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

DILMER EDER BOQUIN OLIVA,

Petitioner,

v.

TODD M. LYONS, *et al.*

Respondents.

Case No. 1:25-cv-1592 (RDA/LRV)

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

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INTRODUCTION

Petitioner Dilmer Eder Boquin Oliva, a native and citizen of Honduras, challenges the legality and constitutionality of 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 Immigration and Nationality Act ("INA"), its implementing bond regulations, and the Fifth Amendment Due Process Clause.

Petitioner's challenge fails on several fronts.[1] *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. Nor does this Court have jurisdiction to enter a declaratory judgment as to the statutory basis on which Petitioner is detained. 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

[1] Federal Respondents recognize that other jurists of this Court recently rejected Federal Respondents' arguments on the issues presented below. *See Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sep. 30, 2025) (Nachmanoff, J); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025) (Trenga, J.); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. 2025) (Brinkema, J.); *see also Singh v. Bondi*, 1:25-cv-1525, Dkt. 8 (E.D. Va. Oct. 8, 2025) (Nachmanoff, J.); *Lopez-Sanabria v. Bondi*, 1:25-cv-1511, Dkt. 9 (E.D. Va. Oct. 3, 2025) (same); *Ortiz Ventura v. Noem*, 1:25-cv-1429, Dkt. 16 (E.D. Va. Oct. 2, 2025) (same); *Perez Bibiano v. Lyons*, 1:25-cv-1590, Dkt. 8 (E.D. Va. Oct. 2, 2025) (Brinkema, J.); *Diaz Gonzalez v. Lyons*, 1:25-cv-1583, Dkt. 8 (E.D. Va. Oct. 1, 2025) (same); *Gomez Alonzo v. Lyons*, 1:25-cv-1587, Dkt. 16 (E.D. Va. Oct. 1, 2025) (same); *Vargas Nunez v. Lyons*, 1:25-cv-1574, Dkt. 10 (E.D. Va. Oct. 1, 2025) (same). Federal Respondents respectfully disagree with those decisions and maintain their position that Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

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 for over 10 years. Therefore, Federal Respondents respectfully request this Court deny the instant Petition.[2]

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 procedures, and as the Supreme Court has unequivocally held, *requires* federal immigration officials to detain these aliens pending the conclusion of any necessary

[2] Even if this Court were to determine that the Board of Immigration Appeal's ("BIA") 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, as Petitioner specifically maintains, 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.

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).[3] *Hasan*, 2025 WL 2682255, at *5; *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)(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

[3] 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).

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 first entered the United States without inspection on or about February 5, 2002at or near Hidalgo, Texas. Federal Respondents' Exhibit ("FREX") 1, Declaration of Michael Coles ¶ 6. He was issued a Notice to Appear ("NTA") charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* He was released from immigration custody on or about February 8, 2002. *Id.* On December 11, 2002, Petitioner was ordered removed in absentia by an Immigration Judge ("IJ") after he failed to appear for his hearing. *Id.* ¶ 7.

On or about December 26, 2009, Petitioner was arrested by the Fairfax County Police Department for misdemeanor assault on a family member in violation of Virginia Code § 18.2-57.2. *Id.* ¶ 8. He was given a deferred adjudication and on or about March 27, 2012, the Fairfax County

Juvenile and Domestic Relations Court dismissed the charge. *Id.* On December 12, 2014, Petitioner was arrested for driving without a license in violation of Virginia Code § 46.2-300. *Id.* ¶ 9. Petitioner was found guilty of that offense and was issued a fine. *Id.*

In 2018, Viridiana Santa-Cruz filed a Form I-130 Petition for Alien Relative with U.S. Citizenship & Immigration Services ("USCIS") for Petitioner's benefit. *Id.* ¶ 10. USCIS approved the I-130 on November 6, 2020. *Id.* On July 13, 2023, Petitioner filed a motion to reopen and to rescind the in absentia removal order with the Immigration Court. That motion was granted on August 3, 2023. *Id.* ¶ 11. Shortly thereafter, on August 25, 2023, Petitioner filed a Form I-485 Application to Register Permanent Residence or Adjust Status with USCIS. *Id.* ¶ 12. On September 18, 2023, the IJ dismissed Petitioner's removal proceedings without prejudice. *Id.* ¶ 13. Petitioner then filed a Form I-601A provisional unlawful presence waiver with USCIS on October 17, 2023, which, at the time of filing, remains pending. *Id.* ¶ 14. On July 9, 2024, Petitioner's I-485 application was administratively closed. *Id.* ¶ 12.

On September 21, 2025, Petitioner was encountered by ICE Enforcement and Removal Operations officers and arrested. *Id.* ¶ 15. He was issued a Notice to Appear ("NTA") charging him as inadmissible under 8 U.S.C. §1182(a)(6)(A)(i) and *id.* § 1182(a)(7)(A)(i)(I). *Id.* He was taken into immigration custody 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 United States without admission or parole. *Id.* He is not clearly and beyond a doubt entitled to be admitted to the United States, and he is seeking admission to the United States. *Id.*

On September 24, 2025, Petitioner filed a motion to terminate or, in the alternative, administratively close removal proceedings with the Immigration Court. *Id.* ¶ 16. At the time of filing, that motion is still pending. *Id.* He also filed a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, with the Immigration Court.

Id. That, too, remains pending. *Id.* Petitioner's first master calendar hearing is scheduled for October 27, 2025 at 9:00 a.m. in Immigration Court. *Id.*

C. The Instant Petition

Seeking a declaration that his detention is only lawful (if at all) under 8 U.S.C. § 1226(a)[4] and a bond hearing, Petitioner filed a Petition for a Writ of Habeas Corpus on September 29, 2025. *See* Doc. No. 1. Petitioner brings three claims of relief. *See* Pet. ¶¶ 31-41. Petitioner claims DHS violated the INA and its implementing bond regulations by subjecting Petitioner to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and not providing him a bond hearing. *Id.* ¶¶ 31-33 (Count I), 34-36 (Count II). Petitioner also claims that his detention without a bond hearing violates his due process rights. *Id.* ¶¶ 37-41 (Count III). The Court initially ordered Federal Respondents to show cause why the petition should not be granted on or before October 1, 2025. Order (Doc. No. 2). The parties jointly moved for a briefing schedule, Doc. No. 4, which the Court granted, Doc. No. 5. Accordingly, Federal Respondents' response to the Petition is due October 8, 2025. *Id.*

ARGUMENT

I. This Court Lacks Jurisdiction Over the Petition.

A. Petitioner's claims are barred by the jurisdiction-stripping provisions of the INA.

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 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

[4] At no point during the substance of his petition does Petitioner provide any basis—let alone argument—that could justify his outright release from immigration custody. To the contrary, the entirety of his petition is premised upon his position that he should be entitled to seek discretionary release from the presiding IJ on bond.

'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 their detention in immigration 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.

B. This Court cannot issue an independent declaratory judgment through its habeas jurisdiction

In the first count of his habeas petition, Petitioner requests a standalone declaratory judgment that "he is properly detained by Respondents, if at all, pursuant to 8 U.S.C. § 1226(a)." Pet. ¶ 33. To be sure, this Court will be required to adjudicate this legal question to determine whether to issue a habeas writ in petitioner's favor. Nevertheless, although it is thus largely an academic exercise, it is important to note that this Court lacks subject-matter jurisdiction to issue an independent declaratory judgment within the context of a petition for a writ of habeas corpus.

Neither the Declaratory Judgment Act nor the Federal Rules of Civil Procedure provide this Court with jurisdiction to enter an independent declaratory judgment as a part of its adjudication of a habeas petition. Initially, it is well-settled that the Declaratory Judgment Act is not a waiver of the United States' sovereign immunity. *See, e.g., Golden & Zimmerman, LLC v. Domenech*, 599 F. Supp. 2d 702, 708 (E.D. Va. 2009) (quoting *Ocean Breeze Festival Park, Inc. v. Reich*, 853 F. Supp. 906, 917 (E.D. Va. 1994)), *aff'd on other grounds*, 599 F.3d 426 (4th Cir. 2010). And Federal Rules of Civil Procedure 57 and 65 do not independently provide district courts with the authority to enter a declaratory judgment against the United States. *See* Fed. R. Civ. P. 57 (providing that the Federal Rules of Civil Procedure "govern *the procedure* for obtaining a declaratory judgment under 28 U.S.C. § 2201"); 65 (providing authority to issue "preliminary injunctions" and "temporary restraining orders").

But perhaps more fundamentally, the issuance of a declaratory judgment is inconsistent with the limited (albeit significant) nature of this Court's habeas jurisdiction. As the Fourth Circuit has recognized, habeas proceedings occupy a unique place in the federal litigative landscape—they are not full "civil actions" under the Federal Rules and instead serve as "unique, hybrid proceedings." *See Obando-Segura v. Garland*, 999 F.3d 190, 197 (4th Cir. 2021). And as such, habeas petitioners need not serve the United States with process consistent with the Federal Rules, and this Court can require a response to a habeas petition—through issuance of an order to show cause—in a much shorter time

period than the sixty (60) days typically provided to the federal government by the Federal Rules. *Compare* 28 U.S.C. § 2243, *with* Fed. R. Civ. P. 4(i); 12(a)(2). These more pressing litigative demands, however, are balanced by the more limited remedies available to a habeas petitioner. *See generally Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (noting that "the traditional function of the [habeas] writ is to secure release from illegal custody"). In short, the traditional remedies that are only available in full civil actions are simply not available when a litigant—such as Petitioner here—invokes this Court's extraordinary habeas jurisdiction. *See, e.g.*, *Timms v. Johns*, 627 F.3d 525, 531 (4th Cir. 2010) (noting that "habeas corpus is an extraordinary remedy typically available only when the petitioner has no other remedy" (quoting *Archuleta v. Hedrick*, 365 F.3d 644, 649 (8th Cir. 2004)).

In short, this Court will adjudicate the issue at the heart of Petitioner's sought declaratory judgment in determining whether he is entitled to habeas corpus relief. This Court need not, and indeed, cannot, issue a standalone declaratory judgment with respect to the answer to that legal issue.

II. Even if the Court Has Jurisdiction Over the Petition, Petitioner's Detention is Lawful.

Before this Court can analyze Petitioner's claims, it must determine what statute authorizes Petitioner's detention. *See Romero v. Bondi*, 2025 WL 2490659, at * 2 (E.D. Va. July 2, 2025) (Alston, J.); *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 they "[have] never been admitted into the [U.S.]" *Romero*, 2025 WL 2490659, at *3 (citing 8 U.S.C. § 1225(a)(1)); *see Jennings*, 583 U.S. at 287; *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sep. 30, 2025); *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.

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)." *Hasan*, 2025 WL 2682255, at *9. "Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2)." *Luna Quispe*, 2025 WL 2783799, at *4 (quoting *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 sections 1225(b)(1) and (b)(2) require the detention of persons deemed to be applicants for admission." *Luna Quispe*, 2025 WL 2783799, at *4. "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 Aslanturk*, 459 F. Supp.3d at 694.

A. Because Petitioner is statutorily defined as applicants for admission, he shall be detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

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] *See* Pet. ¶ 17; FREX 1 ¶¶ 6, 15. 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 (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).

[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).

There is no dispute that Petitioner has not been admitted to the U.S. *See* Pet. ¶ 17; 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.

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 ¶ 15. 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, at 229 (1996)); *see also Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). A contrary reading of § 1225(b)(2) means 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*, for "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. 651, 660 (1892) (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).

B. As Petitioner is clearly applicants for admission seeking admission and not clearly and beyond a doubt entitled to be admitted; they are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

As stated *supra* Part II.A, Petitioner is defined by law as applicants for admission and thus subject to mandatory detention. *See* 8 U.S.C. §§ 1225(a)(1) ("an alien *present* in the [U.S.] who has *not been admitted*" (emphasis added)); 1225(b)(2)(A) ("the alien *shall* be detained" (emphasis added)). 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), such applicant for admission must be "actively seeking admission into the [U.S.]." *Luna Quispe*, 2025 WL 2783799, at *5; *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).

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)); *Vargas Lopez*, 2025 WL 2780351, at *9 ("just because [Petitioner] illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)"). 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. 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. 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. ¶¶ 21, 27, 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 Vargas Lopez*, 2025 WL 2780351, at *9 (finding alien is seeking admission if he wishes to stay in the country); *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 has never left the U.S. *See* Pet. ¶¶ 21, 27. 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[.]" *Id.* (internal quotations omitted) (emphasis added); *see also Robers v. U.S.*, 572 U.S. 639, 643 (2014) ("Generally, identical words used in different parts of the same statute are . . . presumed to have the same meaning." (quoting *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 86 (2006) (internal quotation marks omitted))). And because Petitioner is seeking admission to the U.S., he is properly detained under § 1225(b)(2)(A).[6] *Vargas Lopez*, 2025 WL 2780351, at *9; *Pena*, 2025 WL 2108913, at *2.

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. *See* Pet. ¶¶ 1, 11-15. 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

[6] In some of his orders, Judge Nachmanoff claims "Federal Respondents' argument misreads *Jimenez-Rodriguez*" and found that "the Fourth Circuit did not conclude that all noncitizens who are present in the United States but have not been lawfully admitted are 'seeking admission' within the meaning of § 1225(b)(2)(A)." *Lopez Sanabria*, 1:25-cv-1511, Order at 3 n.4. Federal Respondents agree that the Fourth Circuit did not hold all aliens who are present in the U.S. but have not been lawfully admitted are "seeking admission." However, the Court's explanation of what it means to be "seeking admission" is important in understanding how courts should treat such term throughout the statute. Such application of "seeking admission" should be used consistently throughout the INA. *See United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (looking to how a disputed term or phrase is used in other provisions of the statute to determine its meaning).

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 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 ¶ 15. 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").

Federal Respondents' reading of § 1225(b)(2)(A) does not render 8 U.S.C. § 1226(c) superfluous. *See Vargas Lopez*, 2025 WL 2780351, at *9-*10; *Chavez*, 2025 WL 2730228, at *5; *but see Luna Quispe*, 2025 WL 2783799, at *5; *id.* *5 n.5; *Hasan*, 2025 WL 2682255, at *8; *Quispe-Ardiles*, Mem. Op. at 12-13. 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)). 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 n.6 ("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).

Finally, Petitioner is "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). It is undisputed that Petitioner entered the U.S. without inspection. Pet. ¶ 17; FREX 1 ¶ 6. That makes him inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for being an alien present in the U.S. without being admitted or paroled. And by being inadmissible, he cannot be admitted. *See id.* This is true even if Petitioner seeks any relief from removal, and it is "purely speculative" whether Petitioner will obtain relief from removal. *Mauricio-Vasquez v. Crawford*, 2017 WL 1476349, at *5 (E.D. Va. Apr. 24, 2017).

Therefore, because *by law* Petitioner is defined as applicants 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 are thus properly detained under the INA.

C. The reliance on *Hasan v. Crawford* by other courts in this District is misplaced.

Several jurists of this Court have relied on and incorporated Judge Brinkema's recent decision, *Hasan v. Crawford*, in their opinions and orders disagreeing with Federal Respondents' position that aliens like Petitioner are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Quispe-Ardiles*, 2025 WL 2783800; *Luna Quispe*, 2025 WL 2783799; *see also supra*, at 1 n.1 (citing cases).

Hasan v. Crawford is inapposite to the facts of this case. In *Hasan*, the court found petitioner to be subject to discretionary detention under § 1226(a) instead of § 1225(b). *See* --- F. Supp. 3d ---, 2025 WL 2682255, at *5-9. Recognizing that "§ 1226(a) sets forth 'the default rule' for detaining and removing aliens 'already present in the [U.S.][,]'" *id.* at *6 (quoting *Jennings*, 583 U.S. at 303) (citing *Abreu*, 2025 WL 51475, at * 3), the Court found "*the federal respondents' treatment of Hasan since he arrived in the [U.S.]*" (*i.e.*, as being subject to § 1226(a)) "*unequivocally* demonstrates he is detained pursuant to § 1226(a)." *Id.* at *7 (emphasis added). The court further reasoned Federal Respondents' reading of § 1225(b)(2) "would render [§ 1226(c)(1)] superfluous[.]" *Id.* at *8 (quoting *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010)). Therefore, the *Hasan* petitioner was subject to § 1226(a) detention. *See id.* at 9.

In determining whether an applicant for admission is subject to mandatory detention under § 1225(b)(2)(A), "the examining immigration officer [must] determine[] that [the applicant] seeking admission is not clearly and beyond a doubt entitled to be admitted[.]" *Id.* The court in *Hasan* failed to conduct any analysis as to whether petitioner was seeking admission or was not clearly and beyond a doubt entitled to be admitted. *See generally*, *Hasan*, --- F. Supp. 3d ---, 2025 WL 2682255, at *5-9. Here, when Petitioner was detained, Petitioner had (and still has) not been admitted, is seeking admission, and is not clearly and beyond a doubt entitled to be admitted. *See* FREX 1 ¶ 6; Pet. ¶ 17. Therefore, ICE arrested and detained Petitioner pursuant to its statutory obligations *mandating* their detention, and thus may not be released on bond. *See* 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see*

also Jennings, 583 U.S. at 837 ("Section 1225(b)(2) is broader. It serves as a *catchall* provision that applies to *all* applicants for admission not covered by § 1225(b)(1)") (emphasis added).

Recently, the Court in *Luna Quispe* held that "Respondents' position focuses on § 1226(c) . . . and ignores the default rule in § 1226(a)." *Luna Quispe*, 2025 WL 2783799, at *6; *see Quispe-Ardiles*, at 12-13. In analyzing the "default rule" as construed by *Jennings*, both *Luna-Quispe* and *Quispe-Ardiles* 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*, 2025 WL 2783799, at *6 (citing *Jennings*, 583 U.S. at 289); *see Quispe-Ardiles*, at 13 (same). But what these decisions failed to note is the language from *Jennings* regarding only "***certain*** aliens already in the country," not *all* aliens already in the country. *Jennings*, 583 U.S. at 289 (emphasis added); *Vargas Lopez*, 2025 WL 2780351, at *9. And while Petitioner is an "alien already in the country,[7]" he is also an "alien seeking admission into the country." *Id.*; *see supra* at 12-16. 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, 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*."

[7] 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).

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. § 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 became "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. at 661). 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.

The *Luna Quispe* Court seemed to imply, 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*, 2025 WL 2783799, at *5. Federal Respondents respectfully disagree. 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.

D. 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 III).

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, 15, and for any alien that 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 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 Aslanturk v. Hott*, 459 F. Supp. 3d 681 (E.D. Va. 2020) (Alston, J.); *see also Pipa-Aquise v. Bondi*, 2025 WL 2490657, *2 (E.D. Va. Aug. 5, 2025) (Nachmanoff, J.); *Olaya Rodriguez*, 2025 WL 2490670 (Trenga, 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.").

E. 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." *Demore v. Kim*, 538 U.S. 510, 521-23; 525 (2003) (quoting *Mathews*, 423 U.S. at 79-80). 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)); *id.* at 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 are indefinite. 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). Nor is there any reason to believe that such a years-long process is likely here. And if Petitioner's concern comes to pass, and his removal proceedings become extended to a burdensome extent, 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.

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 freedom 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 Demore*, 538 U.S. at 513-14. Petitioner, by contrast, may be paroled for any "urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). And as Federal Respondents made clear *supra*, Section II.A-B, 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).

Any claim that Petitioner's detention is indefinite does not change this analysis. 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.

F. 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 § 1226(a) satisfy due process. *See Miranda*, 34 F.4th at 366.

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), *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.[8]

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.

Dated: October 8, 2025

Respectfully submitted,

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[8] 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)).

[9] 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. 14, 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).