UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

MAYNOR ANTONIO RAMIREZ VALVERDE

Petitioner,

Case No. 25-CV-1502

v.

SAM OLSON, ET AL.,

Respondents.

MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF HABEAS CORPUS

Now comes the Respondents, by their undersigned counsel, who respectfully submit this Memorandum in Opposition to the Petition for a Writ of Habeas Corpus.

I. INTRODUCTION

Petitioner is a foreign national[1] who was never lawfully admitted to the United States but has been living here since 2022. Currently, he is detained at the Dodge County Jail in Juneau, Wisconsin by U.S. Immigration and Customs Enforcement ("ICE") without bond, pursuant to the provisions of 8 U.S.C. § 1225(b)(2), during the administrative removal process. ECF 1, pp. 3-5. Petitioner, *inter alia*, seeks habeas relief from his mandatory detention praying for release or a bond hearing within 14 days pursuant to 8 U.S.C. § 1225(a). ECF 1, p 13. Succinctly put, Petitioner's claim for relief rests on the allegation that 8 U.S.C. § 1225(b)(2)—providing for mandatory detention—is inapplicable to a foreign national who has penetrated the frontier and

[1] This memorandum uses the term "foreign national" as equivalent to the statutory term of "alien" within the Immigration and Nationality Act ("INA").

been in this country for a period of time. ECF 1, p. 6. Instead, Petitioner claims that 8 U.S.C. § 1226(a), which generally entitles a foreign national to a bond hearing at the outset of their detention, is applicable and as a result Petitioner is being detained without due process. ECF 1, pp. 12-13. As explained below, the Petition should be denied and dismissed because district courts do not have jurisdiction over a habeas challenge to the government's decision to detain a foreign national in Petitioner's circumstances. Even if this Court has jurisdiction, Petitioner has been provided with all the process he is due, and lastly, he has been properly detained under 8 U.S.C. § 1225(b)(2).

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a Nicaraguan national who illegally entered the United States on or about November 7, 2022, as an immigrant without inspection by an immigration officer or in possessions of any valid entry document as required by the Immigration and Nationality Act ("INA"). ECF 3-1, p. 1. On September 5, 2025, Petitioner was apprehended as a "deportable/inadmissible alien" during an ICE operation in Sun Prairie, Wisconsin, and eventually detained at the Dodge County Jail. ECF 1, p 10. Petitioner requested a custody redetermination hearing which was held at the Executive Office for Immigration Review, Chicago Immigration Court on October 10, 2025. Respondent Ex. 1. Petitioner was denied a change in custody status pursuant to the decision in the *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025), which held that "under the language of § 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." Respondent Ex. 1. An asylum hearing has been scheduled for December 8, 2025, at the Immigration Court in Chicago, Illinois. Respondent Ex. 2.

On September 29, 2025, the Ramirez Valverde filed the instant Petition for Writ of Habeas Corpus claiming that the mandatory detention provisions 8 U.S.C. § 1225(b)(2) do not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. ECF 1, p.12. Further, that they do not apply to Petitioner because he has been residing in the United States for years and thus 8 U.S.C. § 1225(a) is the controlling statute and he is entitled to be released from custody or least to have a bond hearing. ECF 1, p.12-13. For the reasons discussed below the Court should deny the Petition.

III IMMIGRATION LEGAL FRAMEWORK

Historically, American immigration law has authorized immigration officials to arrest foreign nationals who are in the country illegally and detain them during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). In the INA, Congress enacted a statutory framework for the civil detention of foreign nationals during the administrative removal process. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. Detention during removal proceedings "is a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).[2] Removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

In the INA, Congress established rules governing when certain foreign nationals may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission." Section 1225 defines an "applicant for admission" as any "alien present in the United States who has not been admitted *or* who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines "admission" and "admitted"

[2] "[P]rior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings." *Demore*, 538 U.S. at 523 n.7.

as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). In other words, an applicant for admission is an alien who is (1) present in the United States who has not lawfully entered the country or (2) who is arriving in the United States. Per 8 U.S.C. § 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible.

Section 1225(b)(1) describes two categories of applicants for admission, which together describe many—but not all—of those applicants. The first category includes those individuals who are arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[3] *Id.* § 1225(b)(1)(A)(i). The second category includes those who have "not been admitted or paroled into the United States" who have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] have been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," and who also are inadmissible under § 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II). Individuals within the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and "shall be detained" until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).[4]

However, these two categories do not encompass all applicants for admission. Section 1225(b)(2) serves as a catchall for all remaining applicants for admission. Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings

[3] These subsections address inadmissibility based on misrepresentation or the lack of valid entry documents.

[4] Depending on the circumstances, a foreign national who is ordered removed under § 1125(b)(1)(A)(i) but who is not removed within 90 days of the removal order may be released under an order of supervision. 8 U.S.C. § 1231(a)(3).

under 8 U.S.C. § 1229a. Section 1225(b)(2)(A) thus generally provides for detention, during removal proceedings, for foreign nationals who are applicants for admission but who do not fall within one of the two categories described in Section 1225(b)(1) (i.e., arriving foreign nationals, or others subject to expedited removal). Section 1225 does not provide a bond hearing for those detained under that provision.

The two categories of individuals described in § 1225(b)(1), and the additional catchall category of aliens described in § 1225(b)(2), who also meet the definition of "applicants for admission," do not encompass all foreign nationals who may be subject to removal. For foreign nationals who fall outside those categories, another provision—§ 1226—provides procedures for detention and removal. Unlike § 1225, § 1226 is not limited to applicants for admission, but broadly applies to aliens facing removal.

Section 1226 provides procedures for detention and removal of foreign nationals that are different from those provided for foreign nationals subject to detention under § 1225. Section 1226(a) provides that if the Attorney General issues a warrant, a foreign national may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." Following arrest, and subject to certain restrictions, the foreign national may remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers can release such an individual if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

If not released by an immigration officer, the foreign national can request a custody redetermination by an immigration judge ("IJ") at any time before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody hearing, the IJ may decide whether to continue detention or release the individual on bond or conditional parole, based on a

variety of factors that account for their ties to the United States, and evaluate whether they pose a flight risk or danger to the community. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3); *Lopez v. Barr*, 458 F. Supp. 3d 171, 178 (W.D.N.Y. 2020) ("The determination of the Immigration Judge 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].").[5]

IV STANDARD OF REVIEW

A petition for a writ of habeas corpus challenges the legality or constitutionality of the government's restraint or imprisonment of the petitioner. 28 U.S.C. § 2241. Petitioner bears the burden to show his detention is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). A hearing is not required where, as here, the petition and response present only legal issues. 28 U.S.C. § 2243

V. ARGUMENT

A. The Court Lacks Jurisdiction Under 8 U.S.C. § 1252

District courts possess limited subject-matter jurisdiction and are entrusted with "only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also Sheldon v. Sill*, 49 U.S. 441, 449 (1850) ("Courts created by statute can have no jurisdiction but such as the

[5] For purposes of custody redeterminations, the Board of Immigration Appeals has identified a non-exhaustive list of factors for consideration: "(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States." *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

statute confers."). This is particularly true in immigration matters. *See, e.g., 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); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (noting that "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*, 420 U.S. at 792 (internal quotes omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

Congress has afforded the Executive Branch expansive authority over immigration matters which necessarily encompasses detention, given that the authority to detain is essential to the authority to remove and because of the importance of public safety. *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*, 163 U.S. at 235 ("Proceedings to exclude or expel would be in 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*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999) (noting that Congress possesses "sweeping powers … to prescribe the treatment of

aliens" and affirming the constitutionality of mandatory detention without bond under § 1226(c) where petitioner lacked defense to removal).

Here, the Court's jurisdiction is limited pursuant to 8 U.S.C. § 1252(b)(9) and (g). Section 1252(b)(9) mandates that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). It further strips district courts of "jurisdiction, by habeas corpus . . . or by any other provision of law," to review such questions except in that context. *Id.* Moreover, "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).[6]

While these jurisdictional bars may still allow foreign nationals to challenge the conditions of confinement or the length of detention during removal proceedings, it does not permit the use of habeas to "challeng[e] the decision to detain them in the first place or to seek removal." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion).[7] But that is precisely what Petitioner seeks to do here. He asks this Court to second-guess his detention amid ongoing removal

[6] In *Parra*, the Seventh Circuit held that 8 U.S.C. § 1252(g) did not bar review of a challenge to detention without bond under 8 U.S.C. § 1226(c). 172 F.3d at 957. However, that case is distinguishable, as here Petitioner does not challenge the constitutionality of mandatory detention. Rather, he argues that his detention without a bond redetermination hearing violates his right to due process. Of course, here, he was provided with that hearing. *See* Ex. 1; this brief *supra*, p. 2.

[7] As Justice Thomas explained in his concurrence in *Jennings*, "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." *Jennings*, 583 U.S. at 317-18 (Thomas, J., concurring in part and concurring in the judgment) (citations omitted).

proceedings. That is exactly the sort of interference Congress precluded in 8 U.S.C. § 1252. As the Supreme Court explained in *Jennings*, habeas cannot be used to "challeng[e] the decision to detain …in the first place." *Id.* The Supreme Court has been explicit: detention pending removal is a "specification of the decision to 'commence proceedings' which . . . § 1252(g) covers." *AADC*, 525 U.S. at 485 n.9.

Section 1252(b)(9) is overarching, channeling "all questions of law and fact" that arise from removal actions into the petition-for-review process. 8 U.S.C. § 1252(b)(9). Courts may obtain jurisdiction to hear claims entirely independent of removal, but not those—like Petitioner's—that strike at the heart of the government's authority to detain during removal proceedings. His challenge is inextricably bound up with the adjudication of his case before the immigration court and, therefore, falls directly within the statute's jurisdiction stripping provisions and is not subject to a collateral habeas attack. Hence this matter may be dismissed without the Court addressing the merits of Petitioner's substantive arguments.

B. Petitioner Is Properly Subject to Detention Under 8 U.S.C. § 1225(b)(2)

ICE's determination that Petitioner is subject to detention pursuant to § 1225(b)(2) aligns with the plain text of § 1225 and the Supreme Court's decision in *Jennings*. Section § 1225(b)(2)(A) mandates detention during the pendency of removal proceedings "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." 8 U.S.C. § 1225(b)(2)(A). Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement.

As described above, Congress defined an "applicant for admission" to include a foreign national "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1).

Petitioner is present in the United States, and he does not contend that he has been admitted. *See generally* ECF 1, p. 10. Petitioner goes even further by suggesting routes he may pursue to gain admission. ECF 1, p. 11 (Asylum and a U visa for alleged victimization).

Since Petitioner cannot demonstrate to an inspecting immigration officer that he is "clearly and beyond a doubt entitled to be admitted"—because he does not deny he is present in the United States without being admitted or paroled and is inadmissible per 8 U.S.C. §§ 1182(a)(6) and (a)(7)(A)(i)(I)—his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A); *Alvarenga Pena v. Hyde*, No. 25-cv-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. Jul. 28, 2025) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States"); *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (rejecting assertion that DHS has discretion to choose to detain an applicant for admission under either § 1225(b) or § 1226(a), which "would render mandatory detention under 8 U.S.C. § 1225(b) meaningless"). Petitioner is therefore properly detained pursuant to § 1225(b)(2)(A). *See Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (agreeing with the government that "[p]etitioners [who] do not contest that they are 'alien[s] present in the United States who ha[ve] not been admitted'" are, "[b]y the plain language of § 1225(a)(1), . . . 'applicants for admission' and thus subject to the mandatory detention provisions of 'applicants for admission' under § 1225(b)(2).").

Supreme Court precedent supports this construction of § 1225(b)(2). As explained in *Jennings* and touched on above, applicants for admission fall into one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to foreign nationals arriving in the United States who are initially

determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. Section 1225(b)(2), on the other hand, is "broader" and "serves as a catchall provision that applies to all applicants for admission not covered by 1225(b)(1) (with specific exceptions not relevant here)." *Id.* Put another way, while § 1225(b)(1) applies to those "arriving" in the United States, § 1225(b)(2) applies to all "other" foreign nationals who are applicants for admission—like Petitioner. Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *Id.* at 302 ("[Section] 1225(b)(2) . . . mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." (emphasis added)).[8]

Petitioner alleges that "[n]o federal court that has considered Respondent's new interpretation of the INA since ICE implemented its July 8, 2025, memo has accepted this new interpretation." ECF 1, pp. 8-9. Certainty, as Petitioner notes, some district courts have disagreed with the Respondents' argument. However, Petitioner is incorrect that all have done so. In fact, several courts have sided with the government's interpretation. *See, e.g., Pena*, 2025 WL 2108913, at *1; *Chavez*, 2025 WL 2730228, at *4; *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9–10 (D. Neb. Sept. 30, 2025). Respondents respectfully submit that the Court should follow these recent well-reasoned opinions and reject Petitioner's arguments.

Petitioner has cited cases which have concluded that 8 U.S.C. § 1225(b) authorizes detaining foreign nationals seeking admission upon *immediate* arrival in the country, whereas § 1226(a) authorizes the government to detain certain noncitizens *already in* the country. *See, e.g., Gomes v. Hyde*, No. 25-cv-11571-JEK, 2025 WL 1869299, at *1 (D. Mass. Jul. 7, 2025). These

[8] The only means of release for an applicant for admission is discretionary parole on a case-by-case basis for urgent humanitarian reasons or a significant public benefit. *See* 8 U.S.C. § 1182(d)(5); *see also* 8 C.F.R. §§ 212.5(b), 235.3(c)

decisions essentially read a temporal limitation into § 1225(b), a limitation Petitioner himself advances ("§ 1225(b) applies to people arriving at U.S. Ports of entry or who recently entered the United States." ECF 1, ¶¶ 41–42.) This reading is erroneous.

All foreign nationals present in the United States without being admitted are "applicant[s] for admission," regardless of when they entered. *See* 8 U.S.C. § 1225(a)(1). When an immigration officer encounters and examines an applicant for admission who seeks to remain in the United States, and that individual (like Petitioner) desires to remain in the United States, he is necessarily "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). Otherwise, the noncitizen must "withdraw the application for admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4). Petitioner obviously has not departed willingly and desires to remain in the United States. A foreign national continues to be "seeking admission" while in immigration removal proceedings to determine whether he can "be admitted to the United States." *See* 8 U.S.C. § 1229a(3).

Notably, Congress did place a temporal limitation in one part of § 1225 regarding the scope of expedited removal—§ 1225(b)(1)(iii)(II)—but placed no such temporal limitation as to when it mandated detention in § 1225(b)(2). Thus, Congress clearly knew it could temporally limit provisions in the INA and opted not to with respect to whom is "seeking admission." Because Petitioner cannot and does not point to any temporal limitation in the statute, the fact that Petitioner has been present since 2022 does not undercut the conclusion that he is subject to mandatory detention as an "applicant for admission."

In *Pena*, the petitioner illegally entered the United States about 20 years before ICE detained him under § 1225(b)(2). 2025 WL 2108913, at *1. Consistent with Respondents' argument here, the court there stated that "[b]ecause petitioner remains an applicant for admission, his detention

is authorized [under Section 1225(b)(2)(A)] so long as he is not clearly and beyond doubt entitled to be admitted to the United States." *Id.* at *2. As with the instant Petitioner, there was no evidence that Pena was admitted to the United States. *Id.* The court there determined that not only was Pena's detention authorized by § 1225(b)(2)(A)—it was mandated by it. *Id.* So the Court should find in the instant matter.

Section 1226(a) authorizes a noncitizen to be "arrested and detained pending a decision" on removal. Section 1225 is an additional detention authority that applies in narrower circumstances—where someone is an "applicant for admission." Thus, even if a foreign national is arrested based upon a warrant, if the examining officer determines that § 1225(b)(2)(A) applies—that is, for individuals like Petitioner who are present in the United States and have not been admitted—that individual "shall be detained." 8 U.S.C. § 1225(b)(2)(A). The specific mandatory language of § 1225(b)(2)(A) governs over the general permissive language of § 1226(a). *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general."). These two statutory authorities complement each other, and do not conflict. *See, e.g., Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012) ("'[O]ur task is to fit, if possible, all parts into a harmonious whole.'" (citation omitted)). *Cf. Vargas Lopez*, 2025 WL 2780351, at *9–10 (the "overlapping relationship between § 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions but consistent with the interpretation of the two provisions under *Jennings*.").

Petitioner's assertion that ICE's determination that he is subject to detention under § 1225(b)(2) is a reversal of ICE's longstanding practice of treating foreign nationals taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a), ECF 1, ¶¶ 3-5, does not change the analysis. The agency's prior practice carries little weight, *Loper*

Bright Enters. v. Raimondo, 603 U.S. 369, 432–33 (2024), and Petitioner does not claim that the Department of Homeland Security ("DHS") ever stated that U.S.C. § 1225(b)(2) did *not* apply to applicants for admission who entered without inspection. To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," the Court must "independently interpret the statute and effectuate the will of Congress." *Id.*, at 395 (cleaned up). As the Supreme Court stated in *Jennings*, "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate detention for applicants for admission until certain proceedings have concluded." 583 U.S. at 297 (cleaned up).

Finally, Petitioner's argument that § 1226(a)'s provision for a bond hearing should apply to foreign nationals that illegally entered the country would produce a Kafkaesque result, entirely unfair to those arriving legally. Specifically, finding Petitioner entitled to release on bond would put undocumented foreign nationals who crossed the border unlawfully in a better position than those who present themselves for inspection at a port of entry. Individuals who presented at a port of entry would be subject to mandatory detention under § 1225, while those who crossed illegally between those points of entry, like Petitioner, would be eligible for a bond under § 1226(a), when later arrested in the United States. It is incumbent on this Court to avoid "creat[ing] a perverse incentive to enter at an unlawful rather than a lawful location." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

C. Petitioner's Detention Does Not Violate the Due Process Clause

Petitioner challenges his detention under the Fifth Amendment Due Process Clause, but he has not plausibly alleged a colorable claim that his temporary detention is unconstitutional. ECF 1, p. 13. Immigration detention, including detention during removal proceedings, has survived Due Process review, and detention periods of 180 days or longer have been upheld as

constitutional. *See, e.g., Jennings*, 583 U.S. at 323 ("This Court has never held that detention during removal proceedings is unconstitutional. To the contrary, this Court has repeatedly recognized the constitutionality of that practice.") (Thomas, J., concurring in part and concurring in the judgment) (citations omitted); *see also Demore*, 538 U. S. at 523 (explaining that detention is 'a constitutionally valid aspect of the deportation process'); *accord, Reno*, 507 U. S. at 305–06; *Shaughnessy*, 345 U. S. at 215; *Carlson*, 342 U. S., at 538, 542; *see also Parra*, 172 F.3d at 958 (detention during removal proceedings constitutional).

Petitioner is in removal proceedings and by any benchmark the process is moving along quite speedily. Petitioner was apprehended on September 5, 2025, ECF 1, p. 10, he had a bond redetermination hearing on October 10, 2025, Respondent Ex. 1, and his matter has been set for an asylum hearing on December 8, 2025. Hence, Petitioner's expressed fears of having to spend years in immigration custody is overblown. ECF 1, p. 12. This detention is neither prolonged, nor indefinite.

Petitioner is receiving the process to which he is due in removal proceedings, 8 U.S.C. § 1229a(b)(4), and has failed to demonstrate a lack of procedural due process. Further, Petitioner has not shown any deprivation of liberty so "truly outrageous" as to establish a substantive due process claim. *See Powers v. Lightner*, 820 F.2d 818, 822 (7th 1987); *see also generally Reed v. Goertz*, 598 U.S. 230, 236 (2023).

The United States has a "powerful interest in maintaining the detention in order to ensure that removal actually occurs." *Parra*, 172 F.3d at 958. And Petitioner has not established a colorable basis on which to find his detention exceeds that powerful interest and the government's broad authority in this area, nor that it offends the Due Process Clause of the Fifth Amendment.

VI. CONCLUSION

For all these reasons, Respondents respectfully request that the Court deny and dismiss the Petition.

Dated at Milwaukee, Wisconsin this 17th day of October 2025

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