IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ALVARO LARA MARTINEZ — PETITIONER

V. — CIVIL ACTION NO. 5:25-cv-00105-DCB-LGI

RAFAEL VERGARA, WARDEN,
ADAMS COUNTY CORRECTIONAL CENTER — RESPONDENT

RESPONSE IN OPPOSITION TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Respondent Rafael Vergara, Warden of Adams County Correctional Center, by and through the United States Attorney for the Southern District of Mississippi, and the undersigned Assistant United States Attorney, submits this response in opposition to Petitioner Alvaro Lara Martinez's amended petition for writ of habeas corpus under 28 U.S.C. § 2241. *See* Dkt. No. 17, *Amended Pet.*

I. INTRODUCTION

On December 2, 2025, Petitioner Lara Martinez filed an amended petition for writ of habeas corpus under 28 U.S.C. § 2241, challenging his continued detention within the institutional custody of Immigration and Customs Enforcement ("ICE"). *See* Dkt. No. 17. Lara Martinez requests that the Court declare that he is detained under 8 U.S.C. § 1226(a) and either order his immediate release or order that he receive a bond hearing. *See id.* at 3, ¶ 10. However, as set forth below, Lara Martinez has not made a request to the immigration

judge for a bond hearing. Thus, he has not exhausted his administrative remedies. Furthermore, as an "applicant for admission," Lara Martinez is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Finally, Lara Martinez has not served Respondent Vergara with the amended petition. Accordingly, the petition should be denied.

II. BACKGROUND

Lara Martinez is a native and citizen of Mexico. *See* Ex. A, at 1, *Notice to Appear*. He entered the United States at an unknown location and at an unknown time without being inspected by an immigration officer. *See id.*

On or about September 20, 2025, Martinez was taken into the custody of ICE. *See* Dkt. No. 17, at 2, ¶ 5. He was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. *See* Ex. A, at 1. On September 21, 2025, Lara Martinez was placed in removal proceedings pursuant to section 240 of the Immigration and Nationality Act ("INA"), and charged under section 212(a)(6)(A)(i) with being "an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General," and under 212(a)(7)(A)(i)(I) with being "an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section

211(a) of the Act." *See id.* at 1, 4.

Lara Martinez was served a Notice to Appear on October 18, 2025, ordering him to appear before an immigration judge on November 4, 2025, for an immigration hearing. *See id.* at 1. That hearing was continued and is now set for December 18, 2025. *See* Ex. B, at 1, *Notice of Internet-Based H'rg.*

III. LEGAL FRAMEWORK

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

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *See 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). Whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum*, 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). "A deportation hearing was the 'usual means of proceeding against an alien already

physically in the United States,' while an exclusion hearing was the 'usual means of proceeding against an alien outside the United States seeking admission.'" *Id.* Aliens in deportation proceedings, unlike those in exclusion proceedings, were entitled to request release on bond. *See Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012) ("'Non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' while non-citizens who actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings.'").

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

Congress discarded that regime through enactment of IIRIRA[1], 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 – in the position of an 'applicant for admission.'" *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 the alien into the United States after inspection and authorization by an

[1] The Illegal Immigration Reform and Immigrant Responsibility Act.

immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, "[u]nder the new regime, 'admission' now determines whether a non-citizen is subject to grounds of deportability or inadmissibility within the context of a removal proceeding." *Hing Sum*, 602 F.3d at 1100.

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "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). "All aliens … who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." *Id.* § 1225(a)(3).

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited Section 240 proceedings—and mandated that

applicants for admission be detained pending those proceedings. *See* 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020), which can potentially be applied to a subset of aliens—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). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such a fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.3(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(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 these 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);[2] *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 Section 1225(b)(2) does not allow for aliens to be released 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 ... have 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).

In sum, the key distinction between sections (b)(1) and (b)(2) of 1225 is that only (b)(1) provides for expedited removal, while section (b)(2) provides for standard removal

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[2] Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) aliens who "arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C).

proceedings under § 1229a. Both sections require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the conclusion of § 1229a removal proceedings.

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens 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. *See Jennings*, 583 U.S. at 303 (stating that "§ 1226 applies to aliens already present in the United States"). 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 alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).[3]

That "default rule," however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable

[3] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1)(A)-(E). The Executive must detain these aliens "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.*

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).[4]

IV. ARGUMENT

Lara Martinez seeks release or a bond hearing pursuant to Section 1226(a). Lara Martinez, however, has not requested a bond hearing before an immigration judge. Thus,

[4] The Laken Riley Act's addition of § 1226(c) does not invalidate §1225(b)'s mandatory detention requirement merely because it could appear redundant. As the Supreme Court has acknowledged, "redundancies are common in statutory drafting ... redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute..." *Barton v. Barr*, 590 U.S. 222, 239 (2020). Importantly, the statutes at issue were "implemented at different times and intended to address different issues. The INA is a complex set of legal provisions created at different times and modified over a series of years. Where these provisions impact one another, they cannot be read in a vacuum." *Matter of Hurtado*, 29 I&N Dec. 216, *227 (BIA 2025).

even if he were correct that he is being detained pursuant to Section 1226(a), his petition would be subject to dismissal for failure to exhaust his administrative remedies. Furthermore, Lara Martinez is unambiguously an "applicant for admission" subject to mandatory detention under Section 1225(b)(2), as he entered the country without inspection and was never "admitted" into the United States. Therefore, his petition should be dismissed.

A. The Court should deny the petition for failure to exhaust administrative remedies.

A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same); *accord Lee v. Gonzales*, 410 F.3d 778, 786 (5th Cir. 2005) ("[A] petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists."); *see also Quinonez Mercado as next friend of Abarca-Jovel v. Dep't of Homeland Sec.*, No. 1:25-CV-12066-JEK, 2025 WL 2430423, at *3 (D. Mass. Aug. 22, 2025) (denying habeas petition where petitioner never sought a bond hearing immigration court); *Palacios v. Venegas*, No. 1:25-CV-00108, 2025 WL 1999169, at *3 (S.D. Tex. June 9, 2025), *report and recommendation adopted*, No. 1:25-CV-00108, 2025 WL 1994779 (S.D. Tex. July 17, 2025) (dismissing case for lack of exhaustion where the petitioner admitted he had "never been to a court" or gone before an

immigration judge); *Singh v. U.S. Immigr. & Customs Enf't*, No. CV H-22-3432, 2023 WL 3571958, at *2 (S.D. Tex. Apr. 26, 2023) (finding habeas relief unwarranted where the petition had not requested a bond hearing before an immigration judge before filing his petition). "Exhaustion allows an agency the first opportunity to apply [its] expertise and obviat[es] the need for [judicial] review in cases in which the agency provides appropriate redress." *Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (internal quotations omitted). It also "create[s] a useful record for subsequent judicial consideration." *Id.*

Here, Lara Martinez asserts that "under 8 U.S.C. § 1226(a), [he] must, upon his request, receive a custody redetermination hearing (colloquially called a 'bond hearing')." *See* Dkt. No. 17, at 13, ¶ 65. He requests the Court to declare that he is detained under 8 U.S.C. § 1226(a) and order that he receive a bond hearing. *See id.* at 3, ¶ 10. However, Lara Martinez has presented no evidence showing that he has requested a bond hearing before an immigration judge. Accordingly, regardless of whether § 1225 or § 1226 applies, his petition should be denied for failure to exhaust administrative remedies.

B. Even on the merits, Petitioner is properly detained under 8 U.S.C. §1225(b)(2) and is not entitled to release.

1. The plain language of 8 U.S.C. § 1225(b)(2)(A) mandates detention.

Lara Martinez asserts that he cannot be subject to mandatory detention under 8 U.S.C. § 1225(b). *See* Dkt. No. 17, at 11, ¶ 58. Lara Martinez, however, unambiguously meets every element in the text of the statute.

When engaging in statutory interpretation, "[w]e begin, as always, with the text."

Esquivel-Quintana v. Sessions, 581 U.S. 385, 391 (2017). "If the statutory language is plain, [the Court] must enforce it according to its terms." *King v. Burwell*, 576 U.S. 473, 486 (2015); *see also Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 171 (5th Cir. 2024) ("As usual, we start with the statutory text.").

The applicable detention statute, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous. As noted above, the statute expressly provides "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) (emphasis added).

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 "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, Lara Martinez is unambiguously 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. *See* Ex. A; *see also* Dkt. No. 17, at 5, ¶ 21 (indicating that petitioner entered the United States without inspection).

The next relevant portion of the statute is whether an examining immigration officer determined that Lara Martinez is "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). In his petition, Lara Martines argues that, as a person already present in the United States, he is not presently "seeking admission." Dkt. No. 17, at 11, ¶ 58. There, however, is "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).

Further, 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) (emphasis added).[5] Therefore, the inquiry is whether an immigration officer

[5] Section 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

determined that Lara Martinez was seeking a "lawful entry." *See id.; see also Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (noting that under the INA, "admission" does not mean physical entry, but lawful entry after inspection by immigration authorities). 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 or she did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A). Indeed, the charges of removal against Lara Martinez are based on his unlawful entry. *See* Ex. A, at 4. So, unless he obtains a lawful admission in the future, he will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), and 1227(a)(1)(A).

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 someone who agrees to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8

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reiterates a clear statutory intent that aliens present in the United States without inspection and admission are considered to be "seeking admission."

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.

Accordingly, Lara Martinez is "seeking admission" to the United States under § 1225(b)(2). He has not agreed to immediately depart, nor has he conceded his removability or allowed his removal proceedings to play out, which logically means that he must be seeking to remain in this country, which requires an "admission" (i.e. a "lawful entry" as discussed above). *See Thuraissigiam*, 591 U.S. at 108-09 (discussing how "[a]n 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)" is deemed "an applicant for admission"). Furthermore, treating Lara Martinez as if he is no longer "seeking admission" would reward him for violating the law, provide him, with better treatment than a foreign national who lawfully presented themselves for inspection at a port of entry, and encourage others to enter unlawfully - defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a

"perverse incentive to enter at an unlawful rather than a lawful location").

Finally, the text provides that Lara Martinez "*shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Lara Martinez is not in expedited removal. He has instead 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* Ex. A. Therefore, he also meets this textual element within § 1225(b)(2)(A) because he is in 1229a removal proceedings and is thus subject to mandatory detention during the pendency of these proceedings.

In sum, the plain text of § 1225(b)(2) unambiguously applies to Lara Martinez. "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); *see also 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 Lara Martinez's detention under § 1225(b)(2)(A) is lawful.

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

With the passage of IIRIRA, 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. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)) ("As we said more than a century ago, deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'"). 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. *See Martinez*, 693 F.3d at 413 n.5; *see also Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872, at *5 (C.D. Cal. Nov. 12, 2025) ("That is consistent with Congress's intent: eliminating 'an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully,' and '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 – in the position of an 'applicant for admission.'"); *see also Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *4-6 (S.D. Tex. Nov. 13, 2025) (citing §§ 1225(a)(2), 1225(c)(1), and 1225(d)(2)) ("Congress could have said that § 1225(b) applied only to arriving aliens if that's what was meant. But it didn't, even as three other closely related subsections did.").

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 can give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process.").

3. Applying the plain language of § 1225, many district courts have recognized that mandatory detention of inadmissible aliens is required by § 1225.

Lara Martinez appears to argue 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). *See* Dkt. No. 17, at 12, ¶ 60. 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).

Furthermore, many recent district court decisions support the application of § 1225(b)(2) mandatory detention to this case. For example, in *Garibay-Robledo v. Noem*, No. 1:25-cv-177-H, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025), a district court in Northern District of Texas recently denied an injunction and request for a bond hearing under § 1226 by an inadmissible alien present in the country for over 30 years, noting the very real distinction

between an "arriving alien" and an "applicant for admission" with respect to the application of § 1225(b) and its mandatory detention requirement. The *Garibay-Robledo* opinion states:

> To be sure, an arriving alien is an applicant for admission: Subsection 1225(a)(1) defines applicant for admission, in part, as "[a]n alien . . . who arrives in the United States." But the same provision also defines an applicant for admission as "[a]n alien present in the United States who has not been admitted." *Id.* This is not the most intuitive definition of the term, but it is the one that Congress enacted into law.

Id. at *2. The court conducted a review of legislative history and further noted that by defining "applicants for admission" broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally. *Id.* at *2-3.

Other courts have reached the same conclusion. *See, e.g., Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229, at *10 (S.D. Ohio Dec. 15, 2025) (noting that "if ICE detains an alien who entered without permission, mandatory detention under § 1225(b)(2) is appropriate," whereas § 1226 "applies to those aliens were lawfully admitted (say, pursuant to a visa); *Ferreira Candido v. Bondi, et al,* No. 1:25-cv-000867-JLS, 2025 WL 3484932, at *2 (W.D.N.Y. Dec. 4, 2025) (finding that "applicant for admission" and "seeking admission" are synonymous and holding that neither are entitled to a bond hearing); *Chen v. Almodovar, et. al*, No. 1:25-cv-177-H, 2025 WL 3264478 (S.D.N.Y. Dec. 4, 2025) ("[B]ecause it is undisputed that Petitioner is an alien, who illegally entered the country, is present in the United States without being admitted, and who is actively seeking admission (i.e., lawful status) through asylum, the Court concludes that 8 U.S.C. § 1225(b)(2)(A) applies to Petitioner."); *Suarez v.*

Noem, No. 1:25-cv-00202, 2025 WL 3312168, at *2 (E.D. Mo. Nov. 28, 2025) ("Section 1225 applies to 'alien[s],' who are 'present in the United States,' and who 'ha[ve] not been admitted' into the United States because they did not 'lawful[ly] ent[er] the country after inspection and authorization by an immigration officer.'"); *Maceda Jimenez v. Thompson*, No. 4:25-cv-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) ("[T]he text of § 1225(b)(2)(A) supports the Government's position."); *Valencia v. Chestnut, et. al.*, No. 1:25-cv-01550-WBS-JDP, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025) ("The statutory language may cover a pro-active engagement with the process of becoming a lawful entrant, *but courts both in this circuit and elsewhere have recognized that the term also functions as a legal designation —describing an individual's legal status for purposes of the statutory removal scheme* -- rather than a description of present conduct.") (emphasis added); *Alonzo v. Noem, et. al.*, No. 1:25-cv-01519-WBS-SCR, 2025 WL 3208284, at *3 (E.D. Cal. Nov. 17, 2025) ("The reasonableness of [the Government's] argument is supported by the statutory language."); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *4-6 (S.D. Tex. Nov. 13, 2025) (denying habeas petition and finding 1225(b)(2) required mandatory detention); *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (Section 1225(b) "applies broadly to all aliens who are 'present in the United States and who have not been admitted.'"); *Mejia Olalde v. Noem*, No. 1:25-cv-00168, 2020 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) ("Because Mejia Olalde is an alien, present in the United States, who has not been admitted, the law defines him to be an applicant for admission. He is thus seeking admission."); *Kum v. Ross, et al.*, No.

6:25-cv-00451-SEC-P, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) *adopting report and recommendation*, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025) (finding that a petitioner who was present in the United States without having been admitted or paroled was an "applicant for admission" under § 1225(b)); *Oliveria v. Patterson, et al.*, No. 6:25-cv-01463, 2025 WL 3095972, at *5 (W.D. La. Nov. 4, 2025) (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an "applicant for admission" subject to mandatory detention under § 1225(b)(2)); *Barrios Sandoval v. Acuna, et. al.*, No. 6:25-cv-01467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025) (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Cirrus Rojas v. Olson*, No. 25-cv-1437-BHL, 2025 WL 3033967, at *8 (E.D. Wisc. Oct. 30, 2025) ("Cirrus Rojas meets the definition of 'applicant for admission' in Section 1225(a)(1). He is an alien 'present' in the United States and he has not been 'admitted.'"); *Garibay-Robledo v. Noem*, No. 1:25-cv-177-H, 2025 WL 3264478, at *2-3 (N.D. Tex. Oct. 24, 2025) (denying an injunction and request for a bond hearing under § 1226 by an inadmissible alien present in the country for over 30 years on the basis that an arriving alien is an applicant for admission); *Vargas Lopez v. Trump, et. al.*, No. 8:25-cv-526, 2025 WL 2780351, at *7-10 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on § 1225(b)(2)); *Chavez v. Noem, et. al.*, No. 3:25-cv-02325-CAB-SBC, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde*,

No. 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States.").[6]

Thus, in addition to the plain language of the statute and the legislative history, the aforementioned well-reasoned decisions of sister courts support the applicability of § 1225(b)(2) to Lara Martinez.

4. Petitioner's argument that the Notice to Appear evidences his detention under § 1226 fails.

Lara Martinez argues that he is detained pursuant to 8 U.S.C. § 1226(a) because his Notice to Appear marked the box stating, "You are an alien present in the United States who has not been admitted or paroled," and charged him with removal under INA § 212(a)(6)(A)(i). *See* Dkt. No. 17, at 10, ¶ 51; *see also* Ex. A, at 1 (reflecting three boxes: (1) "You are an arriving alien," (2) "You are an alien present in the United States who has not been admitted or paroled," (3) "You have been admitted to the United States, but are removable for the reasons stated below."). However, "the categories in the Notice to Appear do not 'directly follow' from specific statutory provisions." *See Melgar v. Bondi*, No. 8:25-CV-555, 2025 WL 3496721, at *9 (D. Neb. Dec. 5, 2025) ("The Notice to Appear identifying Ramirez Melgar as 'an alien present in the United States who has not been admitted or paroled' falls far short of establishing that Ramirez Melgar was detained under § 1226(a) as he alleges

[6] This list of decisions is not exhaustive.

rather than under § 1225(b)(2) as Respondents assert."). As noted by the district court in *Melgar v. Bondi*, "§ 1225 is not limited to an 'arriving alien,' the first category identified in the Notice to Appear." *Id.* Instead, it also applies to an "alien present in the United States who has not been admitted." *Id.* Similarly, § 1226 "is not limited to aliens in the second category identified in the Notice to Appear, that is, 'aliens present in the United States who have not been admitted or paroled' but also applies to 'arriving aliens.'" *Id.* Accordingly, contrary to Lara Martinez's assertion, the Notice to Appear does not prove that he is being detained pursuant to § 1226(a).

5. Petitioner's mandatory detention does not violate due process under the Fifth Amendment.

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Lara Martinez. *See* 8 U.S.C. § 1225(a)(1). Congress directed that aliens like Lara Martinez shall be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, 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 the power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *See Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing*, 163 U.S. at 235 ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings*, 583 U.S. at 286 ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

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*, 583 U.S. at 296-97. The Supreme Court in *Jennings* explained in detail why the *Zadvydas* 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. *See* 538 U.S. at 513. In that case, similar to undocumented aliens like Lara Martinez, 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. *See id.* at 529. 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, Lara Martinez 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. 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. Moreover, as the court noted in its report and recommendation in *Kum*, even lengthy detention is mandatory and lawful under § 1225(b). *See Kum*, 2025 WL 3113646, at *2, n. 2 (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional).

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 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*, Lara Martinez 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. Accordingly, Lara Martinez's detention does not violate the Fifth Amendment.

C. The Court lacks jurisdiction to grant declaratory relief.

In his prayer for relief from the Court, Lara Martinez requests the Court to declare that his detention is unlawful. *See* Dkt. No. 17, at 17, ¶ 5. The Petition makes no mention of the authority under which the Court can grant such declaratory relief. However, Congress has specifically precluded judicial review of a claim by an alien arising from the decision or action of the Attorney General to commence proceedings (in this case under § 1225(b)(2)(A), which requires mandatory detention) or to adjudicate cases (in this case, to hold removal proceedings in accordance with § 1229a). *See* 8 U.S.C. § 1252(g). By its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to commence removal proceedings. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Therefore, the Court lacks subject-matter jurisdiction to grant declaratory relief.

D. Petitioner is not entitled to EAJA fees.

Lara Martinez asks this Court to award his attorneys' fees and costs as provided under the Equal Access to Justice Act ("EAJA"). *See* Dkt. No. 17, at 17, ¶ 7. However, he is not entitled to such relief in this matter. "EAJA is a limited waiver of sovereign immunity, allowing for the imposition of attorney's fees and costs against the United States in specific civil actions." *Barco v. Witte*, 65 F.4th 782, 784 (5th Cir. 2023) (citing *Ardestani v. I.N.S.*, 529 U.S. 129, 137 (1991)). The "threshold issue" in *Barco* was whether "EAJA expressly and

unequivocally waives the United States' sovereign immunity regarding attorney's fees in immigration habeas corpus actions." *Id.* at 785. Finding that habeas corpus proceedings are not purely civil proceedings, but are "hybrid" cases, the Court concluded that EAJA's limited waiver of sovereign immunity does not extend to immigration habeas corpus actions. *See id.* Therefore, regardless of the resolution of Lara Martinez's substantive claims, the Court should reject his request for EAJA fees.

E. Petitioner has failed to perfect service.

This Court is authorized to dismiss a civil action for insufficiency of service of process. *See* Fed. R. Civ. P. 12(b)(5); *see also Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 645 (5th Cir. 1994) ("A district court . . . has broad discretion to dismiss an action for ineffective service of process."). Absent proper service of process, the Court cannot exercise jurisdiction over a party named as a defendant. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). It is a plaintiff's burden to establish the validity of service when process is challenged. *See Carimi v. Royal Carribean Cruise Line, Inc.*, 959 F.2d 1344, 1346 (5th Cir. 1992); *Familia de Boom v. Arosa Mercantile, S.A.*, 629 F.2d 1134, 1139 (5th Cir. 1980), *cert. denied*, 451 U.S. 1088 (1981). Rule 4 of the Federal Rules of Civil Procedure sets forth the specific manner in which service of process must be made on officers, employees, or agencies of the United States, like Defendants. In particular, the plaintiff "must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, . . . officer, or employee." Fed. R. Civ. P. 4(i)(2).

Here, Lara Martinez filed his amended petition on December 2, 2025, but to date, he has not served Respondent with process. *See generally*, Docket. Without service of the amended petition, this Court lacks jurisdiction to adjudicate this action. *See Murphy Bros., Inc.*, 526 U.S. at 350.

V. CONCLUSION

For the reasons explained above, Lara Martinez's petition for writ of habeas corpus should be denied. He has not requested a bond hearing before an immigration judge, thereby failing to exhaust his administrative remedies. Further, as an inadmissible alien seeking admission, he is subject to mandatory detention for the duration of his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Additionally, Lara Martinez has failed to perfect service of his amended petition.

Date: December 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jessica Bourne Williams, Assistant United States Attorney, hereby certify that, on this date, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notice to all counsel of record.

DATE: December 16, 2025

By: */s/Jessica Bourne Williams*
JESSICA BOURNE WILLIAMS
Assistant United States Attorney