IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RUDY GARCIA DOMINGO,

Petitioner,

vs. No. 1:25-cv-00979-DHU-GJF

DORA CASTRO, in official capacity, Facility Administrator[1] of Otero County Processing Center; MARY DE ANDA-YBARRA, in official capacity, Field Office Director of ICE's El Paso Field Office; TODD M. LYONS, in official capacity, Acting Director of ICE; KRISTI NOEM, in official capacity, Secretary of the U.S. Department of Homeland Security; and PAM BONDI, in official capacity, Attorney General of the United States,

Respondents.

MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS (DOC. 1)

INTRODUCTION

Respondents, Immigration and Customs Enforcement ("ICE") and the Department of Homeland Security ("DHS") (collectively "Respondents"), hereby submit this Motion to Dismiss Petitioner's Writ of Habeas Corpus (Doc. 1).

Petitioner is a noncitizen of the United States, who entered the country unlawfully and without inspection, and is currently detained pending removal proceedings before the U.S. Immigration Court. Petitioner asks the Court to grant release from custody or, in the alternative, to order Respondents to provide a bond review hearing within seven days. *See* Doc. 1 at 39.

[1] The undersigned does not represent the Facility Administrator of the Otero County Processing Center, as Otero is a private facility and the Facility Administrator is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply equally to the Facility Administrator.

Petitioner alleges that mandatory detention pursuant to Immigration and Nationality Act ("INA") § 235(b) violates the INA, the Administrative Procedures Act ("APA") and Fifth Amendment due process protections. *Id.* at 37-38; *see also* 8 U.S.C. § 1225(b). Petitioner argues his appropriate classification falls under INA § 236, which would entitle Petitioner to a bond review proceeding and additional due process protections. *See generally* 8 U.S.C. § 1226.

Respondents request the Court deny or dismiss the petition (Doc. 1) as Petitioner is appropriately classified under § 1225(b) per guidance from the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*. *See* 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Additionally, Petitioner's APA claim is barred as relief is properly sought and available via habeas. Alternatively, should the Court find § 1226 applies to Petitioner, the appropriate relief would be such classification and entitlement to a bond review, with all standard procedures and applicable burdens of proof.

FACTUAL BACKGROUND

Petitioner is a noncitizen of the United States and citizen of Guatemala, without lawful status in the United States. On May 24, 2016, Petitioner was apprehended near the border and charged with entry without inspection pursuant to INA § 212(a)(6)(A)(i). On August 6, 2016, Petitioner was released to the Office of Refugee Resettlement ("ORR"). On or about February 14, 2017, Petitioner filed an application for asylum which remains pending. On August 20, 2025, Petitioner was encountered by Enforcement and Removal Operations ("ERO") and detained due to his removability under INA § 212(a)(6)(A)(i) and pursuant to INA § 235(b). *See* 8 U.S.C. 1225(b). On October 15, 2025, Petitioner was released from custody pursuant to the Court's Temporary Restraining Order ("TRO") (Doc. 7). Petitioner remains released from custody under TRO authority pending the outcome of the underlying habeas petition (Doc. 1).

LEGAL BACKGROUND

I. Detention of "Arriving Aliens" Under § 1225 vs. § 1226

Generally, when a noncitizen[2] arrives in the United States they are "an applicant for admission," who must "be inspected by immigration officers" to ensure that they may be admitted into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as "arriving aliens" and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; *see also* 8 U.S.C. § 1225(b)(1)(A)(i). Aliens who enter illegally, but are detained shortly after unlawful entry, cannot be said to have "effected an entry" and remain, similar to an alien detained at a port of entry, "on the threshold" and subject to § 1225. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). These arriving aliens can be subject to an expeditious process to remove them from the United States. 8 U.S.C. § 1225(b)(1). Under this process, known as expedited removal, arriving aliens who entered illegally, lack valid entry documentation or make material misrepresentations shall be "order[ed]...removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). Even if an arriving alien is not determined to be inadmissible pursuant to § 1225(b)(1), they may still be subject to mandatory detention. *See e.g.*, 8 U.S.C. § 1225(b)(2)(A). An applicant who is not determined to be inadmissible nonetheless "shall be detained for a [removal] proceeding" unless the examining immigration officer determines that the noncitizen is "clearly and beyond a doubt entitled to be admitted." *Id.* In comparison, when a noncitizen is charged as removable *from within the United States*, traditionally § 1226 "generally govern[ed] the process of arresting and

[2] The applicable statutes and regulations often refer to these individuals as "aliens". For purposes of clarity, the use of the alternative term "noncitizen" in this brief is not intended to imply a legal distinction.

detaining...aliens pending their removal." 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under § 1226(a), "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

The difference between these noncitizens is significant for due process purposes. *Thuraissigiam*, 591 U.S. at 106–07, 138–40; *See also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the "unique constitutional status of arriving aliens with no ties to the United States"). For example, the Supreme Court considered whether § 1225(b) imposes a time limit on the length of detention and whether such noncitizens detained under this authority have a statutory right to a bond hearing. *Jennings*, at 296–303 (The Supreme Court held that "nothing in the statutory text [of § 1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings.") The sole means of release for noncitizens detained pursuant to § 1225(b) is temporary parole *at the discretion of DHS* under 8 U.S.C. § 1182(d)(5). *Id.* at 300.

For "more than a century" the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Thuraissigiam*, 591 U.S. at 131; *See also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (an alien on the threshold of initial entry stands on a different footing: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned"). The Supreme Court has consistently reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *See, e.g.,*

Thuraissigiam, 591 U.S. at 107 (a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"). Accordingly, Congress may authorize detention, even for prolonged periods of time, and such detention does not deprive § 1225(b) aliens "of any statutory or constitutional right." *Id*. An alien who enters the country illegally is treated as an "applicant for admission" and has only those rights that Congress has provided by statute. *Thuraissigiam,* 591 U.S. at 140. The due process clause requires nothing more. *Id*.

II. Statutory Framework and History

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Noncitizens Unlawfully Present in the United States

Prior to 1996, the INA treated noncitizens differently based on whether they had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see also Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Noncitizens who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id*. § 1226(a) (1995). In contrast, noncitizens who physically entered the United States unlawfully would be placed in deportation proceedings. *Id*.; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8

U.S.C. § 1252(a)(1) (1994)). Thus, the INA's prior framework distinguishing based on physical "entry" had:

> 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 subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

B. IIRIRA Eliminated the Preferential Treatment of Noncitizens Unlawfully Present in the United States and Mandated Detention of "Applicants for Admission"

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of a noncitizen into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added).

In other words, the immigration laws would no longer distinguish based on whether the noncitizen had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been

lawfully admitted." *See* House Rep., at 226 (emphasis added); *see also Hing Sum v. Holder*, 602 F.3d at 1100. IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in § 1225 and § 1226:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that noncitizens "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed … an applicant for admission":

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added).

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited "240" proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for "expedited removal" proceedings, *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of noncitizens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "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." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

> 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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While § 1225(b)(2) does not allow for release on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission of the alien." *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole … been served," the "alien shall … be returned to the custody from which he was paroled" and 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).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of noncitizens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of noncitizens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the

alien is to be removed from the United States." *Id*. § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the noncitizen on bond or conditional parole. *Id*. § 1226(a)(1)-(2). That "default rule," however, does not apply to certain criminal noncitizens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c).

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

C. *Matter of Yajure Hurtado*

For many years after IIRIRA, DHS treated noncitizens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. On July 8, 2025, DHS revisited its legal position on detention and release authorities and issued interim guidance that brought practices in line with the statute's plain text. Specifically, DHS concluded that all noncitizens who enter the country without being admitted (or who otherwise arrive in the United States without proper documentation) are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.

On September 5, 2025, the Board of Immigration Appeals ("BIA") adopted this interpretation through a precedential opinion, *Matter of Yajure Hurtado*, clarifying that aliens

apprehended in the interior of the United States, even after prolonged presence in the United States, are also considered to be "arriving aliens" and are properly detained under 8 U.S.C. § 1225(b)(2). 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure Hurtado*, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220.

The BIA concluded that noncitizens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. 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 number of years. *Id.*

In so concluding, the BIA rejected the argument that "because [petitioner] has been residing in the interior of the United States for almost 3 years...he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* Specifically, if the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). The BIA further rejected arguments that: (1) the immigration judge's interpretation of § 1225(b)(2)(A) would render superfluous § 1226(c)(1)(A); (2) the relevant legislative history of the INA supports an interpretation that would permit bond hearings for individuals present in the United States without admission; (3) DHS's "longstanding practice" indicates that aliens present without admission are entitled to bond hearings; and (4)

Matter of Q. Li, 29 I. & N. 66 (BIA 2025), supports a conclusion that aliens detained with a warrant of arrest are detained under § 1226(a). *Id.* at 221–27.

III. Burden of Proof Under § 1225 and § 1226.

In an immigration context, under both § 1225 and § 1226, it is generally the petitioner's burden to show that he or she is eligible for release or bond. *See, e.g.*, 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding."); *See also Matter of Adeniji*, 22 I. & N. Dec. 1102, 1102 (BIA 1999). This principle is well established in immigration law, even in cases where additional due process and individualized procedures are applicable. *See, e.g., Demore v. Kim*, 538 U.S. 510, 532, (2003) (Justice Kennedy concurring and citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("the permissibility of continued detention pending deportation proceedings turns solely upon the *alien's ability to satisfy the ordinary bond procedures* – namely, whether if released the alien would pose a risk of flight or danger to the community)) (emphasis added).

Similarly, it is also the petitioner's burden to show entitlement to relief from removal on the merits. *See, e.g.*, 8 U.S.C. § 1229a(c)(2) (outlining the burden of proof in removal proceedings: "the alien has the burden of establishing . . . that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible . . . or by clear and convincing evidence that the alien is lawfully present); *see also* 8 U.S.C. § 1229a(c)(4)(B) (when considering applications for relief from removal "the immigration judge will determine whether or not . . . the applicant has satisfied the applicant's burden of proof"); *Matter of Gabriel Almanza-Arenas*, 24 I. & N. Dec. 771, 774-776 (BIA 2009) (in determination of whether the immigration judge improperly applied the REAL

ID Act to petitioner's case, the BIA found that "respondent is seeking discretionary relief from removal, so he bears the burden of proof").

IV. Judicial Review and Executive Deference

More broadly, the Supreme Court has long recognized the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); see also *Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit or exclude aliens "have been legion"). Control of the nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952). Therefore, the Executive Branch has broad constitutional and statutory power over the administration and enforcement of the nation's immigration laws. *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *See e.g.*, 6 U.S.C. § 202(4); 8 U.S.C. § 1103(a)(1), (3).

Congress has delegated broad discretion to executive officials under the INA and these grants of statutory authority are particularly sweeping in the context of parole or release. *Amanullah v. Nelson*, 811 F.2d 1, 6 (1st Cir. 1987). Similarly, the Executive Branch is provided significant deference when it decides to admit or exclude noncitizens, as this power is a sovereign prerogative. *Thuraissigiam*, 591 U.S. at 139 (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). The Constitution gives the political department of the government "plenary authority to decide which aliens to admit." Id. (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659

(1892)). Critically, "a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." Id. See also *Jennings*, at 286 ("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."); Shaughnessy, at 544.

ARGUMENT

I. Section 1225(b)(2) Mandates Detention of Noncitizens Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of Section 1225(b)(2), DHS is required to detain all noncitizens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen has been in the United States or how far from the border they ventured. Section 1225(a) defines "applicant for admission" to encompass a noncitizen who either "arrives in the United States" or who is "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde*, 2025 WL 3131942, at *3. Thus, a noncitizen who enters the country without permission is and remains an applicant for admission, regardless of the duration of the noncitizen's presence in the United States or distance from the border[3]. As the geographic and temporal limits in the neighboring provision, § 1225(b)(1), demonstrate, "[i]f Congress meant to say that an alien

[3] This reading is consistent with the everyday meaning of the statutory terms. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster's New World College Dictionary 69 (4th ed.) ("apply" means "To make a formal request (*to* someone *for* something)"), *with id*. at 1299 ("seek" means "to request, ask for"). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or *admission*") (emphasis added). Likewise, a noncitizen who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") is "seeking admission" to the United States.

no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Id.* at *4.

It cannot be disputed that Respondents previously operated under a different understanding of § 1225(b)(2)(A), such that noncitizens present in the interior of the United States who had entered without admission have historically been detained under Section 1226(a). However, past practice does not justify disregard of clear statutory language. *See, e.g., Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 329 (2015). For example, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that were later deemed incompatible with statutory text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court must always interpret the statute "as written," *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). A "nontextual" practice, even longstanding ones, cannot upend plain statutory meaning upon review. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the Government's prior understanding as "nontextual" and unsupported by any "thorough, reasoned analysis").

A contrary view would make mandatory detention turn on the fortuity happenstance of when a noncitizen attempts to prove admissibility (or how successfully/unsuccessfully a noncitizen illegally enters the United States). *See, e.g., United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not "presume lightly" that statute's application will turn on "arbitrary" issue of timing). There is no reason why Congress would desire mandatory detention to depend on the timing of when a noncitizen attempts to show admissibility (or how successful/unsuccessful an illegal entry attempt was), particularly given how susceptible that rule is to manipulation by the noncitizen's own actions.

Some district courts have rejected Respondents' argument based on language in *Jennings* where the Supreme Court described the detention authorities in § 1225(b) and § 1226, and in that context summarized § 1226 as applying to aliens "already in the country":

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings, 583 U.S. at 289; *see also id*. at 288 (characterizing § 1226 as applying to aliens "once inside the United States"). However, Respondents' do not view this argument as inconsistent with that language: it allows that § 1226 is the exclusive source of detention authority for the substantial category of noncitizens who are were admitted into the United States (and so are "in the country") but are now removable. *Jennings* refers to noncitizens who are "in and admitted to the United States." 8 U.S.C. § 1227(a). The opinion's reference to noncitizens "present in the country" specifically cites § 1227(a), which covers only *admitted* noncitizens. *See Jennings,* 583 U.S. at 288. Moreover, nothing in the quoted language from *Jennings* suggests that § 1226 is the *sole* detention authority that applies to "aliens already in the country."

II. Petitioner is Appropriately Classified under § 1225 per *Hurtado*

Petitioner, under the *Hurtado* view, falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. Petitioner would be a "applicant for admission" to the United States, i.e., a noncitizen present in the United States who has not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress's broad language here is intentional, an undocumented noncitizen is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Petitioner is "deemed" an applicant for admission based upon 1) the undocumented status and 2) that Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," making detention mandatory under § 1225. *See* 8 U.S.C. § 1225(b)(2)(A).

At least three courts have adopted this general interpretation in recent months. *See Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an "applicant for admission" upon the straightforward application of the statute); *Vargas Lopez v. Trump* No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding that § 1225(b) applied despite alien's presence in the country for over ten years, noting "overlap" between §1225 and §1226 authorities); *Chavez v. Noem* No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding the *Hurtado* decision supported by the plain language of the statute, and that such an interpretation does not render § 1226, nor additions thereto by the Laken Riley Act, superfluous). Respondents acknowledge that a number of courts have also made contrary findings on this emergent issue. *See, e.g.,* Doc. 1 at 8-10.

As Petitioner is properly classified under § 1225 per the BIA guidance in *Hurtado*, there can be no Fifth Amendment violation as Petitioner would have only those rights that Congress has specifically provided by statute, which have been provided. *See generally United States v. Verdugo-Urquidez*, 494 U.S. 259, 270–71 (1990); *Thuraissigiam,* 591 U.S. at 131, 140; *Jennings*, at 296–303; *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *see also* 8 U.S.C. § 1182(d)(5). The Court should therefore deny or dismiss the petition (Doc. 1).

III. Should § 1226 Apply, Bond Review is Appropriate Remedy

Should the Court agree with Petitioner's contention that classification under § 1226, rather than § 1225, is appropriate, the subsequent relief, if any, would be to return Petitioner to that status: classification under § 1226 with eligibility for a bond review in the normal course.

For example, in the context of noncitizens detained under §1226(c), courts have repeatedly held that they lack authority to order a mandatory detainee's release pending conclusion of his immigration proceedings. *See generally Nyamekye v. Oddo*, 2023 WL 9271844, at *5 (W.D. Pa.

Mar. 28, 2023) (denying request for immediate release and noting lack of authority to support such a request); *Davis v. Warden of Pike Cnty. Corr. Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022) ("The only remedy for an alien challenging their mandatory detention is a bond hearing") (citing *Hernandez T. v. Wolf*, 2020 WL 634235, at *3 (D.N.J. Feb. 11, 2020). Thus, even if a bond hearing was an available remedy for Petitioner, granting immediate release is not warranted. The Court should not circumvent the U.S. Immigration Court by ordering release, unilaterally shifting the burden of proof at future proceedings or imposing additional restrictions upon Respondents. The appropriate relief would be an order granting classification under § 1226, from which the U.S. Immigration Court would then adjudicate as any other § 1226 case (starting with an evidentiary bond review proceeding).

This position is further supported by the jurisdictional bar of 8 U.S.C. § 1226(e), which strips the Court of jurisdiction to review "discretionary judgment[s] regarding the application of [§1226]. *See* 8 U.S.C. § 1226(e). Section 1226(e) further directs that "[n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the revocation or denial of bond or parole." *Id.* Had Respondents initially classified Petitioner as eligible for bond review under § 1226, the result of that bond review would not be subject to judicial review. It would therefore make little sense for the Court to impose its own judgement on bond (or release) upon the U.S. Immigration Court at this stage.

IV. Petitioner's APA Claim Should Be Dismissed

The APA is only available for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. For example, in *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence

in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

Thus, Petitioner's APA claim is independently barred by the limitation in 5 U.S.C. § 704 and should be dismissed.

CONCLUSION

The Court should deny or dismiss the Petition for Writ of Habeas Corpus (Doc. 1) as Petitioner is appropriately classified under § 1225 pursuant to BIA guidance in *Hurtado*, there has been no statutory or constitutional violation and Petitioner does not have standing to bring a claim under the APA. For these reasons the Court should deny or dismiss the petition (Doc. 1).

Respectfully submitted,

RYAN ELLISON
Acting United States Attorney

/s/ Ryan M. Posey 11/21/2025
RYAN M. POSEY
Assistant United States Attorney
201 Third Street NW, Suite 900
Albuquerque, New Mexico 87102
(505) 346-7274; Fax (505) 346-7205
Ryan.Posey@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 21, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey 11/21/2025
RYAN M. POSEY
Assistant United States Attorney