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

JONATHAN ESCOBAR OLIVARES,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-299-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On September 25, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. On September 26, 2025, the Court ordered Respondent to file a response to the Petition within twenty-one (21) days. ECF No. 3. Respondent now files this Response showing the Court that the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Mexico who is currently detained as an arriving alien pursuant to Immigration and Nationality Act ("INA") § 235(b) (8 U.S.C. § 1225(b)). Declaration of Deportation Officer ("DO") David Bush ("Bush Decl.") ¶¶ 4, 5, 9 & Ex. A. Petitioner unlawfully entered the United States at an unknown date and time. *Id.* ¶ 4. On or about August 5, 2025, Petitioner was arrested by the Forsyth County Sheriff's Office in Cumming, Georgia, for a probation violation. *Id.* On or about August 25, 2025. Petitioner was encountered by Immigration and Customs Enforcement ("ICE") and transferred to Stewart Detention Center in Lumpkin, Georgia. *Id.* & Ex. A.

On or about August 26, 2025, Petitioner was served with a Notice to Appear ("NTA") that charged him as being inadmissible under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I)). Bush Decl. ¶ 5. The NTA notified Petitioner of his first master hearing date of September 9, 2025 at Stewart Immigration Court. *Id.* & Ex. B. On September 9, 2025, Petitioner appeared at his initial master hearing with counsel, and his counsel requested a continuance for attorney preparation time. *Id.* ¶ 6. The Immigration Judge ("IJ") granted counsel's request and reset the case to September 23, 2025. *Id.* On September 23, 2025, Petitioner appeared at the master hearing with counsel. *Id.* ¶ 7. The IJ sustained the NTA and reset the master hearing to October 14, 2025 to afford Petitioner the opportunity to file an application for relief from removal. *Id.* On October 9, 2025, Petitioner filed an application for relief from removal. *Id.* ¶ 8. On October 14, 2025, Petitioner appeared at the master hearing with counsel. *Id.* ¶ 9. The IJ acknowledged the filed application for relief from removal and set the case for a merits hearing on November 10, 2025. *Id.* To date, Petitioner remains detained at Stewart Detention Center pursuant to 8 U.S.C. § 1225(b). *Id.* ¶ 10. In the event Petitioner becomes subject to a final order of removal to Mexico, ICE/Enforcement and Removal Operations ("ERO") will be able to effectuate his removal. Mexico is open for international travel and ICE/ERO is currently removing aliens to Mexico. *Id.* ¶ 11.

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"[1] aliens "initially determined to be inadmissible due to fraud, 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

[1] 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.

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.[2] *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 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

[2] 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).

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 enumerates two claims for relief: (1) his detention violates his Fifth Amendment due process rights because he has not received a bond hearing, Pet. 13–15, and (2) his detention constitutes cruel and unusual punishment within the meaning of the Eighth Amendment, Pet. 15-16. However, as explained more thoroughly below, the scope of Petitioner's claims is unclear. As a remedy, Petitioner requests release from custody or, in the alternative, a bond hearing before an IJ. *Id.* at 17 (requests for relief). The Petition should be denied as to both claims. Petitioner's due process claim fails because he is properly detained pursuant to § 1225(b)(2), and his mandatory detention without a bond hearing under that authority complies with due process under decades of precedent supporting detention of non-citizens during the pendency of removal proceedings. Petitioner's Eighth Amendment claim is not cognizable in habeas, and even if it were, the claim otherwise lacks merit.

I. Petitioner's detention pursuant to 8 U.S.C. § 1225(b)(2) complies with due process.

Petitioner claims that his detention violates his due process rights because he has not received a bond hearing. Pet. 14-15. Specifically, he argues that he has been improperly classified as an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). *Id.* According to Petitioner, the Court should judicially review this implementation of § 1225(b)(2)

and find that his detention is properly governed by 8 U.S.C. § 1226(a), which allows for bond hearings. *Id.*

Petitioner's due process claim should be denied for three reasons. ***First***, the Court lacks jurisdiction over Petitioner's claim because 8 U.S.C. § 1252(e)(3) prohibits this Court from judicially reviewing the implementation of § 1225(b)(2). ***Second***, in the alternative, to the extent the Court finds it retains jurisdiction, Petitioner's claim lacks merit because § 1225(b)(2) is the proper detention authority for an applicant for admission like Petitioner here, and that authority mandates detention. ***Third***, to the extent Petitioner asserts that mandatory detention under § 1225(b)(2) violates due process, his claim should be denied because Supreme Court and district precedent dictate that his due process rights are limited to those provided by statute.

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

At its most basic, Petitioner's due process claim challenges the implementation of § 1225(b)(2) and the concomitant denial of a bond hearing based on the mandatory detention provisions of that section. Petitioner seeks judicial review of ICE/ERO and the immigration courts' interpretation of § 1225(b)(2) and their determination that he falls within its scope. Pet. 12-15. However, the Court lacks jurisdiction over this claim pursuant to 8 U.S.C. § 1252(e)(3). That section 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). Rather, only the U.S. District Court for the District of Columbia is vested with jurisdiction to judicially review the implementation of § 1225(b). *Id.* Unlike other provisions within § 1252(e), subsection (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) (limiting "[j]udicial review of any determination made under section 1225*(b)(1)*,"

(emphasis added)) *with id.* § 1252(e)(3) (limiting [j]udicial review of determinations made under section 1225*(b)*" (emphasis added)).

Thus, Petitioner's challenge to the implementation of the detention authority pursuant to § 1225(b)(2) must be brought in the U.S. District Court for the District of Columbia within 60 days of such implementation. 8 U.S.C. § 1252(e)(3)(B). Because § 1252(e)(3) vests jurisdiction only in the District of Columbia, this Court lacks jurisdiction, and Petitioner's due process claim should be denied on this basis.

B. 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 should not—Petitioner's due process claim should be denied because he is validly detained pursuant to § 1225(b)(2) under the plain language of that subsection. As a result, Petitioner's due process claim should be denied because § 1226(a)—including its accompanying bond procedures—does not govern his detention.

On September 5, 2025, the BIA issued a precedential decision in *In the Matter of Yajure-Hurtado*, affirming that under the plain language of section 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 (B.I.A. 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* Bush Decl. ¶ 5 & Ex. B. 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. Pet. 14-15. This circumstances, however, does not change his status as an applicant for admission, and therefore he is mandatorily detained pursuant to § 1225(b)(2).

The plain language of section 1225(b)(2) dictates that Petitioner falls within its scope. *See Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1199 (11th Cir. 2007) ("In interpreting a statute, we look first to the statute's plain meaning . . . ."). 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[y]ing] 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."

Beyond the plain language, the statutory structure of § 1225(b) also supports this interpretation. 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.

A comparison of § 1225's mandatory-detention provisions to the discretionary-detention provisions of § 1226 further bolsters this conclusion. 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.

"[C]ourts need not examine legislative history if the meaning of the statute is plain." *United States v Florida*, 938 F.3d 1221, 1245 (11th Cir. 2019). 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 non-citizens—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 violates due process because § 1226(a) is the proper detention authority. Pet. 12-15. Because Petitioner is not detained pursuant

to § 1226(a), his claim lacks merit. 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. Petitioner's due process claim should be denied.

C. Petitioner's mandatory detention pursuant to 8 U.S.C. § 1225(b)(2) complies with due process.

As explained above, Petitioner's due process claim is premised on the notion that § 1226(a) governs his detention, and he claims he is entitled to a bond hearing under that authority. As Petitioner frames his claim, "[t]he primary legal dispute in this case centers on a question of statutory interpretation regarding the various provisions of the INA[.]" Pet. 12. But for the reasons outlined in the preceding section, § 1225(b)(2) governs Petitioner's detention, and he is not entitled to a bond hearing pursuant to § 1226(a).

However, Petitioner also states—without citation of any authority—that his "continued detention without opportunity to request bond violates the Due Process Clause of the Fifth Amendment." Pet. 15. Because Petitioner's claim focuses on the dispute of statutory interpretation discussed above, it is unclear whether Petitioner separately asserts that his *detention under § 1225(b)(2)* violates due process because he has not received a bond hearing. Indeed, Petitioner acknowledges that § 1225(b) prohibits his release on bond. *See* Pet. 14-15. To the extent Petitioner raises such a claim, the Petition should be denied. 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.

As a starting point, Congress and the Executive have plenary power over the admission of non-citizens like Petitioner. "For reasons long recognized as 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 arriving 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).[3]

[3] 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-2169, 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676-79 (S.D. Tex. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 332-336 (W.D.N.Y. 2021); *Ford v. Ducote*, No. 20-1179, 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);

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 August 25, 2025. Bush Decl. ¶ 4. He initially had a master calendar hearing set for September 9, 2025, at which he appeared with counsel who requested additional time to prepare. *Id.* ¶ 6 The hearing was rescheduled to September 23, 2025. *Id.* ¶ 7. At that hearing, the IJ sustained the NTA and reset the master hearing for October 14, 2025 to afford Petitioner the opportunity to file an application for relief from removal. *Id.* On October 9, 2025, Petitioner filed an application for relief from removal. *Id.* ¶ 8. On October 14, 2025, Petitioner appeared before the IJ with counsel, at which time the IJ acknowledged Petitioner's application and reset the case for a merits hearing on November 10, 2025. *Id.* ¶ 9. 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 also Demore*, 538 U.S.at 522 (regarding mandatory detention under 8 U.S.C. § 1226(c)).

Gonzalez Aguilar v. McAleenan, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019); *Moore v. Nielsen*, 4:18-cv-0722-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 rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140.

I. Petitioner's conditions of confinement claims are not cognizable in habeas and are otherwise meritless.

At the outset, it is unclear whether Petitioner even affirmatively raises an Eighth Amendment claim. The Petition couches this purported claim in purely hypothetical terms, stating merely that a non-citizen detained "without any immigration charge" or a bond hearing at an "overcrowded and unsafe" facility "*may* have a *colorable* Eighth Amendment claim." Pet. ¶ 56 (emphasis added). Further, Petitioner does not provide any legal basis for his claim, citing only the Model Rules of Professional Conduct's statement that lawyers may advance good faith arguments. *Id.* (citing Model Rules of Pro. Conduct r. 3.1). Respondent respectfully contends that Petitioner's Eighth Amendment claim should be denied for failure to state any claim whatsoever. Nevertheless, even assuming Petitioner's conclusory and hypothetical assertions *could* state an Eighth Amendment claim, the claim should still be denied for four reasons.

First, to the extent Petitioner challenges the conditions of his confinement, his Eighth Amendment claim is not cognizable in habeas. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "[W]here an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence . . . [s]uch claims fall within the 'core' of habeas corpus[.]" *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). "By contrast, constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core[.]" *Id.* For these reasons, in the immigration context, the Eleventh Circuit has held that a "§ 2241 petition is not the appropriate vehicle for raising . . . a claim challeng[ing] the conditions of confinement, not the fact or duration of that confinement." *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (per curiam).

Second, Petitioner's claim should be denied because he is not entitled to release from custody to remedy any purportedly unlawful condition of confinement. "[E]ven if a prisoner proves an allegation of mistreatment in prison that amounts to cruel and unusual punishment, he is not entitled to release." *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (citing *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979), *cert. denied*, 442 U.S. 932 (1979)). Rather, "[t]he appropriate Eleventh Circuit relief from prison conditions that violate the Eighth Amendment during legal incarceration is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Id.*; *see also Vaz*, 634 F. App'x at 781 ("[E]ven if [an immigration detainee] established a constitutional violation [in a habeas proceeding], he would not be entitled to the relief he seeks because release from imprisonment is not an available remedy for a conditions-of-confinement claim." (citing *Gomez*, 899 F.2d at 1126)); *A.S.M. v. Warden, Stewart Cnty. Det. Ctr.*, 467 F. Supp. 3d 1341, 1348 (M.D. Ga. 2020) ("Release from detention is not available as a remedy for unconstitutional conditions of confinement claims." (citations omitted)). Accordingly, even assuming Petitioner could establish an unlawful condition of confinement, his habeas claim should be denied because he is not entitled to release from custody as a remedy.

Third, as this Court has previously held, to the extent Petitioner attempts to raise a claim related to his conditions of confinement pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), such a *Bivens* claim "cannot be raised in the same action as a habeas petition."[1] *S.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-159-CDL-MSH, 2023 WL 2534098, at *6 (M.D. Ga. Jan. 30, 2023) (citing *Kerlin v. Barnard*, 742 F. App'x 488, 489 (11th Cir. 2018)

[1] To the extent Petitioner asserts an Eighth Amendment claim pursuant to *Bivens* challenging only the *fact* of his immigration detention—as opposed to the *conditions* of that detention—that claim should be denied because the Eleventh Circuit has declined to recognize a *Bivens* cause of action in this context. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1205-12 (11th Cir. 2016).

(per curiam); *Corbin v. Dep't of Veteran Affairs*, No. 2:15-cv-1174, 2015 WL 10384134, at *2 (N.D. Ala. Dec. 11, 2015)), *recommendation adopted*, 2023 WL 2527869 (M.D. Ga. Mar. 15, 2023).

Fourth, to the extent Petitioner claims that the denial of a bond hearing constitutes an Eighth Amendment violation, that claim lacks merit. In *Carlson v. Landers*, 342 U.S. 524 (1952), non-citizens mandatorily detained on immigration charges filed habeas petitions asserting, *inter alia*, that "detention without bond was in violation of . . . the Eighth Amendment[.]" 342 U.S. at 529. The Supreme Court held that the non-citizens' detention "clearly" did not implicate the Eighth Amendment. *Id.* at 544-46. For these reasons, even assuming Petitioner affirmatively raises an Eighth Amendment claim, that claim 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.

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

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