IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALEXY KASHRANOV	:	
	:	
Petitioner	:	CASE NO. 25-CV-05555
v.	:	
	:	
J.L. JAMISON, ET AL.	:	
	:	
Respondents.	:	

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

Petitioner is not a citizen of the United States and is present without authorization. After an attempted illegal crossing with his family from Mexico to the United States on December 3, 2023, Customs and Border Patrol discovered and took Petitioner into custody. Two days later, Immigration and Customs Enforcement (ICE), through a Notice to Appear, charged Petitioner as removable under 8 U.S.C. § 1182(a)(6)(A)(i) as a non-citizen present in the United States without being admitted or paroled.

Rather than proceed through the Congressionally-established process, he has filed a habeas petition, challenging the Secretary of Homeland Security's decision to detain him pursuant to § 1225(b)(2), as opposed to 8 U.S.C. § 1226(a). Not only has he failed to establish that the Court has jurisdiction to hear his petition, but he has also failed to establish the merits of his central contention that his detention is unlawful. Petitioner was never inspected and admitted to the United States and therefore, as an applicant for admission, he is subject to mandatory detention under § 1225(b)(2).

This specific legal question has been raised in numerous other habeas petitions, filed in the wake of the BIA's decision in *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025). It cannot be disputed that the majority of courts to have addressed the question have rejected the government's position. Nevertheless, the Third Circuit and this Court have not yet addressed the issue. The Court here, therefore, is not bound by precedent. For the reasons set out below, the Court should dismiss the petition for lack of jurisdiction. If the Court does, however, reach the merits of the petition, it should adopt the government's interpretation of the scope of § 1225(b)(2), which is consistent with the plain text of the statute.

Additionally, Petitioner—who had been in immigration detention for a few days at the time of filing—cannot show irreparable harm, and the public interest lies in ensuring enforcement of the immigration statutes. Preliminary injunctive relief is thus not appropriate.[1]

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a Russian native. Petition for Habeas Corpus (Pet.) ¶ 18; Exhibit A to Petitioner's Mot. for Temporary Restraining Order ¶ 2 (TRO Ex. A). With his wife and daughter, he attempted illegal entry from Mexico into the United States via a gap in border fencing on December 3, 2023. TRO Ex. A ¶ 13; Pet. ¶ 19. However, border patrol officers encountered them and took them into custody. *Id.* Petitioner was placed in removal proceedings and released on his own recognizance two days later on December 5, 2023. Pet. ¶ 20; *id.* Ex. B. Petitioner timely applied for asylum on May 8, 2024. *Id.* ¶ 22.

On September 24, 2025, ICE detained petitioner at its Philadelphia field office during an appointment pursuant to an administrative arrest warrant. TRO Ex. A ¶ 20; *id.* Ex. F. He was placed in immigration custody at the Federal Detention Center in Philadelphia, TRO Memo. at 6, and then transferred to Pike County Correctional Facility on September 28, 2025. *Id.* On October 20, 2025, an Immigration Judge denied Petitioner's request for a custody redetermination hearing. *Id.*; *see also* TRO Ex. G (denying custody redetermination request on the basis that *Matter of Yajure Hurtado*, 29 I&N 216 (BIA 2025) holds that the Immigration Judge lacks authority to hear bond requests or to grant bond to aliens who are present in the United States

[1] Respondents are simultaneously filing an opposition to Petitioner's Habeas Petition and this opposition to the Motion for Temporary Restraining Order and Preliminary Injunction. For ease of reference, respondents have included the full merits argument in both briefs. Here, the merits discussion is relevant to Petitioner's likelihood of success on the merits.

without admission). Petitioner filed a timely appeal to the BIA of the custody redetermination on October 26, 2025.

LEGAL STANDARD

Petitioner's habeas petition challenges his civil immigration detention pending his removal proceeding. It is well established that the writ of habeas corpus is an "extraordinary remedy." *Shinn v. Ramirez,* 596 U.S. 366, 377 (2022). The burden is on the petitioner to show his confinement is unlawful. *Hawk v. Olson,* 326 U.S. 271, 279 (1945); *accord Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (habeas petitioner "carries the burden of proof"); *see* 28 U.S.C. § 2241.

Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have 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."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings*, 583 U.S. at 286 ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

Petitioner is being held pursuant to 8 U.S.C. § 1225(b)(2) and must therefore make a strong showing to demonstrate that his continued detention violates the Constitution or the laws of the United States. *See United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953) ("This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power."); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 402 F. Supp. 251, 254 (E.D. Pa. 1975) ("[D]efendants here carry a heavy burden, for a strong presumption of validity attaches to an Act of Congress.").

Petitioner seeks a temporary restraining order and preliminary injunction. "An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Instead, injunctions "may only be awarded upon a clear showing that the [movant] is entitled to such relief." *Winter v. Nat. Res.*

Def. Council, Inc., 555 U.S. 7, 22 (2008). The standard for obtaining a temporary restraining order is the same standard for obtaining a preliminary injunction. *Corp. Synergies Group, LLC v. Andrews*, 775 F. App'x 54, 58 n.5 (3d Cir. 2019). The movant must establish that (1) "he is likely to succeed on the merits" of his claim; (2) "he is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) an injunction is in the public interest. *Id.* at 20. The last two factors "merge when"—like here—"the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Crucially, on a motion for preliminary injunction, "[t]he movant[] must establish entitlement to relief by clear evidence." *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 526 (3d Cir. 2018) (*citing* Winter, 555 U.S. at 22); *see also Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 202 (3d Cir. 2024) ("Because 'a preliminary injunction is an extraordinary and drastic remedy,' the movant bears the burden of making 'a clear showing.'" (citation omitted)). "The failure to establish any element renders a preliminary injunction inappropriate." *Ferring Pharms, Inc. v. Watson Pharms., Inc.*, 765 F.3d 205, 210 (3d Cir. 2014) (cleaned up). And if injunctive relief is ultimately awarded, its terms must be "no broader than necessary to provide full relief to the aggrieved [movant]." *Benezet Consulting LLC v. Sec'y Commonwealth of Pennsylvania*, 26 F.4th 580, 584 (3d Cir. 2022) (quoting *Belitskus v. Pizzingrilli*, 343 F.3d 632, 649 (3d Cir. 2003)).

ARGUMENT

I. Petitioner is Unlikely to Succeed on the Merits

Petitioner is not entitled to a preliminary injunction, or to any relief in this matter. He is unlikely to succeed on the merits because: (1) this Court lacks jurisdiction to intervene in Petitioner's removal proceedings, (2) Petitioner has failed to exhaust administrative remedies, (3)

Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2), and (4) his detention does not offend Due Process.

A. The District Court Lacks Jurisdiction to Intervene in Petitioner's Removal Proceedings

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 818 (3d Cir. 2023), *cert. denied*, 144 S. Ct. 1007 (2024); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). Petitioner has failed to carry this burden as his claims are jurisdictionally barred by 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9).

i. 8 U.S.C. § 1252(g) bars Petitioner's claims because he is challenging Respondents' action to commence removal proceedings

Congress has provided that "no court shall have jurisdiction to hear any cause or claim" that arises from "the decision or action" to "commence" removal proceedings or "adjudicate [those] cases." *Id.* § 1252(g); *AADC*, 525 U.S. at 483; *Tazu v. Att'y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020).

Petitioner challenges the determination by the Secretary to detain him pursuant to § 1225(b)(2), as opposed to § 1226(a). *See* Pet. ¶ 51. The Court lacks jurisdiction to adjudicate Petitioner's claims as they arise "from the decision or action by the Attorney General [Secretary of Homeland Security] to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see also Tazu v. Att'y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020); *Valencia-Mejia v. United States*, No. 08-cv-2943, 2008 WL 4286979, at *3 (C.D. Cal. Sept. 15, 2008).

Section 1252(g) bars district courts from hearing challenges to the method by which the government chooses to commence removal proceedings, including the decision to detain an alien

pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and bars review of "ICE's decision to take [plaintiff] into custody and to detain him during his removal proceedings") *accord S.Q.D.C. v. Bondi*, No. CV 25-3348 (PAM/DLM), 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025); *see also Linarez v. Garland*, No. 3:24-CV-488, 2024 WL 4656265, at *4 (M.D. Pa. Sept. 24, 2024), report and recommendation adopted sub nom. *Cordon-Linarez v. Garland*, No. 3:24-CV-00488, 2024 WL 4652824 (M.D. Pa. Nov. 1, 2024) ("[I]n our view, the Attorney General's discretionary decision to place Linarez in expedited removal proceedings is precisely the action this statute refers to when it states: 'no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.'").

The Secretary's decision to detain is a "specification of the decision to 'commence proceedings' which . . . § 1252(g) covers." *AADC*, 525 U.S. at 474, 485 n.9; *Sissoko v. Mukasey*, 509 F.3d 947 (9th Cir. 2007); *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms," § 1252(g) "bars us from questioning [the government's] discretionary decisions to commence removal" of a foreign national, which include the "decision to take him into custody *and to detain him during his removal proceedings*." (emphasis added)); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067–68 (N.D. Ill. 2007) (claim challenging arrest and detention during removal proceedings was barred under § 1252(g) because "'when removal proceedings are initiated against an inadmissible alien

by issuing a removal order, the alien is automatically arrested and detained.' The arrest/detention arose from the decision to commence proceedings, and Plaintiff's Fourth Amendment claim arose from the arrest/detention. Thus, . . . the Fourth Amendment claim arose from the decision to commence proceedings.").

ii. 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction because Petitioner challenges Respondents' interpretation of a statutory provision arising from Respondents' action taken to remove him from the United States

Additionally, the District Court lacks jurisdiction to address the Petitioner's claims as Congress has provided that the only remedy for the type of legal question raised in the petition for habeas corpus is through a Petition for Review to the Third Circuit, following a BIA final order. "[N]o court shall have jurisdiction, by habeas corpus . . . or by any other provision of law," to review any questions of law or fact "arising from any action taken or proceeding brought to remove an alien from the United States" except on a petition for review of a final order of removal. 8 U.S.C. § 1252(b)(9); *see also id.* § 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal"). "Judicial 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 United States under this subchapter shall be available only in judicial review of a final order." § 1252(b)(9).

Congress intended to insulate threshold detention decisions from district court review. The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *AADC*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting

§ 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings").

While § 1252(b)(9) may not bar claims challenging the conditions or scope of detention of aliens in removal proceedings, it does bar claims "challenging the decision to detain them in the first place." *Jennings v. Rodriguez,* 583 U.S. 281, 294 (2018) (plurality opinion); *S.Q.D.C.*, 2025 WL 2617973, at *3.[2] By making such a challenge, the habeas claims here require a court to answer "legal questions" that arise from "an action taken to remove an alien," so Petitioner's claims "fall within the scope of § 1252(b)(9)." *Jennings*, 583 U.S. at 295 n.3 (plurality opinion).

"Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] PFR process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007).

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[2] *See also Jennings*, 583 U.S. at 317 (Thomas, J., concurring in part and concurring in the judgment) ("Section 1252(b)(9) is a 'general jurisdictional limitation' that applies to 'all claims arising from deportation proceedings' and the 'many decisions or actions that may be part of the deportation process.' Detaining an alien falls within this definition—indeed, this Court has described detention during removal proceedings as an 'aspect of the deportation process.' . . . The phrase 'any action taken to remove an alien from the United States' must at least cover congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien's removal." (alterations and citation omitted) (quoting *AADC*, 525 U.S. at 482–83; *Demore*, 538 U.S. at 523; and 8 U.S.C. § 1252(b)(9))).

Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that noncitizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law."). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (plurality in *dicta* presuming §1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

iii. 8 U.S.C. § 1252(a)(2)(B)(ii) shields from judicial review discretionary decisions like what charges of inadmissibility to lodge

Furthermore, § 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B).

Even if there were any remaining ambiguity as to whether a foreign national could challenge the decision to detain him during removal proceedings, Congress added this additional

jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA.

B. Petitioner Has Failed to Exhaust Administrative Remedies

The regulatory process Congress created affords Petitioner the opportunity to redress his concerns administratively. Following it would provide a full record to review should Petitioner ultimately seek review. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) ("That is, exhaustion promotes efficiency, including by encouraging parties to resolve their disputes without litigation."); *Laguna Espinoza v. Director of Detroit Field Office*, No. 25-cv-02107, 2025 WL 2878173, *3 (N.D. Cal. Oct. 9, 2025) (dismissing habeas petition challenging detention under § 1225(b) for failure to exhaust). Petitioner's failure to exhaust should cause this Court to dismiss the habeas petition in favor of the administrative process.

Exhaustion is particularly appropriate because agency expertise is required as to the applicability of § 1225(b) as opposed to § 1226(a). "[T]he BIA is the subject-matter expert in immigration bond decisions." *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise"); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

Waiving exhaustion would also "encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district court." *Aden*, 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-

federal-court strategy would needlessly increase the burden on district courts. Exhaustion promotes judicial efficiency by reserving the courts' resources for matters that cannot be resolved administratively. *MacKay v. U.S. Veterans Admin.*, No. CIV. A. 03-6089, 2004 WL 1774620, at *4, n.8 (E.D. Pa. Aug. 5, 2004), *aff'd*, 115 F. App'x 601 (3d Cir. 2004); *Biear v. Att'y Gen. United States,* 905 F.3d 151, 156 (3d Cir. 2018) ("Generally, the law requires exhaustion of administrative remedies before a plaintiff may seek relief in district court."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency"). If the BIA has erred as Petitioner alleges, this Court should allow the administrative process to correct itself.

Because Petitioner has not yet completed exhaustion of his administrative remedies, this matter should be dismissed.

C. Petitioner is Lawfully Detained Pursuant to 8 U.S.C. § 1225(b)(2)

Even if the Court were to determine that it has jurisdiction to hear the petition, Petitioner's argument that he is being held pursuant to the wrong statutory provision fails on the merits.

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). *Jennings*, 583 U.S. 287; *Garibay-Robledo v. Noem, et al.*, No. 1:25-cv-177-H, slip op. at *1-2 (N.D. Tx. Oct. 24, 2025) (Dkt. No. 9). Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2). *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).

Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that 8 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.").

Petitioner falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. Petitioner is an "applicant for admission" to the United States. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission[.]"). He admits that he has been present in the United States but has not yet been admitted. Pet. ¶ 20. As Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A) (stating applicant for admission "shall be" detained).

The Supreme Court has confirmed an alien present in the country but never admitted is deemed "an applicant for admission" and that "detention must continue" "until removal proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings,* 583 U.S. at 289 & 299.

At issue in *Jennings* was the statutory interpretation of and interplay between § 1225(b) and § 1226. The Supreme Court reversed the Ninth Circuit Court of Appeal's imposition of a six-month time limit into § 1225(b) and § 1226(c). *Id.* at 297. In reaching that holding, the Supreme Court declared that "an alien who 'arrives in the United States,' *or* 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Id.* at 287 (emphasis on "or" added). In doing so, the Court explained both aliens detained at the border and those without legal status residing within the United States, would fall under § 1225. *Id.* at 287-88. This would include Petitioner, who is an alien present in the country but not yet admitted. *See Garibay-Robledo*, slip op. at *6-7 (explaining the statutory history of the INA which supports reading the term "applicants for admission" to include aliens detained within the United States who had not been admitted),

The Board of Immigration Appeals (BIA) confirmed the application of § 1225 to applicants for admission, present within the United States, in a published formal decision earlier this year. *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Hurtado*, the BIA affirmed the decision of the immigration judge finding the Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was present in the United States for almost three years but was never admitted shall be detained under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an alien who unlawfully entered the United States in 2022 and was granted temporary protected status in 2024. *Id.* at 216-17. However, that status was revoked in 2025, and the alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. There the alien was initially served with a Notice of Custody Determination, informing him of his detention under 8 U.S.C. § 1226 and his ability to request bond. *Id.* at 226. However, when the alien sought a redetermination of his custody status,

the immigration judge held the Court did not have jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

In affirming the decision of the immigration judge who determined he lacked jurisdiction, the BIA found § 1225 clear and unambiguous: "Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Hurtado*, 29 I&N Dec. 216 at 226. Indeed, §1225 applies to aliens who are present in the country *even for years* and who have not been admitted. *See id.* ("the statutory text of the INA . . . is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status." (citing 8 U.S.C. §1225)). To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years. *Id.* at 228.

Next, the BIA rejected the alien's argument that the mandatory detention scheme under § 1225 rendered the recent amendment to § 1226 under the Laken Riley Act superfluous. *Id.*; c.f. Pet. ¶ 35. The BIA explained, "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute 'shall be detained for [removal proceedings].'" *Id.* at 222. The

BIA explained that any redundancy between the two statutes does not give license to "rewrite or eviscerate" one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).[3]

Thus, because Yahure Hurtado was present in the United States (regardless of how long) and because he was never admitted, under § 1225(b) he was subject to mandatory detention during his removal proceedings and not entitled to a bond hearing. *See id.* at 228. The BIA mandate is clear: "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Id.* at 225. Indeed, this ruling emphasizes that § 1225 applies to aliens like Petitioner who are also present in the United States but has not been admitted.

Following *Hurtado*, several district courts around the country held that § 1225(b) permits the mandatory detention of aliens who had not been previously admitted when entering at the border but were subsequently found within the country. *See Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde,* No. CV 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *see also C.B. v. Oddo*, No. 3:25-CV-00263, 2025 WL

[3] The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted by a three-appellate judge panel. *See id. generally*. It is binding on all immigration judges in the United States. 8 C.F.R. § 1003.1(g)(1) ("[D]ecisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States."). In the Board's own words, *Hurtado* is a "precedential opinion." *Id.* at 216; *see* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law of the land in immigration court today. *See also* 8 C.F.R. § 1003.1(d)(1) (explaining "the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations.").

2977870, at *2 (W.D. Pa. Oct. 22, 2025). In *Vargas Lopez*, the district court expressly addressed the interplay of § 1225(b)(2) and § 1226(a). The court explained that these two statutory provisions overlap and are not mutually exclusive. *Vargas Lopez*, 2025 WL 2780351, at *7 (citing *Jennings*, 583 U.S. at 289).

While § 1225(b) provides for detention of alien applicants for admission, § 1226(a) is broader in scope and permits the Secretary to issue warrants for arrest and detention of aliens present in the country pending removal proceedings. Given that these sections are not mutually exclusive, an alien may be subject to both § 1225(b)(2) and § 1226(a) if he is an applicant for admission who is detained within the country. *Id.*; *see Barton v. Barr*, 590 U.S. 222, 239 (2020) (recognizing that 'redundancies are common in statutory drafting"). An alien remains an applicant for admission, and subject to § 1225(b)(2), so long as he is "not clearly and beyond doubt entitled to be admitted" to the United States. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025). Nothing in either § 1225(b)(2) nor § 1226(a) provides that the government must default to detaining an alien pursuant to §1226(a) if he is subject to detention under § 1225(b)(2) as well.

Neither the Third Circuit Court of Appeals, nor any court in the Eastern District of Pennsylvania, has yet ruled on whether an alien like the Petitioner may be detained under § 1225(b)(2). While district courts in the District of New Jersey and the Western District of Pennsylvania have declined to adopt the BIA's interpretation of § 1225(b)(2), the Court here should not adopt the reasoning articulated in those cases. *See Zumba v. Bondi*, Civ. No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Bethancourt Soto v. Louis Soto, et al.*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Lomeu v. Soto, et al.*, No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025); *Del Cid v. Bondi*, 3:25-cv-00304, 2025

WL 2985150 (W.D. Pa. Oct. 23, 2025); *see also Mugliza Castillo v. Lyons*, 25-cv-16219, 2025 WL 2940990 (D. N.J. October 10, 2025) (holding § 1226(a), rather than § 1225(b), applies to Petitioner, without detailed factual analysis); *Buestan v. Chu*, No. CV 25-16034 (MEF), 2025 WL 2972252, at *1 (D.N.J. Oct. 21, 2025) (same).

In *Zumba*, and several subsequent opinions citing to *Zumba*, the district of New Jersey rejected the government's interpretation of the interplay between § 1225(b)(2) and § 1226(a). *Id.* at *6. The court's analysis, however, reads into the statute a limitation that is simply not there – namely that § 1225(b)(2) only applies to applicants for admission at or near the border. *See Zumba*, 2025 WL 2753496, at *8; *Soto*, 2025 WL 2976572, at *6. The statute itself does not contain any such limitation. *See* § 1225(a) (defining applicant for admission as either "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . .") (emphasis added). Further, the facts of these cases are distinguishable. In *Zumba*, the petitioner had been present in the country for 23 years and had no criminal record. *Id.* at *1, 10; *see also id.* at 6 (citing cases addressing detention of noncitizens present in the country for decades); *Soto*, 2025 WL 2976572, at *1 (petitioner entered the country as a minor and had no criminal history); *Lomeu*, 2025 WL 2981296, at *8 (was married to a U.S. citizen and had no criminal history). Conversely, here, Petitioner has only been present in the country since 2023.

Del Cid is likewise distinguishable. There, the court explained that "[t]his case is primarily about the legal protections due to individuals who have been granted [Special Immigrant Juvenile] Status and who have no criminal history, such as Petitioner's here." *Id.* at 2. While the Court in *Del Cid* held that the two juvenile petitioners should have been detained under § 1226(a), not § 1225(b), the Court "declined to adopt a bright line rule" that § 1225 "only applies to those at or immediately near the border." *Id.* at 15. The court recognized that the

distinction between § 1226(a) and § 1225(b)(2) can "blur" and that this issue is an "open legal question." *Id.* Ultimately, because the court's holding in *Del Cid* is generally limited to the facts at issue, and because Petitioner here is not a juvenile and has not been granted any special status, the Court should decline to adopt the Western District's analysis.

Petitioner remains an applicant for admission as he has not clearly and beyond doubt established he is entitled to be admitted to the United States. He is subject to mandatory detention under § 1225(b)(2) and ineligible for a bond redetermination hearing before an immigration judge.

D. Petitioner's Detention Does Not Offend Due Process

Congress broadly crafted "applicants for admission" to include undocumented aliens, like Petitioner, who are present within the United States. *See* 8 U.S.C. § 1225(a)(1). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *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.").

The Supreme Court has repeatedly recognized this profound interest. *See supra* (collecting cases). As discussed above, Petitioner is presently being held pursuant to § 1225(b), and is therefore not entitled to a bond hearing during his removal proceedings. His detention pursuant to §1225(b) will only last the duration of his removal proceedings. *Demore,* 538 U.S. at 512 ("[B]ecause the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings."); *see also Jennings,* 583 U.S. at 304. In light of Congress's interest in regulating immigration, including by keeping

specified aliens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the *Mathews v. Eldridge* test. *See generally Demore*, 538 U.S. at 531.

Petitioner's detention pending his removal proceedings does not violate Due Process. He has been detained since September 24, 2025. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (detention less than six months presumed constitutional). His immigration proceedings are just beginning and Petitioner's ample available process in his current removal proceedings demonstrate no lack of procedural Due Process—nor any deprivation of liberty "sufficiently outrageous" required to establish a substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal which is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531.

The Third Circuit has recognized that there may come a time when mandatory civil detention without a bond hearing can become unreasonable. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) (analyzing detention under § 1226(c)); *but see C.B.*, 2025 WL 2977870, at *5 ("Neither the United States Supreme Court nor the Court of Appeals for the Third Circuit has directly addressed whether arriving aliens detained under § 1225(b) have the same due process right to a bond hearing upon unreasonable detention as that afforded to noncitizens being held under § 1226(c)."). In any event Petitioner, however, does not allege, nor could he show, that his detention here has become unreasonably long under the factor analysis set out in *German Santos*.

II. The Balance of Harms Favors Respondents

Petitioner has not shown that he will suffer irreparable harm in the absence of a preliminary injunction. Petitioner's discussion of the impacts of family separation are not enough to warrant injunctive relief. Because the type of harm Petitioner alleges "is essentially inherent in detention, the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24, 2018). Indeed, "if detention during removal proceedings constitutes irreparable harm in and of itself, nearly all habeas petitioners would be entitled to injunctive relief." *Abi v. Barr*, 2019 WL 2463036, at *2 (D. Minn. 2019). Given the absence of any irreparable harm that would befall Petitioner if he is not afforded a bond hearing, there is no basis to enter preliminary injunctive relief.

The balance of equities and public interest weigh against granting a preliminary injunction. It is well settled that the public and governmental interest in enforcement of the United States' immigration laws is extremely significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) ("[I]t 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.").

III. The Court Should Order That Petitioner Post Bond

If the Court decides to grant preliminary injunctive relief, the Court should order Petitioner to post a bond under Federal Rule of Civil Procedure 65(c). Under that Rule, the Court may issue a preliminary injunction "only if the movant gives security" for "costs and damages sustained" by defendants if they are later found to "have been wrongfully enjoined." Fed. R. Civ.

P. 65(c). The Third Circuit has held that "a district court lacks discretion under Rule 65(c) to waive a bond requirement except in the exceptionally narrow circumstance where the nature of the action necessarily precludes any monetary harm to the defendant, and that such bond shall be issued irrespective of any request by the parties." *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010).

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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/s/ Gregory B. Davod

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CERTIFICATE OF SERVICE

I certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: Nov. 4, 2025

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