2)(A) (cleaned up). 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); *see also Cruz-Miguel v. Holder*, 650 F.3d 189, 198 n.13 (2d Cir. 2011) ("[i]f the alien is *seeking admission*, he is charged in removal proceedings as an inadmissible[.]") (emphasis added); *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").

In *Lopez-Sorto*, the Fourth Circuit denied a petition for review of a BIA order affirming an IJ's decision to deny an 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 petition was not moot because of an ICE directive that allegedly 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 reached this reasoning by analyzing the definition of "admission," and found that an alien cannot be, under immigration law, 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. ¶¶ 42-44 (seeking immigration relief), 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 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 has not since left. *See* FREX 1 ¶ 6; Pet. ¶ 34. 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. Therefore, 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 8 U.S.C. § 1226(c) superfluous. *See Chavez*, 2025 WL 2730228, at *5; *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 in 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)). It 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 residence's initial admission unlawful because he was inadmissible pursuant

to § 1182(a)(6)(C)(i)). This is evident in the structure of the process of adjustment of status under 8 U.S.C. § 1255(a) which requires, for an alien to be changed from a non-immigrant status to becoming a lawful permanent resident, that they be admitted and be "admissible." The reality of admitted but inadmissible aliens is underlined by the existence of a waiver of inadmissibility for adjustment applications, applications that 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).

Throughout his Petition, 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.[7] *See* Pet. ¶¶ 24-28. Petitioner is mistaken for several reasons. As a matter of statutory construction, § 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). Such contrary position

[7] Petitioner's argument may seek to rely on a portion of the Federal Register which states that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Such statement refers to applicant for admissions in general, and does not apply to those who are seeking admission [or] not clearly beyond a doubt entitled to be admitted," 8 U.S.C. § 1225(b)(2)(A), which are required for mandatory detention under § 1225(b)(2)(A). Indeed, Federal Respondents' reading of § 1225(b)(2)(A) "comports with Congress' addition of § 1225(a)(1) by IIRIRA[.]" *Chavez*, 2025 WL 2730228, at *4.

that § 1226(a) governs "would render mandatory detention under § 1225(b) meaningless." *Florida v. U.S.*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023).

Jennings is instructive. 583 U.S. at 288-89. In *Jennings*, the Supreme Court analyzed three 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, 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. *See* FREX 1 ¶ 11. And since he is not charged with any deportability grounds found in § 1227, he cannot be detained under 8 U.S.C. § 1226. *See* 8 U.S.C. § 1229a(e)(2) (defining removal) *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").

Recently, this Court and others have disagreed with the above analysis, holding that "Respondents' position focuses on § 1226(c) . . . and ignores the default rule in § 1226(a)." *Luna Quispe*, at 11; *see Quispe-Ardiles*, at 12-13. In analyzing the "default rule" as construed by *Jennings*, both courts distinguished "aliens seeking admission into the country," who are subject to § 1225(b) detention, and "aliens already in the country" who are subject to removal proceedings. *Luna Quispe,* Mem. Op., at 11 (citing *Jennings*, 583 U.S. at 289); *see Quispe-Ardiles*, at 13 (same). But what those decisions failed to note is the language from *Jennings* regarding only "***certain*** aliens already in the country," not *all* aliens already in the country. And while Petitioner is an

"alien already in the country[8]," he is also an "alien seeking admission into the country." *Id.*; *see supra* at 11-16. Therefore, under the rules of statutory interpretation, Petitioner is detained pursuant to § 1225(b)(2)(A)'s *mandatory* framework, *see id.* ("the alien *shall* be detained") (emphasis added), as opposed to § 1226(a)'s *discretionary* framework, *see id.* ("an alien *may* be . . . detained") (emphasis added). *See Morales*, 504 U.S. at 384 ("it is a commonplace of statutory construction that the specific governs the general").

In further support of its reasoning, another jurist of the court in *Quispe-Ardiles* stated that Federal Respondents' interpretation of § 1225(b)(2)(A) "[would be] [in]consistent with the core logic of our immigration system." Mem. Op. at 13. The court, citing to *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958), stated:

> "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within [U.S.] after an *entry*, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely on the threshold of initial *entry*."

Quispe-Ardiles, Mem. Op., at 13 (internal citations and quotations omitted). Therefore, the court found that "it is 'doubtful that Congress intended § 1225(b)(2) to apply' to individuals like Mr. Quispe-Ardiles who were detained after being present in the U.S. for several years, who had not committed any crimes, and who had attended every required meeting with immigration officials." *Id.* (quoting *Hasan*, 2025 WL 2682255, at *8).

But the court's reliance on *Leng May Ma* is misplaced. At the time *Leng May Ma* was decided, an "admission" was not defined in the INA like it is today. *See generally* 8 U.S.C. §

[8] To be clear, such reading would not render any part of the statute superfluous as there are other classes of aliens subject to § 1226(a) besides "applicants for admission." *See, e.g.*, 8 U.S.C. §§ 1101(a) (defining immigrant and nonimmigrant aliens), 1227(a) (noting deportable aliens must be admitted).

1101(a). At that time, the term "entry" was used in lieu of the word "admission." *Compare id.* § 1101(a)(13) (1988) (defining "entry" as "any coming of an alien into the [U.S.], from a foreign port or place"), *with id.* § 1101(a)(13)(A) (2025) (defining "admission" as "the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer"); *see Vartelas v. Holder*, 566 U.S. 257, 261-63 (2012) (explaining "entry" and "admission"). Once Congress enacted the IIRIRA, admission become "the key word." *Vartelas*, 566 U.S. at 262. Thus, reading additional language in *Leng May Ma* with the adoption of the term "admission" instead of "entry," the case goes on to state that "the detention of an alien in custody pending determination of his admissibility does not legally constitute an [***admission***] though the alien is physically within the [U.S.]" *Leng May Ma*, 357 U.S. at 188 (citing *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 215 (1953); U.S. *v. Ju Toy*, 198 U.S. 253, 263 (1905); *Nishimura Ekiu v. U.S.*, 142 U.S. 651, 661 (1892)). Therefore, it seems it *was* Congress' intent under IIRIRA to apply § 1225(b)(2)(A) to aliens like Petitioner. *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*, 693 F.3d at 413 n.5.

This Court also noted, citing to *Jennings*, that "arriving aliens" and "applicants for admission" are the same, finding that only arriving aliens can be subject to mandatory detention pursuant to § 1225(b)(2)(A). *See Luna Quispe*, Mem. Op., at 11. But that is statutorily incorrect. An "arriving alien" is a sub-class of an applicant for admission. *See* 8 C.F.R. §§ 1.2 ("arriving alien means an *applicant for admission* coming or attempting to come into the [U.S.] at a port of entry") (emphasis added), 1001.1(q) (same). To be an arriving alien, one must be both "an applicant for admission" *and* "coming or attempting to come into the U.S. at a port of entry." *Id.* And *Jennings*, in fact, did *not* limit detention pursuant to § 1225(b) to "arriving aliens;" it limited mandatory detention under § 1225(b) to "applicants for admission." *See Jennings*, 583 U.S. at 297

("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of *applicants for admission* until certain proceedings have concluded.") (emphasis added). Indeed, as the Fourth Circuit makes clear, courts "cannot read into a statute what is manifestly just not there." *Day v. Johns Hopkins Health Sys. Corp.*, 907 F.3d 766, 780 (4th Cir. 2018) (citing *U.S. v. Locke*, 471 U.S. 84, 95 (1985) ("[T]he fact that Congress might have acted with greater clarity or foresight does not give courts a carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do.")).

Lastly, several jurists of this Court found Federal Respondents' interpretation of § 1225(b)(2)(A) to be "at odds with DHS's own historic understanding of the statute's meaning." *Quispe-Ardiles*, Mem. Op., at 13; *see Hasan*, 2025 WL 2682255, at *9. But an agency's own past practice cannot overcome the plain meaning of the statute. *See Bracamontes v. Holder*, 675 F.3d 380, 384 (4th Cir. 2012) ("the plain meaning controls"); *see also VanDerStok v. Garland*, 86 F.4th 179, 190 (5th Cir. 2023) ("historical practice does not dictate the interpretation of unambiguous statutory terms") (internal citations and quotations omitted).

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 thus 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 (Count I).

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. Petitioner has not been admitted to the U.S., *see* FREX 1 ¶ 6, 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). This Court and others 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. 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]." *Id.* 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.

Other Supreme Court cases such as *Zadvydas v. Davis*, 533 U.S. 678 (2001), are inapposite to Petitioner's case because they 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 take such a drastic step. *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," the Supreme Court in *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.

Petitioner suggests that his placement in mandatory detention pursuant § 1225(b)(2)(A) runs afoul of due process because his removal proceedings "ma take years." Pet. at 2. Such speculation about what "might" occur in the future, however, cannot vest Petitioner withstanding to seek habeas relief *now*. *See, e.g.*, *Doe v. Hochul*, 139 F.4th 165, 187 (2d Cir. 2025). And if Petitioner's concern comes to pass, and his removal proceedings become extended to a burdensome extent, another jurist of this Court has held that an alien subject to mandatory detention – under certain circumstances – may seek habeas relief in the form of a bond hearing. *See, e.g.*, *Abreu*, 2025 WL 51475, at *7.

Moreover, 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.'" *Zadvydas*, 533 U.S. at 630. But as an applicant for admission, Petitioner has a less compelling liberty interest—the first factor—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). 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*, 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)

Moreover, as the Fourth Circuit makes clear, "[t]he absence of a date certain—imminent or not—for the conclusion of . . . proceedings is of no moment." *Castaneda v. Perry*, 95 F.4th 750, 758 (4th Cir. 2024). What may happen in the future is likewise immaterial to this proceeding, as Petitioner may challenge only his *present* detention. *See D.B. v. Cardall*, 826 F.3d 721, 734 n.10 (4th Cir. 2016) ("the question before the district court . . . [is] whether [the petitioner's] *current detention* complies with federal statutes and the Constitution" (emphasis added)); *Doe v. Perry*, 2022 WL 1837923, at *2 (E.D. Va. Jan. 31, 2022). 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 each of these interests. And as the Supreme Court has made clear, 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.[9]

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.). There is no warrant to adopt a novel burden-shifting framework that would require the government to bear the burden of proof to justify denying bond by clear and convincing evidence.

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). 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 ("Supreme Court precedent establishes that the current procedures used for detention under § 1226(a) satisfy due process"). Therefore, if this Court were to grant the Petition,

[9] 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.

it should order a bond hearing adhering to the constitutional bond procedures outlined in Title 8 of the Code of Federal Regulations. [10]

E. Petitioner's Eighth Amendment claim fails (Count II)

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. ¶ 61, 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

[10] If the Court shifts the burden of proof to the government, at the very least, the Court should require only proof "to the satisfaction of the [IJ]" rather than clear and convincing evidence. *Bah v. Barr*, 409 F. Supp. 3d 464, 472 (E.D. Va. 2019) (quoting 8 C.F.R. § 1236.1(c)(8)).

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.

Petitioner's continued detention is consistent with a legitimate government objective, 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). Therefore, Petitioner's Eighth Amendment claim fails.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court decline[11] to issue a Writ of Habeas Corpus and deny the Petition.

Dated: October 2, 2025

Respectfully submitted,

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[11] This Court has 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 Luna Quispe*, Dkt. 16, Order. If the Court were to enjoin Federal Respondents from rearresting 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).

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