

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

ERIC VINICIUS SILVA) CIVIL ACTION NO: 25-cv-01463
OLIVEIRA,)
)
VERSUS) JUDGE JOSEPH
)
BRIAN PATTERSON, *et al*) MAGISTRATE JUDGE AYO

**RESPONSE IN OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS**

On behalf of Respondents,
Brian Patterson, Brian Acuna, Todd M. Lyons,
Sirce Owen, Kristi Noem, and Pamela Bondi

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INTRODUCTION

The Petitioner is a Brazilian national who illegally entered the United States without proper documentation and attempted to evade inspection. Consequently, based on a plain reading of the applicable statutes, he is deemed an applicant for admission, 8 U.S.C. § 1225(a)(1), and detention is mandatory for the duration of his removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner is detained at the Pine Prairie Processing Center and is in removal proceedings before an immigration court, which has found him statutorily ineligible for bond. Petitioner is seeking release from detention claiming that (1) he is not subject to detention pursuant to § 1225 and his continued detention is unlawful and entitles him to habeas or injunctive relief, (2) his detention violates the Due Process Clause of the Fifth Amendment, and (3) he is entitled to a bond or custody redetermination. None of these arguments have merit, and the Petition should be dismissed.

STATEMENT OF THE ISSUE

The core issue in this case is what the proper detention authority and due process requirements are for an alien who is present in the United States without being admitted. The Board of Immigration Appeals for the Executive Office for Immigration Review (“BIA”) specifically addressed this issue in *Matter of Yajure Hurtado*, finding in a precedential decision that an immigration judge lacks authority to hold a bond hearing for an alien who is present in the United States without having been admitted pursuant to section 235 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225. 29 I&N Dec. 216 (BIA Sept. 5, 2025). Accordingly, lower immigration courts have denied bond for this category of aliens under this precedential decision and 8 U.S.C. § 1225. These aliens have subsequently petitioned district courts for habeas relief citing the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), as support for the proposition that if the unadmitted, undocumented alien is physically “present in” the United States, they are no longer an “applicant for admission” under § 1225 and can only be detained pursuant to the provisions of § 1226, which they claim requires an individualized

bond hearing. For the reasons explained below, the *Jennings* decision does not support this proposition, which is in contravention of the clear and unambiguous provisions of the INA and its legislative history.

STATEMENT OF FACTS

Petitioner crossed into the United States through the DeConcini Port of Entry in Nogales, Arizona on August 26, 2016, without any valid documentation and without inspection. *See* Declaration of Ward, Exhibit 1, ¶ 3. Petitioner was charged with being an alien not in possession of a valid immigration document and issued a Notice to Appear for removal proceedings under section 240 of the INA.¹ Ex. 1, ¶ 4. On July 8, 2021, the immigration court dismissed those proceedings. *Id.* Therefore, Petitioner was never admitted into the United States.

On August 15, 2025, ICE officials encountered Petitioner in Bridgeport, Connecticut and he was taken into custody. *Id.* at ¶ 5. Department of Homeland Security (DHS) issued Petitioner a Notice and Order of Expedited Removal pursuant to INA section 235(b)(1) because he was deemed inadmissible under INA section 212(a)(7)(A)(i)(I).² *Id.* On September 8, 2025, the immigration court found that Petitioner was statutorily ineligible for a custody redetermination. *See* Order of the Immigration Judge, Exhibit 2. Petitioner reserved his right to appeal that order, which was due on October 8, 2025. *Id.* However, on October 1, 2025, Petitioner filed the instant habeas action.

On October 9, 2025, DHS cancelled the Notice and Order of Expedited Removal and served Petitioner with a Notice to Appear charging him with removability under INA sections 212(a)(6)(A)(i)³ and 212(a)(7)(A)(i)(I) and placing him in INA section 240 removal proceedings. Ex. 1, ¶ 6, *see also*

¹ This INA section refers to 8 U.S.C. § 1229a and prescribes the procedures for removal proceedings for inadmissible aliens under § 1182 or deportable aliens under § 1227.

² INA section 235(b)(1) refers to 8 U.S.C. § 1225(b)(1), which governs expedited removal for certain inadmissible aliens, as further discussed below. INA section 212(a)(7)(A)(i)(I) refers to 8 U.S.C. 1182(a)(7)(A)(i)(I) and generally provides that an undocumented alien is inadmissible.

³ This INA section refers to 8 U.S.C. 1182(a)(6)(A)(i) and generally provides that an alien who arrives in the U.S. at any time or place other than as designated by the Attorney General, or one who is present in the U.S. with admission or parole, is inadmissible.

Exhibit 3, Notice to Appear dated October 9, 2025. Petitioner is currently detained at the immigration detention center in Pine Prairie, Louisiana and has a hearing with an immigration judge scheduled for October 27, 2025. *Id.* at ¶¶ 7-8.

LEGAL FRAMEWORK

In the INA, 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 execution of removal orders. *See generally* 8 U.S.C. §§ 1225, 1226, and 1231. The interplay between § 1225 and § 1226 is at issue here.

A. Inspection and Detention under INA Section 235, 8 U.S.C. § 1225

1. § 1225(a) – Definition of Applicant for Admission

“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. at 286. 8 U.S.C. § 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). The “or” in this statute is conjunctive and indicates two different types of aliens both of which are considered an applicant for admission: (1) present and not admitted, or (2) arriving in the U.S. Likewise, INA 212(a)(6)(A)(i), 8 USC 1182(a)(6)(A)(i), entitled “Illegal entrants and immigration violators” declares that an “alien present in the United States without being admitted or paroled, *or* who arrives in the United States at any time or place other than as designated by the Attorney General” is inadmissible. (emphasis added). Accordingly, under the INA, there are two types of applicants for admission, 8 U.S.C. § 1225(a)(1),

and two types of “illegal entrants” who are inadmissible, 8 U.S.C. § 1182(a)(6)(A)(i). Notably, pursuant to § 1182(a)(7)(A)(i)(I), any applicant for admission who is not in possession of a valid entry, travel, or identification document is also deemed inadmissible. These defining statutes are terms of art and are not mutually exclusive. An alien can be an applicant for admission who is not an inadmissible alien by arriving at a designated port of entry and presenting for inspection with valid documentation. Conversely, an alien can be an applicant for admission who is also an inadmissible alien under 8 U.S.C. § 1182(a) in one of two ways: (1) by arriving in the United States at a time and place other than a designated port of entry, *or* (2) by being present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1225(a)(1).

2. § 1225(b) – Inspection Procedures

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. § 1225(b)(1) applies to those “arriving in the United States” and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.* § 1225(b)(1)(A)(i), (iii). The “certain other aliens” referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply 1225(b)(1)’s expedited removal 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 multiple years.

Applicants for admission falling under the specifications of subsection (b)(1) are generally subject to expedited removal “without further hearing or review.” *See id.* § 1225(b)(1)(A)(i). That

includes those applicants for admission who cannot show that they have been present in the United States for at least two years prior to the determination of inadmissibility. Importantly, the two-year physical presence requirement does *not* excuse an applicant from mandatory detention under § 1225, as will be explained below, but only determines whether the applicant will be subject to expedited removal under 1225(b)(1), if they have not been present in the United States for more than two years, or subject to standard removal proceedings under § 1229a if they have been present (albeit not admitted or paroled) for more than two years. Additionally, 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 applicant does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he or she is subject to mandatory detention until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i) and (B)(iii)(IV) (stating that the alien “shall be detained”). An applicant for admission is further subject to mandatory detention while undergoing the § 1225(b)(1)(B) asylum procedures until a final determination is made. *Id.*

§ 1225(b)(2) is “broader” than (b)(1), serving 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 under § 1229a.” 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 . . . 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). The key distinction between sections (b)(1) and (b)(2) of § 1225 is that only section (b)(1) provides for

expedited removal, while section (b)(2) provides for standard removal proceedings under § 1229a. However, both sections require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the conclusion of § 1229a removal proceedings. 8 U.S.C. §§ 1225(b)(1)(B)(iii)(IV), (b)(2)(A) (mandatory detention provisions).

While an applicant is subject to the mandatory detention provisions of § 1225(b), 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). However, the INA remains very clear that even “such parole of such alien shall not be regarded as an admission of the alien” and when the purpose of parole, in the discretion of DHS, has been served, the alien should be returned to custody and treated as any other applicant for admission. *Id.*

B. Apprehension and Detention under INA 236, 8 U.S.C. § 1226

8 U.S.C. § 1226 applies to “aliens”, which means *any* person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). Notably, the term “alien” encompasses those aliens who may also be considered “applicants for admission” under § 1225(a). “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)). § 1226 generally governs the process of arresting and detaining deportable aliens pending their removal. *Id.* For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien during removal proceedings.⁴ *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested” alien

⁴ 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—

during the pendency of removal proceedings). Because § 1226(a) is discretionary, it does not grant “any *right* to release on bond.” *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release an alien during his or her 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). Moreover, § 1226(c) specifies a class of aliens who cannot be released and shall be detained in custody during the pendency of removal proceedings (i.e. the determination of whether the alien is to be removed from the United States), such as aliens who have committed certain criminal acts or acts of terror.

ARGUMENT

A. Petitioner’s mandatory detention is authorized under 8 U.S.C. §1225(b)(2).

Petitioner claims that he cannot be placed under mandatory detention pursuant to 8 U.S.C. § 1225(b)(1) rather than detention under § 1226. Pet. ¶ 39. He further argues that he can only be subject to detention under 8 U.S.C. §1226(a), if at all, and not § 1226(c) mandatory detention because he lacks any criminal history. Pet. ¶ 40-41. Accordingly, Petitioner claims that he must receive a bond hearing upon request as a person detained under § 1226(a). Pet. ¶ 46. Petitioner’s arguments fail because he is properly detained under § 1225(b)(2) as an applicant for admission detained for a removal proceeding under § 1229a. Furthermore, as explained above, both §§ 1225(b)(1) and (b)(2) require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the

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).

conclusion of § 1229a removal proceedings. Finally, to the extent Petitioner intends to apply for asylum as indicated in his Petition, ¶ 33, he remains further subject to mandatory detention while undergoing the § 1225(b)(1)(B) asylum procedures until a final determination is made. §§ 1225(b)(1)(B)(iii)(IV).

Petitioner is properly detained under § 1225(b)(2) because he meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support Respondents' interpretation. The applicable detention statute, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous. Including its definitions, this statute is only three sentences long. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A). It states:

Subject to subparagraphs (B) and (C), 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 of this title.

8 U.S.C. § 1225(b)(2)(A).⁵

The first relevant term is “applicant for admission,” which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any alien (a person who is not a citizen or national of the United States, 8 U.S.C. § 1101(a)(3)) “present in the United States who has not been admitted” to be an “applicant for admission.” 8 U.S.C. § 1225(a)(1). Thus, under its plain terms, all unadmitted foreign nationals in the United States are “applicants for admission,” regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. *See id.* While this may seem like a counterintuitive way to define an

⁵ The first clause referencing subparagraphs (B) and (C) is not relevant to this case except to note that (B) specifically excludes aliens to whom paragraph 12(b)(1) applies from the provisions of paragraph 12(b)(2). *See*, 8 U.S.C. §1225(b)(2)(B)(ii).

“applicant for admission,” “[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term’s ordinary meaning.” *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, under the plain text of the statute, Petitioner is an “applicant for admission” because he is a foreign national, he was not admitted, and he was present in the United States when he was apprehended by ICE on August 15, 2025. *See* Exs. 1 and 3.

The next relevant portion of the statute is whether an examining immigration officer determined that Petitioner was “seeking admission.” *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines “admission” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A)⁶. Therefore, the inquiry is whether, after inspection, an immigration officer determined that Petitioner was seeking a “lawful entry.” *See id.* This element of “lawful entry” is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021)(recognizing that “admission” means “lawful entry”). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A). Indeed, the charges of removal against Petitioner are based on his unlawful entry without inspection or valid documentation. Exs. 1 and 3.

The INA provides two examples of foreign nationals who have not yet been admitted but are not “seeking admission.” The first is someone who withdraws his or her application for admission and “depart[s] immediately from the United States.” 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is

⁶ § 1101(a)(13) also contains subsection (B), which addresses humanitarian parole and specifies that these parolees will not be considered admitted, and subsection (C), which addresses categories of certain aliens present in the United States are nonetheless regarded as “seeking an admission” and includes an alien “attempting to enter at a time and place other than as designated by immigration officers OR *has not been admitted to the United States after inspection and authorization by an immigration officer*”. *See*, § 8 U.S.C. 1101(a)(13)(C)(vi) (emphasis added). This subsection further reiterates a clear statutory intent that aliens present in the United States without inspection and admission are considered to be “seeking admission”.

someone who agrees to voluntarily depart “in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings.” 8 U.S.C. § 1229c(a)(1). This means even in removal proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be “seeking admission.” 8 U.S.C. § 1229a(d). Foreign nationals present in the United States for more than two years who have not been lawfully admitted and who do not agree to immediately depart are seeking admission and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is *not* the same as an expedited removal under § 1225(b)(1). Instead, under the clear provisions of §1225(b)(2), removal proceedings must proceed as outlined under § 1229a. Petitioner is still “seeking admission” under § 1225(b)(2) because he has not agreed to depart, and he has not yet conceded his removability or allowed his removal proceedings to play out. *See Dep’t of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (discussing how an alien present in the United States who has not been admitted is deemed “an applicant for admission”).

The final textual requirement is that Petitioner “*shall be detained* for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). As explained above, Petitioner has been placed in full removal proceedings where he will receive the benefits of the procedures in immigration court (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. *See* Exs. 1 and 3. Therefore, he also meets this textual element within § 1225(b)(2)(A) because he is in § 1229a removal proceedings and is subject to mandatory detention during the pendency of these proceedings.

In sum, the plain text of § 1225(b)(2) applies to Petitioner. “Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.” *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies even where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g., Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts “must adopt the plain meaning of a statute, however severe the consequences”). Therefore, no further exercise in statutory

interpretation is necessary or permissible in this case and the court should conclude that Petitioner's detention under § 1225(b)(2) is lawful.

B. Petitioner's argument that § 1226 (and not § 1225) should apply to his detention is flawed.

1. § 1225 applies to an alien that is present in the United States who has not been admitted.

Petitioner's argument that a person "arrested inside the United States and held in civil immigration detention for pending removal proceedings" can only be detained pursuant to 8 U.S.C. § 1226 is wrong. Further, his argument that he is not seeking entry is illogical. Petitioner falls squarely within the ambit of section 1225(b)(2)(A)'s mandatory detention requirement because he is an alien present without admission, and therefore an applicant for admission, who has been in the country for more than two years. He has not shown he is clearly and beyond doubt entitled to admission and, therefore, removal proceedings have been properly initiated. His detention is required by 1225(b)(2).

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." *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012). Petitioner "provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA [8 U.S.C. § 1226(a)]." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6). Statutory language "is known by the company it keeps." *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. See 8 U.S.C. § 1225(a)(1). Both are

understood to be “seeking admission” under §1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.

Likewise, to the extent Petitioner argues that § 1225(b) mandatory detention applies strictly to those subject to expedited removal, that argument also fails under the plain text of the statute. As explained above, 1225(b)(2)(A) refers to proceedings under 8 U.S.C. § 1229a, while only 1225(b)(1) pertains to expedited removals. And, regardless of which removal posture an applicant for admission is in, all applicants for admission are subject to mandatory detention under § 1225 until the removal proceeding or expedited removal has concluded.

Finally, to the extent that Petitioner received humanitarian parole at some point after unlawfully entering the United States (which he has not shown), that parole would not change his current status as an applicant for admission subject to mandatory detention under § 1225(b)(2).⁷ As set forth above, the INA gives DHS the 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).

However, the INA explicitly specifies that such parole does not equate to admission, stating:

The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily or under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien *shall not be regarded as an admission* of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, has been served, the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5)(A) (emphasis added). Accordingly, even if Petitioner was previously paroled for humanitarian reasons as he alleges, DHS is well within its discretion to end that parole and return him

⁷ Petitioner claims that he was then paroled for humanitarian reasons under INA § 212(d)(5)(A). Pet. ¶30. However, he has offered no evidence of such parole.

to custody, where he is to be treated in the same manner as any other applicant for admission to the United States, which is governed by the provisions of § 1225 and requires mandatory detention.

2. *Jennings* does not mandate that all aliens “present in the U.S.” can only be subject to detention under INA 236, 8 U.S.C. § 1226.

Petitioner cites the Supreme Court’s decision in *Jennings* as support for the proposition that if the unadmitted, undocumented alien is physically “present in” the United States, he is no longer an “applicant for admission” under § 1225 and can only be detained pursuant to the provisions of § 1226, which he claims requires an individualized bond hearing. Pet. ¶¶ 15-17. However, this is not at all what the Supreme Court held in *Jennings*, and the Court’s analysis actually supports the Respondent’s position that Petitioner is an “applicant for admission” and, thus, subject to mandatory detention during the pendency of her removal proceedings.

In *Jennings*, the Supreme Court reviewed the Ninth Circuit’s imposition of a six-month time limit on any detention under §§ 1225(b) and 1226 and periodic bond hearings under § 1226(a). *Jennings*, at 292. The Supreme Court concluded that detentions pursuant to §§ 1225(b)(1) and 1225(b)(2) do not contain six-month time limitations and instead, the duration of mandatory detention extends through the completion of the removal proceedings. *Id.* at 302. Similarly, the Court concluded that detentions pursuant § 1226(c) do not have a six-month time limit and § 1226(a) does not require periodic reviews of the bond determinations. *Id.* at 305-306.

Unfortunately, when describing §§ 1225 and 1226 in *Jennings*, the Supreme Court used imprecise language which suggests a dichotomy, that § 1225 is for recently arriving aliens (i.e. entering at the border) and § 1226 is for aliens who reside here (i.e. are “present within the United States”), without regard to the alien’s admission status. *Id.* at 289. This dichotomy, however, is not supported by the clear language of the INA. The *Jennings* Court likely did not foresee the confusion its language could create because *Jennings* involved an alien who was previously granted lawful permanent residence status. *Id.* at 291. As such, he was not an inadmissible alien nor an applicant for admission. *See* 8 U.S.C.

§ 1182 and §1225(a)(1). Instead, he was an admitted alien who was deportable. *See*, 8 U.S.C. §§ 1101(a)(13)(A) and (C), 1227.

In contrast, an inadmissible alien who entered illegally and without inspection or valid documentation (like the Petitioner in this case) remains an “applicant for admission” and is not entitled to the same rights under the INA as those afforded to admitted aliens. Further, an inadmissible alien should clearly not be entitled to *more* rights than an alien entering lawfully at a port of entry with the proper documentation to seek admission. Undocumented, inadmissible aliens who are present in the United States are intended by Congress to be treated as applicants for admission, which the *Jennings* Court recognized:

Under . . . 8 U.S.C. § 1225, 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 added). The presence of the conjunction “or” in the statute clearly indicates *two* categories of aliens who are considered “applicants for admission” in § 1225. The *Jennings* Court did not focus on the second category of aliens, those present in the country but not admitted, such as the Petitioner in this case. And the *Jennings* Court did not hold that an alien entering illegally and later being apprehended within the interior of the United States renders § 1225 inapplicable such that the Petitioner should avoid mandatory detention during the pendency of removal proceedings and be eligible for a bond hearing under § 1226.

3. Congress intended to *mandate* detention for all applicants for admission under § 1225.

Congress provided that mandatory detention pending removal proceedings is the norm—not the exception—for those who enter the country without inspection and who lack documents sufficient for admission or entry. *See* 8 U.S.C. § 1225(b)(2). And for good reason: detention pending removal proceedings is the historical norm and, in this context, reflects the reality that aliens have avoided inspection by sneaking into the United States. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong*

Wing v. United States, 163 U.S. 228, 235 (1896)). When Congress enacted 8 U.S.C. § 1225(b) as part of the immigration reforms of 1996, it determined that treating all unadmitted aliens similarly in terms of detention and removal eliminated unintended consequences and perverse incentives that pervaded the prior system, under which undocumented aliens who entered without inspection received more procedural protections—including the ability to seek release on bond—than those who presented themselves for inspection at ports of entry. In essence, the pre-1996 law favored those that entered the U.S. illegally and clandestinely, which Congress sought to end. Through mandatory detention of applicants for admission, Congress further ensured that the Executive Branch could give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531.

The legislative history is instructive. As explained by the BIA in *Yajure Hurtado*, 29 I&N 216 (BIA Sep. 5, 2025), before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IRRIRA”), the INA provided for inspection of only immigrants arriving at a port of entry. *Id.* at 222. Aliens in the United States were put into removal proceedings but were bond eligible. *Id.* at 223.

Congress acted, in part, to remedy the “unintended and undesirable consequence” of having created a statutory scheme where aliens who entered without inspection “could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,” including the right to request release on bond, while aliens who had “actually presented themselves to authorities for inspection were restrained by ‘more summary exclusion proceedings,’” and were subject to mandatory custody. (Citing *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). . . Thus, after the 1996 enactment of the IIRIRA, aliens who enter the United States without inspection or admission are “applicants for admission” under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), and subject to the inspection, detention, and removal procedures of section 235(b) of the INA.

Id. at 223.

This history supports the result required by the plain language of the statute itself. Indeed, other district courts have recognized that mandatory detention of inadmissible aliens for the duration of their removal proceedings is required by 1225(b)(2). *Lopez v. Trump*, No. 8:25-cv-00526 (D. Neb. 9/30/25) (denying habeas relief to an inadmissible alien in the country for 12 years based on 1225(b)(2) and

inapplicability of 1226);⁸ *Chavez v. Noem*, No. 25-cv-2325, 2025 WL 2730228 (S.D. Cal. 9/24/25)(denying injunctive relief to an inadmissible alien based on 1225(b)(2));⁹ *Pena v. Hyde*, 25-cv-11983, 2025 WL 2108913 (D. Mass. 7/28/25)(denying habeas relief for an inadmissible alien in the country for 20 years based on 1225(b)).¹⁰

Petitioner argues that the plain language of § 1225(b)(2) does not matter, because the government has in the past treated certain aliens who enter without inspection but who are arrested in the interior as subject to discretionary detention under § 1226(a). But this prior practice has no bearing on the legal issues here, as detention is mandated by the plain language of the statute, and Congress’s mandate is supported by eminently reasonable grounds. After all, where (as here) “the words of a statute are unambiguous, this first step of the interpretive inquiry [*i.e.*, construing the statutory text] is [the court’s] last.” *Rotkiske v. Klemm*, 589 U.S. 8, 13 (2019) (citation omitted).

Respondents are aware of prior rulings in this District and others rejecting this argument in similar cases, but these non-binding authorities rely heavily on the improper general dichotomy contained in *Jennings*, which did not consider the breadth of alien statuses. Accordingly, Respondents respectfully maintain that Petitioner is an applicant for admission subject to mandatory detention under § 1225(b)(2) in light of the legislative history, the reasoning outlined by the Supreme Court in *Jennings*, and the aforementioned decisions of sister courts supporting this proper application of the INA.

C. Petitioner’s mandatory detention does not violate due process.

As mentioned above, Congress broadly crafted “applicants for admission” to include undocumented aliens present within the United States like Petitioner. See 8 U.S.C. § 1225(a)(1). And Congress directed that aliens like Petitioner shall be detained during their removal proceedings. 8

⁸ See *Lopez v. Trump*, No. 8:25-cv-00526 (D. Neb. 9/30/25) attached as Exhibit 4.

⁹ See *Chavez v. Noem*, No. 25-cv-2325, 2025 WL 2730228 (S.D. Cal. 9/24/25) attached as Exhibit 5.

¹⁰ See *Pena v. Hyde*, 25-cv-11983, 2025 WL 2108913 (D. Mass. 7/28/25) attached as Exhibit 6.

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.”). In doing so, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. That is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. 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.”). And with this power to remove aliens, the Supreme Court has recognized the United States’ longtime Constitutional ability to detain those in removal proceedings. *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 v. Rodriguez*, 583 U.S. 281, 286 (2018) (“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.”).

In another immigration context (aliens already ordered removed and awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as unnecessarily restrictive in other contexts, such as during the pendency of removal proceedings under § 1225(b) and § 1226(c). This was an express holding of

Jennings, stating “In Parts III-A and III-B [of the opinion], we hold that, subject only to express exceptions, §§ 1225(b) and 1226(c) authorize detention until the end of applicable proceedings.” *Jennings*, at 296-97. The Supreme Court in *Jennings* explained in detail why the *Zadydas* opinion does not provide authority to graft a time limit onto the text of § 1225(b) (as opposed to § 1231(a)(6), which authorizes the detention of aliens who have already been removed from the country), noting that § 1225(b) uses the word “shall” instead of “may”, specifies a clear time frame for detention during the pendency of proceedings, and provides an express exception to detention, which signals that there are no other circumstances under which a § 1225 detainee may be released. *Id.* at 298-300.

Further, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings. 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the “definite termination point” of the detention, which was the length of the removal proceedings. *Id.* at 512. In light of Congress’s interest in dealing with illegal immigration by keeping aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns. *See id.* generally.

Likewise, Petitioner’s temporary detention pending his removal proceedings does not violate due process. He has been detained for roughly eight weeks as his process unfolds. Specifically, he has a removal hearing before the immigration judge scheduled on October 27, 2025, only one week from this filing. Resolution one way or another is undoubtedly forthcoming. Petitioner’s ample available process in his current removal proceedings demonstrates 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). Petitioner is detained for the limited purpose of removal proceedings. His detention is not punitive or for other reasons than to address his

removability from the United States. His detention under § 1225(b)(2) is also not indefinite, as it will end upon the conclusion of his removal proceedings, which are moving expeditiously. A period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. The *Jennings* Court, while examining a constitutional challenge, refused to put a six-month deadline on a 1225(b)(2) detention. *Jennings*, 583 U.S. at 302.

In his habeas corpus challenge in *Demore*, the alien did not contest Congress' general authority to remove criminal aliens from the United States. Nor did he argue that he himself was not "deportable" within the meaning of § 1226(c). Rather, the alien in that case argued that the Government may not, consistent with the Due Process Clause of the Fifth Amendment, detain him for the period necessary for his removal proceedings. Similar to the alien in *Demore*, Petitioner is alleging that he should not be detained during the pendency of his removal proceedings. However, Congress made the decision to detain him during the removal proceedings which is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531.

D. Petitioner cannot demonstrate the factors necessary for injunctive relief.

A preliminary injunction is an "extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A party seeking an injunction must show: (1) a "substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of the injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012); *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)). However, in cases such as this, where the government is the nonmovant, the balance of hardships and lack of public disservice factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

“The same standard applies to both temporary restraining orders and to preliminary injunctions.” *Council on Am.-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 74 (D.D.C. 2009). Though Petitioner glosses over the standard, it bears emphasis that the standard is stringent and not easily met. The Fifth Circuit has “cautioned repeatedly” that a preliminary injunction is an “extraordinary remedy.” *Tex. Med.*, 667 F.3d at 574. For this reason, the Fifth Circuit has made clear that relief should be treated “as the exception rather than the rule.” *Miss. Power & Light v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1976). Such relief is “particularly disfavored” and should only issue when “the facts and law clearly favor the moving party.” *Id.* “The denial of a preliminary injunction will be upheld where the movant has failed sufficiently to establish *any one* of the four criteria.” *Black Fire Fighters Ass’n v. City of Dallas, Tex.*, 905 F.2d 63, 65 (5th Cir.1990) (emphasis in original). Moreover, the Fifth Circuit has cautioned that a preliminary injunction “should not be granted unless the party seeking it has ‘clearly carried the burden of persuasion’ on all four requirements.” *PCI Transportation Inc. v. Fort Worth & Western Railroad Co.*, 418 F.3d 535, 545 (5th Cir. 2005) (citations omitted). Therefore, without such a showing as to all four elements, the relief sought by Petitioner cannot issue. *See, e.g. Ponce v. Sorcorro Indep. Sch. Dist.*, 508 F.3d 765, 772 (5th Cir. 2007).

1. The Petitioner cannot succeed on the merits.

Petitioner cannot succeed on the merits, which is a heavy burden and the most important factor a court must consider in evaluating a request for a preliminary injunction. *United States v. Abbott*, 110 F.4th 700, 706-707 (5th Cir. 2024). As set forth in great detail above, Petitioner is properly detained under § 1225, and not § 1226. Moreover, because Petitioner is detained under § 1225, his continued detention during the pendency of his removal proceeding is mandated and he is not entitled to a bond hearing under § 1226. Accordingly, for the same reasons that Petitioner’s request for habeas relief should be denied, he is not entitled to injunctive relief because he cannot succeed on the merits of his claims.

2. The Petitioner cannot establish irreparable harm.

Petitioner has not shown that he will suffer irreparable harm in the absence of a preliminary injunction. *Winter v. National Resources Defense Counsel, Inc.*, 555 U.S. 7, 20 (2008). Detention alone does not constitute irreparable harm. 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). Nor has Petitioner alleged any harm of a constitutional dimension, as discussed above. Given the absence of any irreparable harm that would befall Petitioner if he is not afforded a bond hearing, preliminary injunctive relief is not appropriate.

3. The balance of equities favors the United States.

The balance of equities and public interest weigh against granting a preliminary injunction. The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has specifically acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981) (“The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.”).

Moreover, the prompt execution of removal orders is a legitimate governmental interest which detention may facilitate. *Nken*, 556 U.S. at 436 (“There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established and permits and prolongs a continuing violation of United States law.”) (internal quotation omitted). The strong governmental interest in ensuring

appearance for removal proceedings and prompt removal through mandatory detention pending removal proceedings outweighs the Petitioner's alleged hardships. Even assuming Petitioner were likely to succeed on the merits of his claims (which he is not), the balance of the equities weighs heavily in favor of the government, and the Court should decline to enter any injunction.

E. This Court lacks jurisdiction over this matter.

Even though Respondents can successfully oppose the merits of Petitioner's challenge to DHS's detention classification under the INA as argued above, the District Court lacks jurisdiction to even consider the merits of this matter under 8 U.S.C. § 1252 and 8 U.S.C. § 1226(e), for the reasons set forth below.

1. 8 U.S.C. §§ 1252 Channels All Challenges to Removal Orders and Removal Proceedings to the Courts of Appeals

Petitioner's petition and requests for relief are a collateral attack on his removal proceedings dressed up as a request for a bond hearing. Congress, however, has foreclosed exactly this type of challenge. Multiple provisions of 8 U.S.C. § 1252 strip this Court of jurisdiction over Petitioner's request, and Petitioner cannot sidestep that the substance of her claims are barred by § 1252 by restyling them as something else.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Here, Congress has spoken with unmistakable clarity. § 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." It further specifies that "no court shall have jurisdiction, by habeas corpus . . . or by any other provision of law," to review such questions except in that context. 8 U.S.C. § 1252(b)(9). § 1252(g) is equally categorical, barring jurisdiction over "any cause or claim" arising from the

government’s decision to “commence proceedings,” “adjudicate cases,” or “execute removal orders.” 8 U.S.C. § 1252(g).

Petitioner’s claims fall squarely within these prohibitions. He is not challenging the conditions of confinement or the length of detention—issues courts have occasionally recognized as falling outside § 1252(b)(9)’s sweep. *See Jennings*, 583 U.S. at 294 (plurality opinion).¹¹ Instead, he asks this Court to second-guess DHS’s decision to detain him while it commences proceedings under § 1229a and whether and how an immigration judge, subject to precedential decisions of the BIA, grants bond in the midst of these ongoing removal proceedings. That is precisely the sort of interference Congress barred—multiple times over—in § 1252. As *Jennings* explained, habeas cannot be used to “challeng[e] the decision to detain them 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.” *Reno v. Am.-Arab Anti-Discrimination Comm.* (“*AADC*”), 525 U.S. 471, 485 n.9 (1999).

§ 1252(b)(9) is extraordinarily broad, channeling “all questions of law and fact” that “arise from” removal actions into the petition-for-review process. Courts may retain 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. In short, Petitioner is inviting this Court to disregard Congress’s carefully constructed jurisdictional framework and insert itself into ongoing removal proceedings. Congress could not have been clearer: questions about whether, when and under what

¹¹ 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).

circumstances an alien is detained during removal proceedings must be addressed through the statutory review process, not through habeas collateral attacks. Because §§ 1252(b)(9) and 1252(g) categorically bar this Court from intervening, denial of the motion for preliminary injunction and dismissal for lack of jurisdiction is mandatory.

2. 1226(e) precludes judicial review of the Attorney General's decisions regarding Petitioner's detention or release.

If this Court finds that Petitioner can only be detained pursuant to the provisions of INA 236(a), which is denied by Respondents, then this Court must likewise find that it is precluded from reviewing any decision by the Attorney General to detain petitioner and to deny bond. 8 U.S.C. 1226(e) provides:

(e) Judicial Review. The Attorney General's discretionary judgment regarding the application of [Section 1226] shall not be subject to review. No court may set aside any action or decision by the Attorney General under [Section 1226] regarding detention of any alien or the revocation or denial of bond or parole.

Accordingly, § 1226(e) precludes an alien from challenging discretionary judgment or decision by the Attorney General regarding his detention or release. *See Jennings*, 138 S. Ct. at 841 (*citing Demore v. Kim*, 538 U.S. 510, 516 (2003)).

The Supreme Court noted in *Jennings* that 1226(e) does not preclude challenges to the statutory framework that permits the alien's detention without bail. *Id.* Therefore, the Supreme Court ultimately found that 1226(e) did not preclude judicial review in that case. *Id.* However, this case is distinguishable from *Jennings* such that judicial review should be precluded under 1226(e) for the reasons outlined by the Supreme Court in both *Jennings* and *Demore*. In *Jennings*, the petitioner represented a class of aliens who were challenging the extent of the Government's detention authority under the INA, whether INA sections 235(b) and 236(a) contained an implicit limit on the length of detention allowable while removal proceedings are ongoing, and, if that challenge failed, whether the entire statutory scheme was unconstitutional under the Fifth Amendment. *Id.* In this case, Petitioner is not challenging the

constitutionality of the statutory provisions of the INA as enacted by Congress in sections 235 and 236. Instead, Petitioner is directly challenging the Attorney General's decision to detain him under INA 235(b)(2) and the Immigration Judge's denial of an INA 236(a) bond hearing. Accordingly, these challenges fall squarely into the types of challenges clearly precluded by 1226(e) and this Court should decline to review them.

CONCLUSION

For the reasons explained above, Petitioner's petition for writ of habeas corpus and request for injunctive relief should be denied and Petitioner's detention should remain undisturbed for the duration of his removal proceedings. As an inadmissible alien seeking admission to the United States, he is subject to mandatory detention for the duration of his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2) and is therefore not entitled to a bond hearing under § 1226.

Respectfully submitted,

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