

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

JUAN MARIA CHIMBORAZO  
CUNIN,

*Petitioner,*

v.

BRIAN MCSHANE, *et al.*

*Respondents.*

Case No. 3:25-cv-01887 (LAL)

**RESPONSE TO VERIFIED PETITION FOR WRIT OF HABEAS  
CORPUS AND COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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This is a habeas action filed on October 8, 2025, by Petitioner, JUAN MARIA CHIMBORAZO CUNIN, an immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), at the Clinton County Correctional Facility in McElhattan, Pennsylvania. Doc. 1, Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief. Specifically, Cunin requests the Court to grant a writ of habeas corpus requiring Respondent(s) to “immediately release Petitioner from custody on his own recognizance or under parole, bond, or reasonable conditions of supervision;” *Id* at 31, ¶ 6.

On October 14, 2025, this Court entered an order directing Respondent to respond to the Petition within twenty-one (21) days of the Order, or on or before November 4, 2025. Doc. 3, Order to Show Cause. This Response is filed in accordance with that Order.

### **INTRODUCTION**

Petitioner challenges the legality and constitutionality of United States (“U.S.”) Immigration and Customs Enforcement’s (“ICE’s”) established arrest and civil detention authority. As “[a]n alien present in

the [U.S.] who has not been admitted[.]” Petitioner is defined as an applicant for admission. 8 U.S.C. § 1225(a)(1). And, like here, where an applicant for admission “seek[s] admission [and] is not clearly and beyond a doubt entitled to be admitted” to the U.S., “[he] *shall* be detained[.]” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Despite the plain language of these statutes, the Petition contends that discretionary detention under 8 U.S.C. § 1226(a) applies here instead, and that detention without a bond hearing violates the Immigration and Nationality Act (“INA”), its implementing bond regulations, and the Due Process Clause. Doc 1 at 28, ¶¶ 55-69.

These challenges fail. The INA clearly defines an “alien present in the U.S. who has not been admitted” as an “applicant for admission.” And because Petitioner is present in the U.S., has not been admitted, is seeking admission, and not clearly and beyond a doubt entitled to be admitted, they are subject to mandatory detention pursuant to § 1225(b)(2)(A). Additionally, this court does not have jurisdiction to review Petitioner’s claims. Even if this Court assumes jurisdiction, Petitioner’s interpretation of § 1225(b) contradicts the statute’s plain text. This dooms his Petition and requires denying injunctive relief.

As for Petitioner's constitutional claims, the due process afforded to applicants for admission is only that which is provided by the INA. And since no additional process is due here, there is no due process violation. Therefore, Federal Respondents respectfully request this Court deny the instant Petition.

The United States Court of Appeals for the Third Circuit, its sister circuits, and the courts of the Middle District of Pennsylvania have yet to address the issue. While the Respondent acknowledges that some district courts have rejected Respondent's arguments on the issues presented below,<sup>1</sup> other district courts have also found Respondent's arguments dispositive. *See Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL

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<sup>1</sup> *See, e.g., Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, --- F.Supp.3d, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Hasan v. Crawford*, -- F. Supp. 3d --, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 (E.D. NY. Oct. 6, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D. N.C. Oct. 7, 2025); *Alejandro v. Olson*, No. 1:25-cv-02027, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Aguilar Merino v. Ripa*, No. 25-23845, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Ochoa Ochoa v. Noem*, No. 25-cv-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *H.G.V.U. v. Smith, et al.*, No. 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042 (D. Md. Oct. 21, 2025); *Bethancourt Soto v. Soto*, No. 25-cv-16200, 2025 WL 2976572 (D. N.J. Oct. 22, 2025); *Astudillo v. Hyde*, No. 25-551, 2025 WL 3035083 (D. R.I. Oct. 30, 2025); *Martinez Lopez v. Larose*, No. 25-cv-2717, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025).

2780351 (D. Neb. Sept. 30, 2025). As such, Respondent requests that the Court deny and dismiss the Petition.

## FACTS

### **A. Statutory and Regulatory Background**

Before proceeding to the factual and legal premise of the instant habeas petition, it is important to explain the statutory and regulatory provisions governing civil immigration detention. Such provisions have been the subject of extensive judicial discussion. *See generally DHS v. Thuraissigiam*, 591 U.S. 103 (2020); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Important to any understanding of this statutory scheme is the concept of “admission.” An “admission” (or being “admitted”) is “the *lawful* entry of [an] alien into the [U.S.] after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(13)(A) (emphasis added). The INA authorizes the removal of certain aliens who have not been admitted to the U.S. through different procedures, and as the Supreme Court has unequivocally held, *requires* federal immigration officials to detain these aliens pending the conclusion of any necessary proceedings. *See* 8 U.S.C. §

1225(b) (emphasis added).

**1. Mandatory Detention – 8 U.S.C. § 1225**

Any “alien present in the [U.S.] who has not been admitted or who arrives in the U.S.” whether or not at a port of entry is treated an “an applicant for admission.” 8 U.S.C. § 1225(a)(1); *see* 8 C.F.R. § 235.1(f)(2). Applicants for admission may be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or through non-expedited removal proceedings under § 1225(b)(2). *Hasan*, 2025 WL 2682255, at \*5; *see Rodriguez v. Perry*, 747 F. Supp. 3d 911, 915 (E.D. Va. 2024) (Brinkema, J.); 8 U.S.C. §§ 1225(b)(1) (arriving aliens), (b)(2) (other applicants for admission). Section 1225(b)(2) “serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]” *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). And applicants for admission “*shall be detained* for a [removal] proceeding” if the “examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).<sup>2</sup>

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<sup>2</sup> This form of mandatory detention has the same effect as the mandatory civil immigration detention required for certain other classes of aliens pursuant to § 1226(c).

Although detention pursuant to section 1225(b) is mandatory, it is *not* indefinite. On the contrary, “§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time.” *Jennings*, 583 U.S. at 299. Specifically, “detention must continue . . . until removal proceedings have concluded.” *Id.* (internal citation omitted). But “[o]nce those proceedings end, detention under § 1225(b) must end as well.” *Id.* at 297. Further, while § 1225(b)(2) does not provide for bond hearings, *see id.* at 297–303; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218-19 (BIA 2025) (§ 1225(b)(2)), it does contain “a specific provision authorizing release from . . . detention”: The Secretary of Homeland Security (hereinafter, the “Secretary”) “may ‘for urgent humanitarian reasons or significant public benefit’ temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2),” *Jennings* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). “[P]arole of such alien[s] *shall not* be regarded as an admission of the alien[s].” 8 U.S.C. § 1182; *see id.* § 1101(a)(13)(B).

## **2. Discretionary Detention – 8 U.S.C. § 1226(a)**

As the Supreme Court has explained, “[s]ection 1226 ***generally*** governs the process of arresting and detaining that group of aliens pending their removal.” *Jennings*, 583 U.S. at 288 (emphasis added); *see* 8 U.S.C. §

1226(a); *Rodriguez*, 747 F. Supp. 3d at 916. Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. *See* 8 U.S.C. § 1226(a). By regulation, immigration officers can release an alien if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). Pursuant to 8 U.S.C. § 1226(b), ICE “at any time may revoke a bond or parole authorized under [§ 1226(a)], rearrest the alien under the original warrant, and detain the alien.” *Id.*; *see* 8 C.F.R. §§ 236.1(c)(9), (d)(1).

### **A. Facts and Procedural History**

Petitioner is a native and citizen of Ecuador. Petition, Doc 1, 7. He crossed the US/Mexico border in May of 2005. *Id.* He subsequently applied for asylum in an attempt to gain legal status. *Exhibit #1, 880 I- 213*. He appeared for an asylum interview. Petition, Doc 1, 7. On or about May 15, 2020, an Immigration Court filed a notice to Appear. *Id.* On October 2, 2025, Petitioner was detained while at work and was sent to Clinton

County Correctional Facility. *Id.* He had an individual calendar hearing scheduled for December 12, 2029, but it has since been moved to November 18, 2025. *Exhibit #2, 880 Case Notice.*

### **B. The Instant Petition**

Petitioners filed Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief.. *See* Doc 1. Petitioners bring four Claims for Relief. *See* Doc 1,. ¶¶ 55-69. Petitioners claim DHS violated the INA by subjecting Petitioners to mandatory detention pursuant to 8 U.S.C. § 1226(a) and not providing them a bond hearing. *Id.* ¶¶ 55-57 (Count One). Petitioners also claim that his detention without a bond hearing violates their due process rights. *Id.* ¶¶ 58-60 (Count Two), ¶¶ 61-67 (Count Three), ¶¶ 68-69 (Count Four).

### **ARGUMENT**

Petitioner's claim fails on the merits. This Court does not have jurisdiction to review Petitioner's claims. Even if this Court assumes jurisdiction, Petitioner's interpretation of § 1225(b) contradicts the statute's plain text. The Court should deny interim relief and dismiss the Petition on the merits.

**I. This Court does not have jurisdiction over Petitioner's claims.**

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. Accordingly, Petitioner is unable to show a likelihood of success on the merits. The motion for injunctive relief should be denied and the Petition dismissed.

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain an alien

pending removal. *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020); *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during removal proceedings”).

In *Tazu*, the United States Court of Appeals for the Third Circuit found that the decision to detain a noncitizen during removal proceedings fell under the “execute removal orders” portion of 8 U.S.C. § 1252(g). 975 F.3d at 298-99. The Third Circuit explained as follows:

The text of § 1252(g) resolves this claim. It strips us of jurisdiction to review the Attorney General’s “decision or action ... to ... execute [a] removal order[.]” *Tazu*’s challenge to his short re-detention for removal attacks a key part of executing his removal order. The verb “execute” means “[t]o perform or complete.” And to perform or complete a removal, the Attorney General must exercise his discretionary power to detain a [noncitizen] for a few days. That detention does not fall within some other “part of the deportation process.” We thus hold that a brief door-to-plane detention is integral to the act of “execut[ing] [a] removal order[.]”

The Government re-detained *Tazu* just three days after it got his new passport. If courts had not intervened, it would have removed him just three-and-a-half weeks after re-detaining him. Re-detaining *Tazu* was simply the enforcement mechanism the Attorney General picked to execute his removal. So § 1252(g) funnels review away from the District Court and this Court.

*Id.* (internal quotations omitted). Here, while a distinction exists between the timeline of detention, the Third Circuit’s reasoning in *Tazu*, that the Attorney General’s decision to detain a noncitizen for removal is the enforcement mechanism for execution of a removal order, supports the decision to detain Santana-Rivas. *See also Herrera-Correra v. United States*, No. CV 08-2941, 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008) (“The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings.”). As such, judicial review of the claim that Petitioner is entitled to bond is barred by § 1252(g). The Court should dismiss for lack of jurisdiction.

Second, under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’

clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; see *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at \*2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); see *id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); accord *Ruiz v. Mukasey*,

552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v ICE*, 510 F.3d 1, 11 (1<sup>st</sup> Cir. 2007). 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031-32 (9th Cir. 2016)

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief

sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here, Petitioner challenges the government’s decision and action to detain, which arises from DHS’s decision to commence removal proceedings against an arriving alien and is thus an “action taken . . . to remove [them] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at \*3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner’s claims are unreviewable here. While holding that it was unnecessary to

comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, Petitioner does challenge the government’s decision to detain her in the first place. Though Petitioner may attempt to frame this challenge as one relating to detention authority, rather than a challenge to DHS’s decision to detain her pending his removal proceedings in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to remove’ [a noncitizen].” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petition for lack of jurisdiction under § 1252(b)(9). Petitioner must present his claims before the appropriate federal court of appeals because they challenge the government’s decision or action to detain him,

which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

## **II. The Detention at Issue Here is Lawful**

Even if this Court finds that 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not preclude judicial review, the Court should reject Petitioner’s argument that 8 U.S.C. § 1226(a) governs her detention instead of 8 U.S.C. § 1225(b)(2).

### **A. Pursuant to 8 U.S.C. § 1225(b)(2)(A), detention is mandatory for applicants for admission seeking admission who are not clearly and beyond a doubt entitled to be admitted.**

Before this Court can analyze the Petition’s claims, it must determine what statute authorizes Petitioner’s detention. As a *legal* matter, 8 U.S.C. § 1225(b)(2)(A) applies here, since it encompasses applicants for admission “seeking admission [and] [are] not clearly and beyond a doubt entitled to be admitted.” *Id.*; *see Jennings*, 583 U.S. at 287; *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sep. 30, 2025); *Chavez v. Noem*, -- - F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025); *Pena v. Hyde*, 2025 WL 2108913, at \*2 (D. Mass July 28, 2025) (emphasis added); *see also Laguna Espinoza v. ICE*, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025) (“the Board of Immigration Appeals and the immigration courts more generally

have in the statutory and administrative regimes governing the admission and removal of foreigners”).

First, consider the plain text. Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). “Seeking admission” and “appl[ying] for admission,” in this context, are plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all noncitizens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person “seeking admission” is just another way of saying someone is applying for admission—that is, he is an “applicant for admission”—which includes both those individuals arriving in the United States and those already present without admission. See 8 U.S.C. § 1225(a)(1); *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

Second, consider the statutory structure of § 1225(b). To be sure, § 1225(b)(1) applies to applicants for admission who are “arriving in the United States” (or those who have been present for less than two years) and provides for expedited removal proceedings. It also contains its own mandatory-detention provision applicable during those expedited proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Section 1225(b)(2), by contrast, applies to “other” noncitizens—“in the case of [a noncitizen] who is an applicant for admission”—those not subject to expedited removal under (b)(1). They too must “be detained” but instead for a more typical removal “proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). Properly understood, § 1225(b) applies to two groups of “applicants for admission”: (b)(1) applies to “arriving” or recently arrived noncitizens who must be detained pending expedited removal proceedings; and (b)(2) is a “catchall provision that applies to all applicants for admission not covered by § 1225(b)(1),” *Jennings*, 583 U.S. at 287, who, like Petitioner, must be “detained for a [non-expedited] proceeding under section 1229a of this title,” 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting (b)(2) to “arriving” noncitizens would render it redundant and without any effect.

And third, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to noncitizens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to noncitizens who are "applicants for admission,"—a specially defined subset of noncitizens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of [noncitizens] as 'applicants for admission,' and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen]."). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the

specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

A court in Massachusetts recently confirmed that a noncitizen, unlawfully present in the country for approximately 20 years, was nonetheless an “applicant for admission.” *See Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025). The court explained this resulted in the “continued detention” of a noncitizen during removal proceedings as commanded by statute. *Id.* And the BIA has long recognized that “many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Lemus-Losa*, 25 I. & N. Dec. at 743.

**B. The Laken Riley Act doesn’t change the analysis.**

Petitioner points to a different mandatory-detention provision in § 1226(c)(1)(E), recently amended in the Laken Riley Act, and argues that provision would be redundant of § 1225’s mandatory-detention provisions under the government’s interpretation. Doc. 1 at 22-23, ¶ 41. The Court should reject this argument.

To be sure, some redundancy would result in some cases (though not on this record, where only one of the two provisions even arguably applies). But the Supreme Court has recognized that “redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). No matter what, “[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Id.* The Laken Riley Act was plainly directed at a particular problem Congress addressed “to be doubly sure” that individuals cannot reoffend when they should be in immigration custody. *See id.* Nothing in the law shrinks the scope of the mandatory-detention provisions in § 1225, an altogether different statutory provision enacted decades earlier to address an entirely different problem.

Congress adopted multiple mandatory-detention provisions at different times and in different circumstances, some of which may overlap in some cases. But the hypothetical possibility of multiple mandatory-detention provisions applying in another future case doesn’t change the plain scope of § 1225(b)(2) in this case.

**C. The BIA recently adopted the government's interpretation, and the Court should consider that expert panel's conclusion.**

The BIA addressed this issue in September and agreed with the government's interpretation of § 1225(b)(2). *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Though agency decisions are not binding on this Court, the reasoning is persuasive.

Petitioner points “decades that followed” (enactment of IIRIRA) most noncitizens who entered without inspection or admission received bond hearings. Doc. 1 at 16, ¶ 31. But prior administration practice does not alter this Court's obligation to “independently interpret the statute and effectuate the will of Congress” by adopting the best reading of the statutory language. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Id.* at 432-33 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

The agency's explanation for its prior practice is limited to one sentence: “Despite being applicants for admission, [noncitizens] who are

present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” *Inspection and Expedited Removal of [Noncitizens]; Detention and Removal of [Noncitizens]; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 93131, 10312, 10323 (Mar. 6, 1997). This unexplained conclusion provides no persuasive reasoning in support of Petitioner’s interpretation.

Here, “read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). The Court should adopt the government’s interpretation as the best reading of the statute’s plain text, context, and structure.

### **III. Petitioner’s Remaining Counts must also be denied.**

Neither the regulations nor the Constitution supply a different result, and the Court should deny Counts II through IV of the habeas petition as well. In Counts II through IV of the petitions, Petitioner asserts mandatory detention without a bond hearing violates due process. But an immigration detainee has no constitutional right to release on bond when held pursuant

to a statutory provision requiring mandatory detention. *Banyee v. Garland*, 115 F.4th 928, 931 (8th Cir. 2024).

Respondent maintains that the Petitioner is being held under the mandatory detention provision of 8 U.S.C. § 1225(b). Yet, in the event this Court finds that it has jurisdiction and the Petitioner is detained under 8 U.S.C. § 1226, defendant's detention does not violate the due process clause of the Fifth Amendment because it has not been prolonged or arbitrary (approximately 1 month),<sup>3</sup> his future detention is unlikely to be prolonged as he is scheduled for a hearing on November 18, 2025, and his proceedings are progressing at a normal rate.

\* \* \*

To deny the Petition in this case, this Court need only follow the Supreme Court's pellucid instructions. Granting the Petition, by contrast,

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<sup>3</sup> See *Appiah v. Lowe*, No. 3:24-cv-2222, 2025 WL 510974 (M.D. Pa. (Feb. 14, 2025) (Mariani, J.) (finding petitioner's 18 months of detention did not require individualized bond hearing); *White v. Lowe*, No. 1:23-CV-1045, 2023 WL 6305790 (M.D. Pa. September 27, 2023) (Conner, J.) (finding that petitioner's continued detention for approximately 15 months did not require an individualized bond hearing), *abrogated by White v. Warden Pike County Correctional Facility*, No. 23-2872, 2024 WL 4164269 (3d Cir. Sept. 12, 2024) (finding White's detainment, which had reached 25 months at the time of his appeal, violated due process); *McDougall v. Warden, Pike County Correctional Facility*, No. 3:23-cv-00759, 2023 WL 6161038 (M.D. Pa. September 21, 2023) (Mariani, J.) (finding petitioner's detention for a little over 13 months did not weigh in favor of relief); *Flores-Lopez v. Lowe*, No. 1:21-CV-1839, 2021 WL 6134453, at \*2 (M.D. Pa. December 29, 2021) (Conner, J.) (denying habeas corpus relief where petitioner had been detained for approximately 19 months after his first bond hearing); *Gabriel v. Barr*, No. 1-20-CV-1054, 2021 WL 268996 (M.D. Pa. January 27, 2021) (Jones III, J.) (finding that petitioner was not entitled to an individualized bond hearing after 18 months in custody); *Crooks*, 2018 WL 6649945 at \*2 (denying a bond hearing to a petitioner who had been detained for 18 months).

would require a reading of the Due Process Clause that the Supreme Court has never endorsed and in fact has repeatedly rejected. *See Jennings*, 583 U.S. at 297 (“nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings”). This Court should decline to take such a drastic step. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (“Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution.”).

### **CONCLUSION**

For the foregoing reasons, Federal Respondents respectfully request that the Court deny the Writ of Habeas Corpus and hold Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Dated: November 4, 2025

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

JUAN MARIA CHIMBORAZO  
CUNIN,

*Petitioner,*

v.

BRIAN MCSHANE, *et al.*

*Respondents.*

Case No. 3:25-cv-01887 (LAL)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on November 4, 2025, she served a copy of the attached

**RESPONSE TO VERIFIED PETITION FOR WRIT OF HABEAS  
CORPUS AND COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

via ECF:  
Paul Grotas Esquire  
Matthew J. Archambeault, Esquire

/s/ Tammy S. Folmar  
Tammy S. Folmar  
Legal Administrative Specialist