IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JULIO CESAR PAREDES ALVAREZ,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-296-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On September 25, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. On the same day, the Court ordered Respondent to file a response to the Petition within twenty-one (21) days. ECF No. 3. On October 1, 2025, Petitioner filed a "Motion for Emergency Temporary Restraining Order." ECF No. 6. On the same day, the Court directed Respondent to respond to the motion contemporaneously with the response to the Petition, finding that the motion "requests the same ultimate relief as the petition." ECF No. 7.

Petitioner asserts five claims in his pleadings: (1) violation of 8 U.S.C. § 1226(a) for unlawful denial of release on bond, Pet. 10; (2) violation of the bond regulations (8 C.F.R. §§ 236.1, 1236.1, and 1003.19), Pet. 10-11; (3) violation of the Administrative Procedure Act ("APA") based on actions contrary to law and arbitrary and capricious agency policy, Pet. 11; (4)

[1] In addition to Warden of Stewart Detention Center, Jason Streeval, Petitioner also names Immigration and Customs Enforcement ("ICE") Atlanta Field Office Deputy Managing Director George Sterling, acting Director of ICE Todd Lyons, Secretary of the Department Homeland Security Kristi Noem, Attorney General Pamela Bondi, and acting Director of the Executive Office for Immigration Review Sirce Owen as Respondents in his Petition. "[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

violation of the APA based on failure to observe required procedures, Pet. 12; and (5) violation of due process, Pet. 12-13. Respondent now files this Response showing the Court that the Petition and the Motion should be denied.

BACKGROUND

Petitioner is a native and citizen of Mexico. Declaration of Deportation Officer ("DO") Michael Gloster ("Gloster Decl.") ¶ 3 & Ex. A. On an unknown date and in an unknown location, Petitioner entered the United States without inspection. Ex. A. On April 24, 1998, the Department of Homeland Security ("DHS") encountered Petitioner after unlawfully entering the United States, and he was permitted to voluntarily return to Mexico. Ex. A.

On or about September 16, 2025, ICE/ERO encountered Petitioner at the Whitfield County Correctional Center in Dalton, Georgia. Gloster Decl. ¶ 4 & Ex. A. On September 18, 2025, ICE/ERO took Petitioner into custody and issued Petitioner a Form I-862, Notice to Appear, charging him with inadmissibility under Sections 212(a)(6)(A)(i) and (a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA") (8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I)). *Id.* ¶¶ 5-6 & Ex. B. Petitioner is detained at Stewart Detention Center ("SDC") in Lumpkin, Georgia, pursuant to the authority of § 235(b) (8 U.S.C. § 1225(b)). *Id.* ¶ 9.

On September 29, 2025, Petitioner appeared for his initial master calendar hearing before an Immigration Judge ("IJ") and requested a continuance to find an attorney. *Id.* ¶ 7. The IJ reset the hearing for October 14, 2025. Gloster Decl. ¶ 7. On October 14, 2025, Petitioner appeared with counsel and requested additional time to prepare. *Id.* ¶ 8. The hearing was continued to October 28, 2025. *Id.* Petitioner is detained pre-final order of removal pursuant to 8 U.S.C. § 1225(b)(2). *Id.* ¶ 9. In the event Petitioner becomes subject to a final order of removal and is ordered removed to Mexico, ICE/ERO will be able to effectuate his removal to Mexico. *Id.* ¶ 10. Mexico is open

for international travel, is issuing travel documents to facilitate removals of Mexican nationals, and ICE/ERO is currently removing non-citizens to Mexico. *Id.*

LEGAL FRAMEWORK

Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It is the interplay between these statutes that is at issue here.

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled "ALIENS TREATED AS APPLICANTS FOR ADMISSION"—dictates who "shall be deemed for purposes of this chapter an applicant for admission," defining that term to encompass *both* an alien "present in the United States who has not been admitted *or* [one] who arrives in the United States . . . ." *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those "arriving in the United States" and "certain other"[2] aliens "initially determined to be inadmissible due to fraud,

[2] The "certain other aliens" referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to an alien who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

"Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or

more . . classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," it provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien during removal proceedings.[3] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien detained under § 1226(a) should remain detained during the pendency of his removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge

[3] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for ties to the United States and risks of flight or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release an alien during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

ARGUMENT

Petitioner asserts five claims in his pleadings: (1) violation of 8 U.S.C. § 1226(a) for unlawful denial of release on bond, Pet. 11; (2) violation of the bond regulations (8 C.F.R. §§ 236.1, 1236.1, and 1003.19), Pet. 11-12; (3) violation of the Administrative Procedure Act ("APA") based on actions contrary to law and arbitrary and capricious agency policy, Pet. 12-13; (4) violation of the APA based on failure to observe required procedures, Pet. 13; and (5) violation of due process, Pet. 13. Petitioner's claims should be denied.

As an initial matter, the Court lacks jurisdiction to consider Petitioner's arguments about the application of § 1225(b) pursuant to 8 U.S.C. § 1252(e)(3). If the Court finds that it does have jurisdiction, however, Petitioner's claims alleging violations of the bond statute and regulations should be denied because that statute and those regulations do not apply to him as an "applicant

for admission" detained under § 1225(b)(2). Additionally, Petitioner's APA claims are not cognizable in habeas and, even if they were, the claims are meritless. Lastly, Petitioner's due process claims fail because his detention under § 1225(b) comports with due process under decades of precedent supporting detention of non-citizens during the pendency of removal proceedings.

Additionally, Petitioner's Motion for Emergency Temporary Restraining Order should be denied because it requests the ultimate relief in the case and he has not shown he will suffer irreparable injury absent temporary injunctive relief.

I. The Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(e)(3).

At the outset, Petitioner's first four claims should be denied for lack of subject matter jurisdiction. In all four claims, Petitioner challenges ICE/ERO and the immigration courts' implementation of section 1225(b)(2) to deny a bond hearing. Pet. 11-13. Section 1252(e)(3), however, bars this court from conducting "judicial review of determinations under section 1225(b) of this title and its implementation." 8 U.S.C. § 1252(e)(3). Unlike other provisions within § 1252(e), § 1252(e)(3) applies broadly to judicial review of § 1225(b), not just determinations under § 1225(b)(1). *Compare* 8 U.S.C. § 1252(e)(2). Thus, Petitioner's challenges regarding implementation of the detention authority pursuant to § 1225(b)(2)(A) must be brought in the U.S. District Court for the District of Columbia within 60 days of such implementation. *Id.* § 1252(e)(3)(B). Because § 1252(e)(3) vests jurisdiction only in the District of Columbia, this Court lacks jurisdiction, and Petitioner's first four claims should be denied on this basis.

II. Petitioner Is Subject to Mandatory Detention Without a Bond Hearing under the Plain Language of 8 U.S.C. § 1225(b)(2).

In the alternative, even assuming the Court finds it retains jurisdiction—which it does not—Petitioner's first four claims should be denied because he is validly detained under § 1252(b)(2). On September 5, 2025, the BIA issued a precedential decision in *In the Matter of*

Yajure-Hurtado, affirming that under the plain language of § 1225(b)(2), aliens present in the United States without admission, like Petitioner here, are subject to mandatory detention without a bond hearing during their removal proceedings. 29 I&N Dec. 216 (BIA 2025). For the same reasons as the BIA determined § 1225(b)(2) applies in *Hurtado*, the Court should reject Petitioner's argument that § 1226(a) governs his detention instead of § 1225(b)(2).

Petitioner is an "applicant for admission" under § 1225(a)(1). *See* 8 U.S.C. § 1225(a)(1). He nonetheless argues that, unlike other applicants for admission, he cannot be subjected to § 1225(b)(2)'s mandatory-detention provision because he has been present in the interior of the United States. *See, e.g.*, Pet. 9-10. This circumstances, however, does not change his status as an applicant for admission, and therefore he is mandatorily detained pursuant to § 1225(b)(2).

First, consider the plain text. Statutory language "is known by the company it keeps." *United States v. Dawson*, 64 F.4th 1227, 1237 (11th Cir.), cert. denied, 144 S. Ct. 343 (2023) (quoting *Yates v. United States*, 574 U.S. 528, 537, (2015)). "Seeking admission" and "appl[ying] for admission," in this context, are plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person "seeking admission" is just another way of saying someone is applying for admission—that is, he is an "applicant for admission"—which includes both those individuals arriving in the United States and those already present without admission. *See* 8 U.S.C. § 1225(a)(1); *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

Congress used the simple phrase "arriving alien" throughout much of § 1225. *See*, *e.g.*, 8 U.S.C. §§ 1225(a)(2), (b)(1), (c), (d)(2). That phrase plainly distinguishes an alien presently in, or recently "arriving" in, the United States from other "applicants for admission" who, like Petitioner, have been present in the United States without having been admitted. But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)'s mandatory-detention provision. 8 U.S.C. § 1225(b)(2). If Congress meant to limit § 1225(b)(2)'s scope to "arriving" aliens, it could have simply used that phrase, like it did in § 1225(b)(1). Instead, Congress used the phrase "alien seeking admission" as a plain synonym for "applicant for admission."

Second, consider the statutory structure of § 1225(b). To be sure, § 1225(b)(1) applies to applicants for admission who are "arriving in the United States" and provides for expedited removal proceedings. It also contains its own mandatory-detention provision applicable during those expedited proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Section 1225(b)(2), by contrast, applies to "other" aliens—"in the case of an alien who is an applicant for admission"—those *not* subject to expedited removal under (b)(1). They too "shall be detained" but instead for a more typical removal "proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Properly understood, § 1225(b) applies to two groups of "applicants for admission": (b)(1) applies to "arriving," or recently arrived, aliens who must be detained pending *expedited* removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, who, like Petitioner, "shall be detained for a [*non-expedited*] proceeding under section 1229a of this title," 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting (b)(2) to "arriving" aliens would render it redundant and without any effect.

And *third*, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. Unless there is a conflict, a specific provision governs over a more

general provision encompassing that same matter. *See Nitro-Lift Technologies, LLC v. Howard*, 568 U.S. 17, 21 (2012); *Bloate v. U.S.*, 559 U.S. 196, 207–08 (2010). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to aliens who are "applicants for admission,"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not been admitted." *Id.* § 1225(a). *See also Florida v. United States,* 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of aliens as 'applicants for admission,' and § 1225(b) mandates detention of these aliens throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien."). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

The U.S. District Court for the District of Massachusetts recently confirmed that an alien, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, Civ. Action No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025). The court explained this resulted in the "continued detention" of an alien during removal proceedings as commanded by statute. *Id.*; *see also*, *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding § 1225(b)(2) applicable to the petitioners and denying a TRO for failure to show likelihood of success). The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Lemus-Losa*, 25 I. & N. Dec. at 743.

When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *NPR Investments, LLC ex rel. Roach v. U.S.*, 740 F.3d 998, 1007 (5th Cir. 2014). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history were relevant, the text of a law controls over purported legislative intentions. *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat aliens arriving at ports of entry worse than those who successfully entered the nation's interior without inspection. *See Hurtado*, 29 I&N Dec. at 222–25. Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, U.S. v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

The Court should reject Petitioner's interpretation because it rewards aliens, like him, who "crossed the border unlawfully," by making them bond-eligible, unlike arriving aliens, "who

present themselves for inspection at a port of entry." *Id.* In other words, aliens who presented at ports of entry in compliance with the law would be subject to mandatory detention under § 1225, while those who crossed without inspection would be eligible for bond under § 1226(a). Such an outcome would contradict Congress' stated intent in passing IIRIRA and lead to an absurd result.

Petitioner argues that his detention without a bond hearing is in violation of 8 U.S.C. § 1226(a) and the implementing regulations thereof. Pet. 10-11. Because Petitioner is not detained pursuant to § 1226(a), these claims are meritless. For the reasons discussed above, Petitioner is properly classified as an "applicant for admission," and under a plain reading of the statutes, he is mandatorily detained during the pendency of his removal proceedings pursuant to § 1225(b). Those proceedings are ongoing, and upon issuance of a final order of removal, Petitioner's detention authority will adjust accordingly. Counts I and II of the Petition should be denied.

III. Petitioner's APA claims are not cognizable in habeas and are otherwise meritless.

Separately, Petitioner's two APA claims should be denied because those claims are not cognizable in this habeas corpus proceeding. Petitioner has filed a habeas petition—not a civil complaint—and his APA claims are not cognizable in habeas. This Court addressed this issue in *Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). There a non-citizen filed a habeas petition challenging his continued detention. *Villafuerte*, 2018 WL 6626640, at *1. However, the non-citizen also raised an APA claim concerning the denial of his application for immigration status. *Id.* at *1-2. The Court held that the petitioner's APA claim was "not cognizable" for two reasons. First, the non-citizen sought a form of "collateral administrative relief" which is not properly within the purview of habeas corpus. *Id.* at *2 (quotations and citations omitted). Second, it was "inappropriate" to permit the non-citizen to raise

a civil claim because the non-citizen filed a habeas petition with a far lower filing fee. *Id.* The Court should reach the same conclusion here and decline to allow Petitioner to bootstrap APA claims onto the Petition.

Furthermore, Petitioner's APA claims are meritless. Petitioner states that the application of § 1225(b) to non-citizens like Petitioner is arbitrary and capricious and was applied in violation of the notice and comment rulemaking procedures. Pet. 11. For many of the reasons explained above, however, this argument fails on the merits. Namely, the Supreme Court has interpreted § 1225(b)(2) to cover "all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, and the BIA has now applied this interpretation to non-citizens in the same class as Petitioner here. *In re Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Accordingly, Petitioner cannot establish that application of § 1225(b)(2) to him is arbitrary or capricious or otherwise contrary to law.

IV. Petitioner's detention pursuant to 8 U.S.C. § 1225(b) complies with due process.

In his fifth claim, Petitioner argues that his detention under § 1225(b)(2) violates due process because he has not received a bond hearing. However, as an applicant for admission, Petitioner's due process rights are limited to those provided by statute. Because the INA does not permit bond hearings for applicants for admission, his continued detention complies with due process.

Petitioner contends that his continued detention violates his due process rights.[4] Decades of precedent contradict this contention. As a starting point, Congress and the Executive have plenary power over the admission of non-citizens like Petitioner. "For reasons long recognized as

[4] Petitioner does not specify if his claims are brought based on procedural or substantive grounds. The government addresses the due process claims in the same section. If the Court wishes for the government to address one or both of the due process claims in more detail, undersigned counsel respectfully requests an additional opportunity for briefing if necessary.

valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, "over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Id.* (collecting cases).

"[A] concomitant of that power [over the admission of aliens] is the power to set the procedures to be followed in determining whether an alien should be admitted." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). "[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972).

In assessing due process protections arising from the application of these procedures, the Supreme Court has recognized that while all non-citizens are entitled to due process protections, this "does not lead . . . to the conclusion that all aliens must be placed in a single homogeneous legal classification." *Mathews v. Diaz*, 426 U.S. at 77-78. Rather, "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted).

In recognition of these plenary powers to determine the procedures for admission, over the course of more than a century, the Supreme Court has consistently held in multiple contexts that the due process rights of aliens seeking admission into the United States—like Petitioner here—

are limited to only the procedures provided by statute. *Thuraissigiam*, 591 U.S. at 138-40 ("[A]n alien . . . has only those rights regarding admission that Congress has provided by statute."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." (citations omitted)); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." (internal quotations and citation omitted)); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (same); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("[T]he decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.").

This Court has applied these principles and addressed the precise issue presented here. In *D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, an applicant for admission filed a habeas petition, claiming, *inter alia*, that her mandatory detention under 8 U.S.C. § 1225(b) without a bond hearing violated due process. No. 7:20-cv-159-CDL-MSH, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020), at *1-2. The Court denied the alien's claim because "longstanding Supreme Court precedent" makes clear that such an alien's "procedural due process rights entitle them only to the relief provided by the INA." *Id.* at *6 (citing *Thuraissigiam*, 591 U.S. at 140; *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Nishimura Ekiu*, 142 U.S. at 660). "[B]ecause the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing." *Id.* (citations omitted).[5]

[5] In the context of one specific type of "applicant for admission," the "arriving alien," courts throughout the country have reached the same conclusion as this Court: non-admitted aliens' due process rights are limited to the procedures provided by statute, and they do not have a due process right to a bond hearing. *See Mendoza-Linares v. Garland*, No. 21-cv-1169, 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676-79

To the extent Petitioner claims his detention violates his substantive due process rights, that claim should be denied. Where a law affects a "fundamental liberty interest," it complies with due process if it "is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993) (internal quotations and citations omitted). "Substantive due process analysis must begin with a careful description of the asserted right[.]" *Id.* (internal quotations and citations omitted). Petitioner's detention is narrowly tailored to a government interest. Petitioner has been in custody since September 18, 2025. Gloster Decl. ¶ 5. He initially had a master calendar hearing set for September 29, 2025, which was rescheduled to October 14, 2025. *Id.* ¶ 7. At that hearing, Petitioner, represented by counsel, sought additional time to prepare and the IJ reset the hearing for October 28, 2025. *Id.* ¶ 12. His case is being actively worked to ensure that the substantive due process rights to which he is entitled are being preserved. Unlike the potentially indefinite detention at issue in *Zadvydas*, Petitioner's mandatory detention under section 1225(b) has a clear end date—the conclusion of his removal proceedings. The Supreme Court has held that mandatory detention for this purpose complies with due process. *See*, *generally*, *Demore*, 538 U.S.at 522 (regarding mandatory detention under § 1226(c)).

V. Petitioner is not entitled to a Temporary Restraining Order / Preliminary Injunction.

Petitioner is not entitled to a TRO or preliminary injunction. Petitioner's claims are similar to hundreds of other petitions on which this Court has ruled without a hearing. Petitioner's

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(S.D. Tex. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 332-336 (W.D.N.Y. 2021); *Ford v. Ducote*, No. 20-1170, 2020 WL 8642257, at *2 (W.D. La. Nov. 2, 2020); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020); *Mendez-Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020); *Gonzalez Aguilar v. McAleenan*, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019); *Moore v. Nielsen*, 4:18-cv-01722-LSC-HNJ, 2019 WL 2152582, at *3 (N.D. Ala. May 3, 2019). The underlying legal basis for this finding applies equally to all "applicants for admission," including Petitioner, who never "effected an entry" into the United States. *See Thuraissigiam*, 591 U.S. at 140. Whether classified as an "arriving alien" (a sub-classification of "applicant for admission") or not, Petitioner was never admitted into the United States and therefore never effected an entry. *See* Jackson Decl. ¶ 3. The Supreme Court was explicit that such an alien who has never "effected an entry" "has only those right regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140.

"emergency" motion merely restates the arguments made in his Petition and asserts that irreparable injury will ensue absent expedited consideration. ECF No. 4 at 7-8. Petitioner's arguments on irreparable injury depend on the finding that Petitioner's detention under 8 U.S.C. § 1225(b)(2) is either an improper application of the statute or a violation of Petitioner's due process rights. *Id.* Rather than using his motion for preliminary injunction to preserve the status quo to facilitate judicial review of his claims, Petitioner, instead, seeks to mandate that Respondent confer the ultimate relief he seeks in this case. In other words, any analysis of the motion for preliminary injunction is necessarily an analysis of the ultimate issue since the Petition and motion seek the same relief, and that does not state a legally cognizable claim for injunctive relief.

"The purpose of the preliminary injunction is to preserve the positions of the parties" until the court can enter a final decision on the merits of the case. *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011) (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)). The purpose is not to "grant[] most or all of the substantive relief requested in the" pleading. *Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982) (citations omitted). "Thus only those injuries that cannot be redressed by the application of a judicial remedy *after* a hearing on the merits can properly justify a preliminary injunction." *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). (emphasis added).

In light of the case law, it is apparent that Petitioner's motion is not a proper motion for preliminary injunction. He does not seek relief appropriate for a preliminary injunction. Rather, properly construed, his motion is simply a successive pleading in support of his Petition. But the Petition is still being briefed. Absent leave of Court, Petitioner may not file an additional pleading to supplement his Petition. His motion for preliminary injunction should be denied because Petitioner does not seek any "preliminary" relief at all.

Moreover, Petitioner seeks a preliminary injunction which affords him the ultimate relief sought in the case rather than one which simply maintains the status quo. "Mandatory preliminary relief, which goes well beyond simply maintaining the status quo pendente lite, is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party[.]" *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976) (citations omitted); *see also Pinkston v. Univ. of S. Fla. Bd. of Trustees*, No. 8:15-cv-1724-T-33TBM, 2016 WL 11469181, at *2 (M.D. Fla. May 18, 2016) (recognizing that movant's motion for preliminary injunction sought "the ultimate case-dispositive determination" and that "[t]his type of preliminary injunctive relief is particularly disfavored").

Additionally, Petitioner cannot establish any irreparable harm which may occur if a preliminary injunction is not granted. An irreparable injury "must be neither remote nor speculative, but actual and imminent." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (citations omitted). In analyzing a motion for preliminary injunction, "the harm considered by the district court is necessarily confined to *that which might occur in the interval between ruling on the preliminary injunction and [ruling] on the merits.*" *U.S. v. Lambert*, 695 F.2d 536, 540 (11th Cir. 2000) (emphasis added). "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 90 (1974).

Unlike many of the cases he cites, Petitioner has not established that his continued detention is unconstitutional. Indeed, for the reasons explained above, he cannot even establish that he is likely to succeed on the merits of his constitutional claim. Moreover, in Petitioner's motion for preliminary injunction, he requests the same relief which he seeks in the Petition: his release from custody. His continued detention is the status quo. Absent a favorable ruling on the

ultimate merits of the Petition, he cannot establish any substantial threat of harm in the interim. Thus, Petitioner does not meet the elements of a preliminary injunction or TRO, and the Motion for Emergency Temporary Restraining Order should be denied.

CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition. Further, Respondent respectfully requests that the Court deny the Motion for Emergency Temporary Restraining Order.

Respectfully submitted, this 16th day of October, 2025.

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