

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

HERBERTH ROMERO-TORRES,

Petitioner,

v.

PAUL PERRY, *et al.*

Respondents.

Case No. 1:25-cv-1726 (RDA/WBP)

**FEDERAL RESPONDENTS' OPPOSITION TO
THE PETITION FOR A WRIT OF HABEAS CORPUS**

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INTRODUCTION

Petitioner claims he warrants immediate release from civil immigration detention because an immigration judge (“IJ”) determined Petitioner was subject to discretionary detention pursuant to 8 U.S.C. § 1226(a) which allows for bond. However, the Department of Homeland Security (“DHS”), pursuant to regulatory authority implemented by the Executive Office for Immigration Review (“EOIR”) through the Attorney General, 8 C.F.R. § 1003.19(i)(2), stayed Petitioner’s release on bond pending his appeal with the Board of Immigration Appeals (“BIA”), arguing that Petitioner is an applicant for admission and subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), which does not provide aliens the opportunity to seek bond. Despite Petitioner clearly being an applicant for admission and clear regulatory authority authorizing such stay, Petitioner claims that his detention without a bond hearing violates the Fifth Amendment Due Process Clause and the Eighth Amendment’s protection from cruel or unusual punishment.

This challenge fails.¹ 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, he is subject to mandatory detention pursuant to § 1225(b)(2)(A). As for the Petition’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. Indeed, Petitioner’s Eighth Amendment fails as such rights do not apply to immigration detainees. Therefore, Federal Respondents respectfully request this Court deny the instant Petition.

¹ Even if this Court were to determine that the BIA’s statutory construction was in error, and that § 1226(a) (as opposed to § 1225(b)(2)) applies here, this Court should not grant outright release. To the contrary the sole relief that this Court can provide is an order compelling the Immigration Court to hold a bond hearing at which Petitioner may advocate for an exercise of discretion in favor of release on bond.

Federal Respondents recognize that this Court and other jurists of this Court have recently rejected Federal Respondents' arguments on the issues presented below. *See, e.g., Singh v. Lyons*, 1:25-cv-1606, Dkt. 6 (E.D. Va. Oct. 14, 2025) (Trenga, J.); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sep. 30, 2025) (Nachmanoff, J.); *Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025) (Trenga, J.); *Hasan v. Crawford*, -- F. Supp. 3d --, 2025 WL 2682255 (E.D. Va. 2025); *see also* Teyim v. Perry, 1:25-cv-1615, Dkt. 9 (E.D. Va. Oct. 15, 2025) (Nachmanoff, J.); *Lopez-Sanabria v. Bondi*, 1:25-cv-1511, Dkt. 9 (E.D. Va. Oct. 3, 2025) (same); *Ortiz Ventura v. Noem*, 1:25-cv-1429, Dkt. 16 (E.D. Va. Oct. 2, 2025) (same); *Singh v. Lyons*, 1:25-cv-1606, Dkt. 6 (E.D. Va. Oct. 14, 2025) (Trenga, J.); *Alfaro v. Lyons*, 1:25-cv-1569, Dkt. 11 (E.D. Va. Oct. 11, 2025) (same); *Maldonado Merlos v. Noem*, 1:25-cv-1645, Dkt. 11 (E.D. Va. Oct. 9, 2025) (Brinkema, J.); *Guerra Leon v. Noem*, 1:25-cv-1634, Dkt. 12 (E.D. Va. Oct. 8, 2025) (same); *Vargas Nunez v. Lyons*, 1:25-cv-1574, Dkt. 10 (E.D. Va. Oct. 1, 2025) (same); *Diaz Gonzalez v. Lyons*, 1:25-cv-1583, Dkt. 8 (E.D. Va. Oct. 1, 2025) (same); *Gomez Alonzo v. Lyons*, 1:25-cv-1587, Dkt. 16 (E.D. Va. Oct. 1, 2025) (same); *Perez Bibiano v. Lyons*, 1:25-cv-1590, Dkt. 8 (E.D. Va. Oct. 2, 2025) (same).

Federal Respondents respectfully remain of the view that their position is correct, as evident by other district court decisions, *see 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), and respectfully asks this the Court to confirm such position is lawful.

BACKGROUND

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 as “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).²

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”

² 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).

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).

3. The Automatic Stay Regulation – 8 C.F.R. § 1003.19(i)(2)

Regulations provide that “[a] decision in any proceeding [within EOIR] . . . from which an appeal to the [BIA]³ may be taken shall not be executed during the time allowed for the filing of an appeal . . . nor shall such decision be executed while an appeal is pending or while a case is before the [BIA] by way of certification[.]” including custody redeterminations by an IJ. 8 C.F.R. § 1003.6(a); *see id.* 1003.6(c). Indeed, the Attorney General gave DHS discretionary authority that allows them to invoke an automatic stay of any decision by an IJ to release an individual on bond when DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2).

The regulations provide that, once DHS has invoked an automatic stay, the “stay shall lapse if DHS fails to file a notice of appeal within ten (10) business days of the issuance of order of the [IJ].” 8 C.F.R. § 1003.6(c)(1). And “[t]o preserve an automatic stay,” DHS must file, with the notice of appeal, “a certification by a senior legal official that the official has approved the filing

³ The BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; *id.* § 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the IJs, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

of the notice of appeal and that the motion has evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument.” *Id.* § 1003.6(c)(1)(i) and (ii). “The [IJ] shall prepare a written decision explaining the custody determination within five (5) business days after the [IJ] is advised that DHS has filed a notice of appeal or, with the approval of the [BIA] in exigent circumstances, as soon as practicable thereafter (not to exceed five business days). *Id.* § 1003.6(c)(2). Further, “[t]he [BIA] will track the progress of each custody appeal which is subject to an automatic stay in order to avoid unnecessary delays.” *Id.* § 1003.6(c)(3). “If the [BIA] has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal.” *Id.* § 1003.6(c)(4).⁴

If the BIA fails to act on the appeal before the 90 days expire, “DHS may seek a discretionary stay pursuant to 8 CFR 1003.19(i)(1)[,]” which results in the stay extending for an additional 30 days. 8 C.F.R. § 1003.6(c)(5). If the BIA fails to act on DHS discretionary stay request pursuant to 8 C.F.R. § 1003.19(i)(1) by the end of the stay period, “the alien’s release shall be automatically stayed for five business days.” 8 C.F.R. § 1003.6(d). During that five-day period, DHS may refer the case to the Attorney General for consideration. *Id.* If DHS refers the case to the Attorney General, “[t]he automatic stay will expire 15 business days after the case is referred to the Attorney General.” *Id.*

B. Petitioner’s Immigration History

The details of Petitioner’s immigration history are more fully explained in Federal Respondents’ Exhibit (“FREX”) 1, which is attached to this memorandum.

⁴ The regulations provide that the automatic stay provision is intended as a public safeguard, as well as a measure to enhance the agency’s ability to effect removal should that be the ultimate decision in a case. 71 Fed. Reg. 57873, 57874. The automatic stay allows ICE to “maintain the status quo” while it seeks expedited review by the BIA of the custody order. *Id.*

C. The Instant Petition

Seeking immediate release⁵, Petitioner filed a Petition for a Writ of Habeas Corpus on October 8, 2025. *See* Dkt. 1. Petitioner brings three claims of relief. *See* Pet. ¶¶ 38-53. *First*, Petitioner claims that his detention without a bond hearing violates his due process rights. *Id.* ¶¶ 38-44 (Count One). *Second*, Petitioner claims that his detention is a form of cruel and unusual punishment, thus violating his Eighth Amendment rights. *Id.* ¶¶ 45-52 (Count Two). *Lastly*, Petitioner seeks fees pursuant to the Equal Access to Justice Act (“EAJA”). *Id.* ¶ 53 (Count Three). On October 10, 2025, this Court ordered Respondents to respond to the Petition on or before Thursday, October 16, 2025. Dkt. 2. The Court further ordered that Petitioner may reply on or before Thursday, October 23, 2025, and scheduled a hearing on this case for Wednesday, October 29, 2025, at 1:00 p.m. *Id.*

ARGUMENT

I. The Detention at Issue Here is Lawful

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

⁵ Despite this verbiage, at no point during the substance of their Petition does Petitioner provide any basis – let alone argument – that could justify their outright release from immigration custody. To the contrary, the entirety of their Petition is premised upon their position that they should be entitled to seek discretionary release from the presiding IJ on bond.

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”).

There is a statutory distinction between aliens who are detained after a lawful admission into the U.S. and those who are present without a lawful admission. “An alien who ‘arrives in the [U.S.],’ or is ‘present’ in this country but ‘has not been admitted,’ is considered an ‘applicant for admission’ under 8 U.S.C. § 1225(a)(1).” *Hasan*, 2025 WL 2682255, at *9. “Applicants for admission are either covered by Section 1225(b)(1) or 1225(b)(2).” *Quispe*, 2025 WL 2783799, at *4 (quoting *Olaya Rodriguez v. Bondi*, 2025 WL 2490670, at *2 (E.D. Va. June 24, 2025) (Trenka, J.); *see Jennings*, 583 U.S. at 287 (section 1225(b)(2) “serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)”) (emphasis added). “Both sections 1225(b)(1) and (b)(2) require the detention of persons deemed to be applicants for admission.” *Quispe*, 2025 WL 2783799, at *4. “Both provisions require that any applicant for admission remain detained until their asylum application is fully adjudicated or until removal proceedings conclude.” *Olaya Rodriguez*, 2025 WL 2490670, at *2 (citing 8 U.S.C. §§ 1225(b)(1), (2)). An alien must meet three requirements to be subject to § 1225(b)(2)(A) mandatory detention: (1) be an applicant for admission, (2) be “seeking admission[,]” and (3) “is not clearly and beyond doubt entitled to be admitted into the [U.S.]” *Quispe*, 2025 WL 2783799, at *5 (quoting 8 U.S.C. § 1225(b)(2)(A) (internal quotations omitted); *see also Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588, at *4-7 (S.D.N.Y. 2025); *Martínez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238, at *3-4 (D. Mass. 2025). Petitioner meets all three requirements and is thus properly detained under 8 U.S.C. § 1225(b)(2)(A).

i. Petitioner is statutorily defined as “applicant for admission.”

The factual circumstances of this case make clear that mandatory detention under 8 U.S.C. § 1225(b)(2) applies here because Petitioner is an applicant for admission and for who DHS did not elect to utilize expedited removal.⁶ *See generally* FREX 1. In analyzing whether an alien is an applicant for admission under the INA, “[w]e begin, as always, with the text.” *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017); *see Chavez*, 2025 WL 2730228, at *4 (same); *see also Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012) (“[T]he best evidence of Congress’s intent is the statutory text.”). An applicant for admission is defined as “an alien *present* in the [U.S.] who has *not been admitted*.” 8 U.S.C. § 1225(a)(1). The only requirements to be an applicant for admission is to be (1) present in the U.S., and (2) have not been admitted. *See id.* And the INA defines “admission” as “the *lawful entry* of the alien into the [U.S.] *after inspection and authorization by an immigration officer*.” 8 U.S.C. § 1101(a)(13) (emphasis added); *see Aremu v. DHS*, 450 F.3d 578, 585 (4th Cir. 2006).

There is no dispute that Petitioner has not been admitted to the U.S. *See* Petition (Dkt. No. 1); FREX 1. Petitioner *entered* the U.S. *without being inspected or paroled* by an immigration official, which does not satisfy the definition of “admission.” *See* 8 U.S.C. § 1101(a)(13) (requiring a lawful entry and inspection by an immigration officer to be admitted). Thus, because Petitioner is an “alien *present* in the [U.S.] who [have] *not been admitted*[,]” he is, *by law*, an “applicant for admission.” 8 U.S.C. § 1225(a)(1) (emphasis added); *see Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *see also Leiba v. Holder*, 699 F.3d 346, 351

⁶ DHS has the discretion to choose between processing for expedited removal under § 1225(b)(1) or standard removal proceedings under 8 U.S.C. § 1229a. *See Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520 (BIA 2011).

(4th Cir. 2012) (noting that courts cannot ignore the plain meaning of Congress’s definition of “admitted”).

Indeed, Congress’ intent in enacting the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), *see* Pub. L. No. 104-208, 110 Stat. 3009 (1996), was to make sure that those who entered the U.S. without inspection did not have more procedural or substantive due process rights than those who present themselves to authorities for inspection. *See Matter of Yajure Hurtado*, 29 I. & N. at 225 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)); *see also Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). Under Petitioner’s reading of § 1225(b)(2), aliens who *entered* the U.S. *illegally* and *remain* in the U.S. *illegally* are afforded more due process protection (*i.e.*, a bond hearing) than those who follow U.S. law and seek *lawful entry* at the border or a port-of-entry. *See* 8 U.S.C. § 1225(a)(3) (“All aliens [] who are applicants for admission or otherwise seeking admission . . . *shall* be inspected by immigration officers”) (emphasis added); *id.* § 1325 (criminalizing improper entry by an alien). As the Supreme Court reiterated in *Thuraissigiam*, “foreigners who have never been naturalized . . . *nor even been admitted* into the country pursuant to law,” “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, *are due process of law.*” 591 U.S. at 138 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted) (emphasis added); *see id.* at 139 (noting the executive has plenary power to decide whether an alien should be admitted).

Therefore, because Petitioner is “an alien present in the [U.S.] who has not been admitted[,]” they “shall be deemed . . . applicant[s] for admission.” 8 U.S.C. § 1225(b)(1).

- ii. Petitioner is actively seeking admission to the U.S. and is not clearly and beyond a doubt entitled to be admitted.

In addition to being an applicant for admission, one jurist of this Court recently held that to be detained pursuant to § 1225(b)(2)(A), such applicant for admission must be “actively seeking

admission into the [U.S.].” *Quispe*, 2025 WL 2783799, at *5 (emphasis added). Because Petitioner is actively seeking admission and is not clearly and beyond a doubt entitled to be admitted, they *shall* be detained pursuant to § 1225(b)(2)(A). *See Vargas Gomez*, 2025 WL 2780351, at *9.

An alien is actively seeking admission into the U.S. simply being in the U.S. without being admitted. *See Jennings*, 583 U.S. at 288 (holding aliens detained under § 1225(b)(2)(A) “‘shall be detained for a removal proceedings’ if an immigration officer ‘determines that they are not clearly and beyond a doubt entitled to be admitted’ into the country”) (quoting 8 U.S.C. § 1225(b)(2)(A) (cleaned up); *Vargas Gomez*, 2025 WL 2780351, at *9 (“[J]ust because [Petitioner] illegally remained in this country for years does not mean that he is suddenly not an ‘applicant for admission’ under § 1225(b)(2)”). Indeed, Fourth Circuit case law supports this reading. *See Lopez-Sorto v. Garland*, 103 F.4th 242, 252 (4th Cir. 2024); *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021); *see also Cruz-Miguel v. Holder*, 650 F.3d 189, 198 n.13 (2d Cir. 2011) (“[i]f the alien is *seeking admission*, he is charged in removal proceedings as an inadmissible alien.”) (emphasis added); *id.* (“[i]f the alien has been admitted, however, he is charged in removal proceedings as a deportable alien under 8 U.S.C. § 1227”).

In *Lopez-Sorto*, the Fourth Circuit denied a petition for review of a BIA order affirming an IJ’s decision to deny an alien’s application for deferral of removal. 103 F.4th at 247. One of the issues in *Lopez-Sorto* was whether the petition was moot when the petitioner was removed from the U.S. *See id.* at 248. The petitioner contended that his petition was not moot because of an ICE directive that allegedly required him to be returned to the U.S. because he *resided* in the U.S. *Id.* at 249 (emphasis added). The Fourth Circuit held that he could *not* reside in the U.S. because he was not legally allowed to be *physically present* in the U.S. *Id.* at 250-51 (emphasis added). The Court reached this reasoning by analyzing the definition of “admission,” and held that an alien cannot

be, under immigration law, physically present in the U.S. without being admitted to the U.S. *Id.* at 252; *see id.* (“in the absence of an entry, the Supreme Court has concluded that an alien can neither dwell nor reside within the [U.S.]”) (citing *Kaplan*, 267 U.S. at 229-30). And since Petitioner has pursued a life in the U.S. (e.g. by simply seeking relief from removal), as a legal matter, they must be actively seeking admission. beforebeing physically present and residing in the U.S. *See Lopez-Sorto*, 103 F.4th at 252; *see also Vargas Gomez*, 2025 WL 2780351, at *9 (finding alien is seeking admission if he wishes to stay in the country); *Matter of Lemus-Lora*, 25 I. & N. Dec. 734, 743 (BIA 2012)(recognizing an alien not admitted can be seeking admission by being present in the U.S.).

Jimenez-Rodriguez provides further guidance. 996 F.3d 190. The alien in *Jimenez-Rodriguez* entered the U.S. without inspection and “lived in [the] U.S. ever since.” *Id.* at 191. He eventually applied for a U-visa seeking lawful status. *Id.* at 193. To be eligible to for a U-visa, an alien must not be inadmissible, but he may apply for a waiver of inadmissibility if he is “seeking admission” to the U.S. *See* 8 U.S.C. § 1182(d)(3)(A)(ii); 8 C.F.R. § 214.1(a)(3)(I). In determining whether an alien was “seeking admission,” the Fourth Circuit looked to § 1225 for guidance. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2; *id.* at 199. Reading the INA and § 1225(a)(1) together, the Fourth Circuit concluded that “[b]ecause Jimenez-Rodriguez was never lawfully admitted, he qualifies as someone “seeking admission[.]” *Id.* at 194 n.2.

Although Federal Respondents recognize that different facts are presented here, Petitioner, like the alien in *Jimenez-Rodriguez*, entered the U.S. without inspection. *See* FREX 1. The Fourth Circuit determined that the petitioner in *Jimenez-Rodriguez* was “seeking admission” because he was never lawfully admitted. *See Jimenez-Rodriguez*, 996 F.3d at 194 n.2. Therefore, it follows that “[b]ecause [Petitioner] [was] never lawfully admitted, [they] qualif[y] as someone seeking

admission[.]” *Jimenez-Rodriguez*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) (internal quotations omitted) (emphasis added). And because Petitioner is seeking admission to the U.S., he is properly detained under § 1225(b)(2)(A).⁷ *Vargas Gomez*, 2025 WL 2780351, at *9; *Pena*, 2025 WL 2108913, at *2. *See also* 8 U.S.C. § 1225(b)(2)(A) (“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”) (emphasis added); *Olaya Rodriguez*, 2025 WL 2490670, at *3; *Pipa-Aquise*, 2025 WL 2490657, at *1 n.2. The detention at issue here is pursuant to ICE’s statutory obligations, which do not allow for release on bond. *See* 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *Vargas Gomez*, 2025 WL 2780351, at *9; *Chavez*, 2025 WL 2730228, at *4; *Pena*, 2025 WL 2108913, at *2.

Federal Respondents’ reading of § 1225(b)(2)(A) also does not render § 1226(c) superfluous. *See Vargas Gomez*, 2025 WL 2780351, at *9-10; *Chavez*, 2025 WL 2730228, at *5. Section 1226(c)(1) pertains to the mandatory detention of *criminal* aliens, and is *not* limited to any subset. *See id.* (“[t]he Attorney General shall take into custody *any* alien”) (emphasis added). Indeed, lawful permanent residents who are inadmissible at the time of their initial entry to the U.S. or time of adjustment may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Azumah v. USCIS*, 107 F.4th 272, 273 (4th Cir. 2024) (lawful

⁷ Some jurists of this Court claim “Federal Respondents’ argument misreads *Jimenez-Rodriguez*” and found that “the Fourth Circuit did not conclude that all noncitizens who are present in the United States but have not been lawfully admitted are “seeking admission” within the meaning of § 1225(b)(2)(A).” *Lopez Sanabria*, 1:25-cv-1511, Order at 3 n.4. Federal Respondents agree that the Fourth Circuit did not hold all aliens who are present in the U.S. but have not been lawfully admitted are “seeking admission.” However, the Court’s explanation of what it means to be “seeking admission” is important in understanding how courts should treat such term throughout the statute. Such application of “seeking admission” should be used consistently throughout the INA. *See United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (looking to how a disputed term or phrase is used in other provisions of the statute to determine its meaning).

permanent resident challenging his inadmissibility under § 1182(a)(2)). It also reaches those who may have been admitted erroneously but are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i); *Lopez-Sorto*, 103 F.4th at 251 (“There is a possibility that inadmissible aliens may be admitted when they are mistakenly authorized to enter the country by an immigration officer.”) (citing *In Re Quilantan*, 25 I. & N. Dec. 285, 291 (BIA 2010); *Kanu v. Garland*, 672 F. Supp. 3d 108, 117 (E.D. Va. 2023) (Nachmanoff, J.) (finding a lawful permanent residence’s initial admission unlawful because he was inadmissible pursuant to § 1182(a)(6)(C)(i)). This is evident in the structure of the process of adjustment of status under 8 U.S.C. § 1255(a) which requires, for an alien to be changed from a non-immigrant status to becoming a lawful permanent resident, that he be admitted and be “admissible.” The reality of admitted but inadmissible aliens is underlined by the existence of a waiver of inadmissibility for adjustment applications, applications that are only available to admitted aliens and a small set of applicants for admission not relevant here. *See id.*; 8 U.S.C. § 1182(h); 8 C.F.R. § 245.1(f).

In the end, Petitioner is mistaken about the proper interpretation between §§ 1225(b) and 1226(a) for several reasons. As a matter of statutory construction, § 1225(b)(2)(A) governs because it contains specific mandatory language, *see id.* (“the alien *shall* be detained”) (emphasis added), as opposed to § 1226(a)’s general discretionary and permissive language, *see id.* (“an alien *may* be arrested and detained”) (emphasis added). *See Morales*, 504 U.S. at 384 (“it is a commonplace of statutory construction that the specific governs the general”). And as the Fourth Circuit makes clear, “a general provision should not be applied when doing so would undermine limitations created by a more specific provision.” *In re Wright*, 826 F.3d 774, 779 (4th Cir. 2016) (quoting *Coady v. Vaughn*, 251 F.3d 480, 484 (4th Cir. 2001)) (internal quotations omitted). Such contrary

position that § 1226(a) governs “would render mandatory detention under § 1225(b) meaningless.” *Florida v. U.S.*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023).

Jennings is instructive. 583 U.S. at 288-89. In *Jennings*, the Supreme Court analyzed three detention provisions in the INA: 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c). *See id.* at 287-89. In analyzing detention under § 1226, the *Jennings* Court distinguished applicants for admission who are subject to mandatory detention pursuant to § 1225 with those who are “within one or more . . . classes of *deportable* aliens” and thus fall under § 1226 detention. *Id.* at 288 (quoting 8 U.S.C. §§ 1227(a)(1), (2)) (internal quotations omitted) (emphasis added). Here, Petitioner is not subject to the deportability grounds at 8 U.S.C. § 1227; they are charged with being *inadmissible* under 8 U.S.C. § 1182. *See* FREX 1 (showing Petitioner is removable because his is inadmissible, not deportable). And since they are not charged with any deportability grounds found in § 1227, they cannot be detained under § 1226. *See* 8 U.S.C. § 1229a(c)(2) (defining removal) *Cruz-Miguel*, 650 F.3d at 198 n.13 (“[i]f the alien has been admitted, however, he is charged in removal proceedings as a deportable alien under [] § 1227”).

Recently, other jurists of this Court held that “Respondents’ position focuses on § 1226(c) . . . and ignores the default rule in § 1226(a).” *Quispe*, 2025 WL 2783799, at *6; *see also, e.g., Quispe-Ardiles*, 2025 WL 2783800, at *5. In analyzing the “default rule” as construed by *Jennings*, these jurists distinguished “aliens seeking admission into the country,” who are subject to § 1225(b) detention, and “aliens already in the country” who are subject to removal proceedings. *Quispe*, 2025 WL 2783799, at *6 (citing *Jennings*, 583 U.S. at 289); *see* 2025 WL 2783800, at *5 (same). But respectfully, what these decisions failed to note is that *Jennings* actually limited its statement only to “*certain* aliens already in the country,” not *all* aliens already in the country. *Id.* at 289; *see Vargas Gomez*, 2025 WL 2780351, at *9. And while Petitioner is an “alien already in

the country⁸,” he is also an “alien seeking admission into the country.” *Jennings*, 583 U.S. at 289; *see supra* at 7-17. Therefore, under the rules of statutory interpretation, Petitioner is detained pursuant to § 1225(b)(2)(A)’s *mandatory* framework, *see id.* (“the alien *shall* be detained”) (emphasis added), as opposed to § 1226(a)’s *discretionary* framework, *see id.* (“an alien *may* be . . . detained”) (emphasis added). *See Morales*, 504 U.S. at 384 (“it is a commonplace of statutory construction that the specific governs the general”).

In further support of its reasoning, the court in *Quispe-Ardiles* stated that Federal Respondents’ interpretation of § 1225(b)(2)(A) “[would be] [in]consistent with the core logic of our immigration system.” 2025 WL 2783800, at *7. The court, citing to *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958), stated:

“[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within [U.S.] after an *entry*, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely on the threshold of initial *entry*.”

Quispe-Ardiles, 2025 WL 2783800, at *7 (internal citations and quotations omitted). Therefore, the court held that “it is ‘doubtful that Congress intended § 1225(b)(2) to apply’ to individuals like Mr. Quispe-Ardiles who were detained after being present in the U.S. for several years, who had not committed any crimes, and who had attended every required meeting with immigration officials.” *Id.* (quoting *Hasan*, 2025 WL 2682255, at *8).

But the court’s reliance on *Leng May Ma* is misplaced. At the time *Leng May Ma* was decided, an “admission” was not defined in the INA like it is today. *See generally* 8 U.S.C. §

⁸ To be clear, such reading would not render any part of the statute superfluous as there are other classes of aliens subject to § 1226(a) besides “applicants for admission.” *See, e.g.*, 8 U.S.C. §§ 1101(a) (defining immigrant and nonimmigrant aliens), 1227(a) (noting aliens must be admitted to be deportable).

1101(a). At that time, the term “entry” was used in lieu of the word “admission.” *Compare id.* § 1101(a)(13) (1988) (defining “entry” as “any coming of an alien into the [U.S.], from a foreign port or place”), *with id.* § 1101(a)(13)(A) (2025) (defining “admission” as “the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer”); *see Vartelas v. Holder*, 566 U.S. 257, 261-63 (2012) (explaining “entry” and “admission”). Once Congress enacted the IIRIRA, admission became “the key word.” *Vartelas*, 566 U.S. at 262. Thus, reading additional language in *Leng May Ma* with the adoption of the term “admission” instead of “entry,” the case goes on to state that “the detention of an alien in custody pending determination of his admissibility does not legally constitute an admission though the alien is physically within the [U.S.]” *Leng May Ma*, 357 U.S. at 188 (citing *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 215 (1953); *U.S. v. Ju Toy*, 198 U.S. 253, 263 (1905); *Nishimura Ekiu v. U.S.*, 142 U.S. 651, 661 (1892)). Therefore, it seems it was Congress’ intent under IIRIRA to apply § 1225(b)(2)(A) to aliens like Petitioner. *See Matter of Yajure Hurtado*, 29 I. & N. at 225 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)); *see also Martinez*, 693 F.3d at 413 n.5.

In *Quispe*, the Court implied, citing to *Jennings*, that only “arriving aliens” are subject to mandatory detention pursuant to § 1225(b)(2)(A). *See Quispe*, 2025 WL 2783799, at *5. Federal Respondents respectfully disagree with the Court. An “arriving alien” is a sub-class of “applicant[s] for admission,” and the statute *expressly* refers to this broader group. *See* 8 C.F.R. §§ 1.2 (“arriving alien means an applicant for admission coming or attempting to come into the [U.S.] at a *port of entry*”) (emphasis added), 1001.1(q) (same). To be an arriving alien, one must be both “an applicant for admission” *and* “coming or attempting to come into the U.S. at a port of entry.” *Id.* And *Jennings*, in fact, did *not* limit detention pursuant to § 1225(b) to “arriving aliens;” it recognized that mandatory detention under § 1225(b) applies to “applicants for admission.” *See*

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.”) (emphasis added). Indeed, as the Fourth Circuit has made clear, courts “cannot read into a statute what is manifestly just not there.” *Day v. Johns Hopkins Health Sys. Corp.*, 907 F.3d 766, 780 (4th Cir. 2018) (citing *U.S. v. Locke*, 471 U.S. 84, 95 (1985) (“[T]he fact that Congress might have acted with greater clarity or foresight does not give courts a carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do.”))⁹.

Finally, Petitioner is “not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). It is undisputed that Petitioner entered the U.S. without inspection. *See* FREX 1. That makes them inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for being aliens present in the U.S. without being admitted or paroled. And by being inadmissible, they cannot be admitted. *See id.* This is true even if Petitioner seeks any relief from removal, and it is “purely speculative” whether Petitioner will obtain relief from removal. *Mauricio-Vasquez v. Crawford*, 2017 WL 1476349, at *5 (E.D. Va. Apr. 24, 2017).

Therefore, because *by law* Petitioner is defined as an applicant for admission who is seeking admission and not clearly and beyond a doubt entitled to be admitted, he *shall* be detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and is thus properly detained under the INA.

B. Because the Petitioner is provided with adequate due process, the automatic stay regulation cannot violate Petitioner’s due process rights.

⁹ Several jurists of this Court have held Federal Respondents’ interpretation of § 1225(b)(2)(A) to be “at odds with DHS’s own historic understanding of the statute’s meaning.” *Quispe-Ardiles*, 2025 WL 2783800, at *7; *see Hasan*, 2025 WL 2682255, at *9. But an agency’s own past practice cannot overcome the plain meaning of the statute. *See Bracamontes v. Holder*, 675 F.3d 380, 384 (4th Cir. 2012) (“the plain meaning controls”); *see also VanDerStok v. Garland*, 86 F.4th 179, 190 (5th Cir. 2023) (“historical practice does not dictate the interpretation of unambiguous statutory terms”) (internal citations and quotations omitted).

- i. The Constitution does not mandate any further process to Petitioner than that provided by the INA.

To assess the merits of the Petition's constitutional claims, it is necessary to determine first the due process rights afforded to aliens in these circumstances. As explained above, the INA *mandates* Petitioner's detention. *See* 8 U.S.C. § 1225(b)(2)(A). And the Supreme Court has held, nowhere in the statutory rubric did Congress mention a bond hearing or state a maximum period of time within which an alien could be held in such mandatory detention without providing a bond hearing. *See Jennings*, 583 U.S. at 297. For any alien who has "not been admitted into the country pursuant to law," the INA provides the appropriate due process. *See Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu*, 142 U.S. at 660) (internal quotations omitted) (emphasis added). Other jurists of this Court have come to similar conclusions that the due process rights for other applicants for admission are only what the INA prescribes. *See Pipa-Aquise*, 2025 WL 2490657 (Nachmanoff, J.); *Olaya Rodriguez*, 2025 WL 2490670 (Trenga, J.); *Aslanturk v. Hott*, 459 F. Supp. 3d 681 (E.D. Va. 2020) (Alston, J.).

To be sure, *Thuraissigiam* only addressed the due process afforded to arriving aliens detained pursuant 8 U.S.C. § 1225(b)(1), and § 1225(b)(2) has yet to be addressed by the Supreme Court. However, *Nishimura Ekiu*¹⁰ provides guidance. 142 U.S. 651. There, a Japanese national petitioned for habeas corpus after being "detained at San Francisco upon the ground that she should not be permitted to land in the [U.S]." *Id.* at 651. Although the petitioner, who had arrived by ship,

¹⁰ The Court in *Singh v. Lyons* contended that the government's reliance on *Nishimura Ekiu* is misplaced because the alien here has domicile or residence within the U.S. *See Singh*, 1:25-cv-1606, Dkt. 6, Memorandum Opinion and Order, at 5 n.5. However, the Fourth Circuit has found that, for immigration purposes, an alien who has not been admitted or paroled *cannot* reside in the U.S. because he was *not legally* allowed to be in the U.S. *See Lopez-Sorto*, 103 F.4th at 250-51 (emphasis added); *id.* at 252 ("in the absence of an entry, the Supreme Court has concluded that an alien can neither dwell nor reside within the [U.S.]") (citing *Kaplan*, 267 U.S. at 229-30).

was not entitled to land, an immigration official had placed her in a mission house in San Francisco with the intent of “keeping her there” until judicial proceedings concluded. *Id.* at 661. After determining that the petitioner had been “restrained of h[er] liberty” and was “doubtless entitled to a writ of *habeas corpus* to ascertain whether the restraint [wa]s lawful,” the Supreme Court explained an unadmitted alien’s due process rights are closely circumscribed:

It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the [U.S.], nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government.

Id. at 660. “As to such persons,” the court concluded, “the decisions of executive or administrative officers, acting within powers expressly conferred by [C]ongress, *are due process of law.*” *Id.* (emphasis added).

Looking to the statute at issue, the Supreme Court held that the immigration officer’s decision to prevent the petitioner from landing was made in accordance with that statute; that his determination “was final and conclusive against the petitioner’s right to land in the [U.S.]; and that the petitioner therefore was “not unlawfully restrained of her liberty.” *Id.* at 663-64. In other words, the government’s adherence to the statute authorizing her detention after a determination that she could not land was the only due process right the petitioner could claim. As the Supreme Court stated in *Thuraissigiam*, “a concomitant” of the government’s “plenary authority to decide which aliens to admit” is “the power to set the procedures to be followed *in determining whether an alien should be admitted.*” 592 U.S. at 139 (emphasis added).

Jennings provides further clarity. 583 U.S. 281 (2018). In *Jennings*, aliens alleged, notwithstanding other statutory detention provisions, that § 1225(b) provided for periodic bond hearings where the government must prove by clear and convincing evidence that such detention

remains justified. 583 U.S. at 291. However, the Court found that “nothing in the statutory text imposes any limit on the length of detention. *Id.* And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Id.* at 297. The Court also took note that that the clear exception to detention under § 1225(b) “implies that there are no *other* circumstances under which aliens detained under 1225(b) may be released.” *Id.* at 300 (emphasis in the original). Indeed, “the text of [] [§ 1225(b)], when read most naturally, does not give detained aliens the right to periodic bond hearings during the course of their detention.” *Id.* at 286.

* * *

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

- ii. If the Court were to find that additional due process than the INA provides should be afforded, the detention here still does not violate the Due Process Clause.

The discussion above establishes, beyond reasonable dispute, that Petitioner’s due process rights extend no further than what the INA provides. In the event this Court holds otherwise, t a traditional due process analysis still favors continued detention. Thus, the Petition’s claims that due process requires something more must fail.

As a threshold matter, “Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[,]”

notwithstanding any individual's countervailing right to freedom from physical confinement. *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). More specifically, recalling the long-standing principle that "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable to citizens," *Demore* held that Congress could "detain" an alien – without any procedure to determine on an individualized basis whether that alien was "dangerous" or a flight risk – during "his removal proceedings." *Id.* at 521-23; 525 (quoting *Mathews v. Diaz*, 423 U.S. 67, 79-80 (1976); *Carlson v. Landon*, 342 U.S. 524 (1952)). This was so, the Court continued, because "detention during deportation proceedings [w]as a constitutionally valid aspect of the deportation process." *Id.* at 523; *see also id.* at 531. And it was irrelevant that bond hearings could provide an individualized assessment of an alien's particular proclivity towards being a danger to the community and/or a flight risk without a significant burden, as Congress could employ "reasonable presumptions and generic rules" in dictating which aliens would be subject to mandatory detention because "the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Id.* at 526 (quoting *Reno v. Flores*, 507 U.S. 292, 313 (1993)); 528. Put simply, as the Fourth Circuit has held, the *Demore* "Court refused to impose its own policy judgment on how best to ensure aliens' attendance at future removal proceedings." *Miranda*, 34 F.4th at 360.

To the extent that the Petition suggests that mandatory detention pursuant § 1225(b)(2)(A) runs afoul of due process as it may be indefinite, this argument has no bearing on the analysis. Speculation about what "might" occur in the future cannot vest a habeas petitioner with standing to seek habeas relief *now*. *See, e.g., Doe v. Hochul*, 139 F.4th 165, 187 (2d Cir. 2025). As the Fourth Circuit makes clear, "[t]he absence of a date certain—imminent or not—for the conclusion of . . . proceedings is of no moment." *Castaneda v. Perry*, 95 F.4th 750, 758 (4th Cir. 2024). What

may happen in the future is likewise immaterial to this proceeding, as Petitioner may challenge only his *present* detention. *See D.B. v. Cardall*, 826 F.3d 721, 734 n.10 (4th Cir. 2016) (“the question before the district court . . . [is] whether [the petitioner’s] *current detention* complies with federal statutes and the Constitution” (emphasis added)); *Doe v. Perry*, 2022 WL 1837923, at *2 (E.D. Va. Jan. 31, 2022). Nor is there any reason to believe that any kind of indefinite process is likely here. In the event of a lengthy mandatory detention, certain jurists of this Court have held that an alien subject to mandatory detention – under certain circumstances – may seek habeas relief in the form of a bond hearing.

In any sense, the governing procedural due process framework confirms that Petitioner’s detention satisfies an applicant for admission’s due process. The Fourth Circuit analyzes an alien’s procedural due process claim by weighing the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Miranda*, 34 F.4th at 359-65. The three factors relevant to assessing Petitioner’s due process claim are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest.” *Mathews*, 424 U.S. 319, 335 (1976).

1. Federal Respondents recognize that “[f]reedom from . . . government custody . . . ‘lies at the heart of the liberty that [the Due Process] Clause protects.’” *Zadvydas*, 533 U.S. at 690. But as applicants for admission, Petitioner has a less compelling liberty interest than the aliens in *Zadvydas* and *Demore*, who were lawfully admitted. *See Wilson v. Zeithern*, 265 F. Supp. 2d 628, 635 (E.D. Va. 2003) (detention of inadmissible alien pending removal did not violate due process); *Hong v. U.S.*, 244 F. Supp. 2d 627, 635 (E.D. Va. 2003) (“Hong’s liberty interest, as an inadmissible alien seeking admission into the country, is more attenuated than the liberty interest

of a deportable alien already present in the country.”). The Supreme Court and Fourth Circuit even made clear that an alien who has not been admitted “does not have the same status for due process purposes as an alien who has ‘effected entry.’” *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021) (quoting *Thuraissigiam*, 591 U.S. at 139-40 (cleaned up)).

The Supreme Court has emphasized that “detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523. Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See id.* at 530; *see also Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation procedure.”). Indeed, Petitioner’s private liberty interest is diminished when their release is available on the condition that they leave the U.S. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 1999) (unlike criminal cases, immigration detention “is not entirely beyond [the alien’s] control; he is detained only because of the removal proceedings, and he may obtain his release any time he chooses by withdrawing his application for admission and leaving”), *overruled on other grounds by INS v. St. Cyr*, 533 U.S. 289, 312-13 (2001).

An alien’s private interest is even more diminished when release into the U.S. would be an assistance to an ongoing violation of U.S. law. *See* 8 U.S.C. § 1182(a) (inadmissibility grounds). In addition to these inadmissibility grounds, 8 U.S.C. § 1325 provides that any alien who “enters or attempts to enter the [U.S.] at any time or place other than as designated by immigration officers,” “shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both[.]” *Id.* § 1325(a)(1); *see id.* § 1325(b) (civil penalties). In fact, such violation has been recognized by other courts, including the Supreme Court. *See AADC*, 525

U.S. at 491 (“in all cases, deportation is necessary in order to bring an end [to] an ongoing violation of [U.S.] law”); *Lopez-Mendoza*, 468 U.S. at 1039 (“The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws”); *Gomez-Chavez v. Perryman*, 308 F.3d 796, 800-01 (7th Cir. 2002) (no liberty interest in remaining in violation of applicable U.S. law). Accordingly, the first *Mathews* factor weighs in favor of the government.

2. Regarding the second factor, individuals detained under § 1225(b)(2)(A) have the ability to seek parole for reasons beyond those available to other aliens detained pursuant to 8 U.S.C. § 1226(c), who could be released only for narrow, witness-protection purposes. *Id.* § 1226(c)(2); *see* 538 U.S. at 513-14. Petitioner, by contrast, may be paroled for any “urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A).

Therefore, the second *Mathews* factor favors the government.

3. Regarding the third factor, the government’s interests in mandatory detention pursuant to §1225(b) are legitimate and significant. “[T]he government interest includes detention.” *Miranda*, 34 F.4th at 364. A court “must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *Miranda*, 34 F.4th at 364 (same). “Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]” *Miranda*, 34 F.4th at 364. And for one, the argument that the Due Process Clause mandates immediate release flouts the Supreme Court’s directive that the government “need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication” when it comes to immigration regulation. *Diaz*, 426 U.S. at 81.

Additionally, “[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of [U.S.] law.” *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 (“The government’s interest in efficient administration of the immigration laws . . . is weighty.”). Mandatory detention remedies this risk by “increasing the chance that, if ordered removed, [Petitioner] will be successfully removed.” *Demore*, 538 U.S. at 528. Mandatory detention pursuant to § 1225(b)(2)(A) indisputably serves each of these interests. And as the Supreme Court has made clear, civil immigration detention is “constitutionally valid” as long as it “serve[s] its purported immigration purpose.” *Demore*, 538 U.S. at 523, 527.

* * *

For all of these reasons, all three *Mathews* factors favor the government, and this Court should therefore dismiss the instant Petition.

C. If the Court is inclined to grant the Petition, the only relief the Court should offer is a bond hearing pursuant to normal procedures.

If the Court grants the Petition, the Court should order only a bond hearing pursuant to the usual procedures. *See Santos Garcia v. Garland*, 2022 WL 989019, at *7 (E.D. Va. Mar. 31, 2022) (Alston, J.); *Martinez v. Hott*, 527 F. Supp. 3d 824, 837-38 (E.D. Va. 2021) (Alston, J.).

Under the regulations governing bond hearings for detained aliens, the alien bears the burden to show both that his release would not pose a danger to property or persons and that he is likely to appear for future proceedings. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (“[T]he 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”); *Matter of Fatahi*, 26 I. & N. Dec. 791, 795 n.3 (BIA 2016). The Fourth Circuit has confirmed that such bond

procedures outlined in 8 U.S.C. § 1226(a) are constitutional and satisfy due process. *See Miranda*, 34 F.4th at 366 (“Supreme Court precedent establishes that the current procedures used for detention under § 1226(a) satisfy due process”).

The Supreme Court perceived no constitutional difficulty in assigning the burden of proof to an alien facing prolonged detention to make a case for bond. After the presumptively reasonable six-month detention period following a final order of removal, it is up to *the alien* to “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701; *see Ming Hui Lu v. Lynch*, 2016 WL 375053, at *6 (E.D. Va. Jan. 29, 2016). Only then is the government required to “respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701.

Even the dissent in *Jennings*, which would have interpreted the INA’s detention provisions as authorizing bond hearings, concluded that any such bond hearing “should take place in accordance with customary rules of procedure and burdens of proof rather than the special rules” Petitioner seeks. 583 U.S. at 356 (Breyer, J., dissenting). The Fourth Circuit reached a similar conclusion. *See Guzman Chavez v. Hott*, 940 F.3d 867, 874, 882 (4th Cir. 2019), *rev’d on other grounds*, *Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021). And accordingly, several decisions from jurists of this Court ordering bond hearings for detained aliens have declined to adjust the usual burden-of-proof scheme. *See Cardona Tejada v. Crawford*, 2021 WL 2909587, at *4 n.9 (E.D. Va. May 19, 2021); *Mauricio-Vasquez*, 2017 WL 1476349, at *6. Therefore, if this Court were to grant the Petition, it should order a bond hearing adhering to the constitutional bond procedures outlined in Title 8 of the Code of Federal Regulations.

D. Petitioner’s Eighth Amendment claim fails

And finally, Petitioner claims that his detention constitutes cruel and unusual punishment under the Eighth Amendment. This claim is without merit. As an initial matter, the Eighth

Amendment does not apply to immigration detainees like Petitioner. *Ziglar v. Abbasi*, 582 U.S. 120, 170-71 (2017) (Breyer, J., dissenting). And even if it did, Petitioner's detention is civil, not punitive, in nature. As the Supreme Court has explained, the removal process "has never been held to be punishment." *Carlson v. Landon*, 342 U.S. 524, 537 (1952). Instead, detention and "[removal] proceeding[s] [are] [] purely civil action[s] to determine eligibility to remain in this country, *not* to punish an unlawful entry, though entering or remaining unlawfully in this country is itself a crime." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) (emphasis added). Put differently, "[t]he purpose of [removal] is *not to punish* past transgressions but rather to put an end to a continuing violation of the immigration laws." *Id.* at 1039 (emphasis added). The Supreme Court has repeatedly recognized the Government's interest in protecting the public and preventing aliens from absconding by detaining them pending their immigration proceedings. *See Jennings*, 538 U.S. at 285-86; *Demore*, 538 U.S. at 520-22; *Zadvydas*, 533 U.S. at 690-91. That is exactly what Federal Respondents have done here. Petitioner is civilly detained as required by statute while the Government effectuates his removal from the United States.

For over a century, the Supreme Court has affirmed detention as a "constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523 (listing cases).¹¹ This Court should reach the same conclusion here and reject Petitioner's Eighth Amendment claim.

E. Petitioner cannot seek EAJA fees in a Habeas Petition.

In this proceeding, Petitioner expressly challenges his civil detention. *See, e.g.*, Pet. ¶ 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact

¹¹ Petitioner's detention is not indefinite. To the contrary, detention continues "until removal proceedings have concluded." *Jennings*, 583 U.S. at 299.

or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus”); *see also, e.g., Miller v. Commw. of Pa.*, 588 F. App’x 96, 97 n.1 (3d Cir. 2014) (“Relief in the form of . . . release from custody indicates a challenge to ‘the very fact or duration of [one’s] physical imprisonment’ and may be sought *only* through a petition for a writ of habeas corpus[.]” (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, “release from ICE custody . . . is a remedy that is *only* available through a habeas petition.” *Armando C. G. v. Tsoukaris*, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added). And indeed, a “Petition for a Writ of Habeas Corpus” is exactly what Petitioner filed.¹²

Petitioner claims he is entitled to attorney’s fees and costs under EAJA. *See* Pet. However, the Fourth Circuit recently held EAJA fees are not an appropriate remedy in the habeas context. *See Obando-Segura v. Garland*, 999 F.3d 190, 192-93 (4th Cir. 2021) (quoting *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969)) (a “habeas proceeding [i]s not a ‘civil action’”; rather, such proceedings “are ‘unique’ and occupy a special place of their own in our system.”); *Smith v. Angelone*, 111 F.3d 1126, 1130 (4th Cir. 1997) (“Although a habeas proceeding is considered a civil action for some purposes, it is ‘more accurately regarded as being *sui generis*.’” (citation and internal citation omitted)); *Quispe*, 2025 WL 2783799, at *3-4 (“a habeas proceeding is not a civil action under [] EAJA”). Petitioner may not have his cake and eat it too by availing himself of the specialized procedural rules attendant to habeas proceedings while also maintaining a mine-run civil claim that, in the usual course, is subject to the Federal Rules of Civil Procedure.

¹² Bear in mind that Petitioner appears to have paid only the \$5 filing fee for a habeas petition rather than the \$405 fee for a civil action, thus underscoring that this action is a habeas challenge. *See* Doc. No. 1; 28 U.S.C. § 1914(a); U.S. District Court for the Eastern District of Virginia, Court Fees, *available at* <https://www.vaed.uscourts.gov/court-fees> (last visited Oct. 16, 2025).

Therefore, Petitioner's EAJA claim should be dismissed.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court decline¹³ to issue a Writ of Habeas Corpus and deny the Petition.

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Respectfully submitted,

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/s/

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¹³ This Court has previously enjoined Federal Respondents from rearresting an alien released on bond unless they commit a violation of law or fail to attend any court hearing. *See Hasan*, Dkt. 16, Order. If the Court were to enjoin Federal Respondents from rearresting Petitioner, Federal Respondents respectfully request that they be allowed to rearrest Petitioner if he is ordered removed, which is required by law. *See* 8 U.S.C. § 1231(a)(2) (“[d]uring the removal period, the Attorney General *shall* detain the alien”) (emphasis added).