UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:25-cv-24854-KMM

DEYBIS CRISTOFER RAMIREZ REYNOSO,
Petitioner,

v.

CHARLES PARRA, in his official capacity as Assistant Field Office Director, Krome North Service Processing Center, et al.,
Respondents.
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RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

Respondents, Charles Parra, in his official capacity as Assistant Field Office Director, Krome North Service Processing Center, et al., hereby respond to the Court's Order to Show Cause (ECF No. 4) why Petitioner Deybis Cristofer Ramirez Reynoso's Petition for a Writ of Habeas Corpus should not be granted.

INTRODUCTION

Petitioner alleges that he entered the United States as an unaccompanied alien child in approximately August 2016. Petition at ¶ 43. Petitioner was arrested on or about September 16, 2025, following a traffic stop. *Id.* at ¶ 44. Thereafter, the Department of Homeland Security placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a, charging him with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection. *Id.* at ¶ 45.

Petitioner is currently in custody at Krome Detention Center pending removal proceedings. He alleges that he was unlawfully denied a bond hearing pursuant to an Immigration and Customs Enforcement (ICE) policy that requires detention of "applicants for admission" who have entered the United States without admission or inspection, as provided in INA § 235(b) (codified at 8 U.S.C. 1225). *See* Petition at ¶¶ 3, 29.

Petitioner argues that because he was apprehended after having lived in the United States since 2016, he is not an "arriving alien" subject to INA § 235, but instead subject to INA § 236(a)

(codified at 8 U.S.C § 1226(a)), a provision of the INA that authorizes the arrest and detention of aliens pending removal on a warrant issued by the Attorney General, and which allows discretion for the alien's release on bond or through conditional parole. Petition at ¶¶ 43–49. Plaintiff further argues that because he entered the country as an unaccompanied minor, he is exempt from the requirement of mandatory detention without the possibility of release on bond.

As demonstrated below, Petitioner is, in fact, an "arriving alien" and an applicant for admission who entered the United States without inspection and is subject to INA § 235(b)'s (8 U.S.C § 1225(b)) unequivocal requirement of detention.

FACTUAL BACKGROUND

Petitioner, Deybis Cristofer Ramirez Reynoso (Petitioner), is a native and citizen of Guatemala. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, August 23, 2016 (Form I-213, August 23, 2016). On or about August 23, 2016, Petitioner, then an unaccompanied thirteen-year-old minor, requested admission at the Ysleta Border Crossing in El Paso, Texas. *Id.* U.S. Customs and Border Protection (CBP) determined that Petitioner was inadmissible to the United States in violation of INA §§ 212(a)(4)(A), (7)(A)(i)(I). *Id.*

On August 24, 2016, CBP issued Petitioner a Notice to Appear (NTA), charging him with inadmissibility in violation of INA § 212(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, was 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, and INA § 212(a)(4)(A), as amended, as an alien who is likely at any time to become a public charge. *See* Exh. B, NTA dated August 24, 2016.

On September 10, 2016, Petitioner was released to his father's custody. *See* Exh. C, Declaration of Deportation Officer Erasmo Suarez, ¶ 11. On or about October 27, 2016, the NTA was filed with the Executive Office for Immigration Review (EOIR) in Miami, Florida, placing Petitioner in removal proceedings. *See* Exh. B, NTA. At Petitioner's master calendar hearing on March 29, 2019, Petitioner, through counsel, submitted written pleadings admitting the allegations contained in the NTA; conceding the charge under INA § 212(a)(7)(A)(i)(I); and denying the INA § 212(a)(4)(A) charge. *See* Exh. D, Respondent's Written Pleadings. On March 28, 2019, the

presiding immigration judge sustained Petitioner's removability from the United States pursuant to INA § 212(a)(7)(A)(i)(I). *See* Exh. C, Declaration of Deportation Officer Erasmo Suarez, ¶ 14.

On or before February 7, 2023, EOIR removed Petitioner's removal proceedings from their active calendar pursuant to EOIR's Off-Calendar Initiative. *See* Exh. C, Declaration of Deportation Officer Erasmo Suarez, ¶ 15. Petitioner's removal proceedings remained dormant until Petitioner's arrest for a traffic violation on or about September 16, 2025. *See* Id. at ¶ 16; and Exh. E, Form I-213, Record of Deportable/Inadmissible Alien, September 16, 2025 (Form I-213, September 16, 2025). As a result of Petitioner's traffic arrest, the arresting agency transported Petitioner to the West Palm Beach Border Patrol Station and transferred custody to CBP. *See* Exh. C at ¶ 17. Petitioner was then taken into the custody of ICE, Enforcement and Removal Operations (ERO). *See* Exh. E., Form I-213, September 16, 2025; Exh. F, Detention History. To date, Petitioner remains in ICE custody at the Krome North Service Processing Center. *See* Exh. F, Detention History.

ARGUMENT

I. Petitioner is an Arriving Alien Subject to Detention Under 8 U.S.C. § 1225(b)(2).

"Congress has established the requirements for admission of aliens that arrive at the border without authorization to enter." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *4 (S.D.N.Y. June 12, 2018) (citing 8 U.S.C. § 1225). Under § 1225(a), "aliens who arrive at the nation's borders" without authorization to enter this country "are deemed 'applicants for admission,' and must be inspected by an immigration official before being granted admission." *Id.* (citing 8 U.S.C. § 1225(a)(1), (3)). Under 8 U.S.C. § 1225(b), "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 1229(a) of this title [i.e., a removal proceeding]." *Id.* (quoting 8 U.S.C. § 1225(b)(2) (A)) (brackets in original). Thus, detention is mandatory for arriving aliens subject to Section 1225(b).

If an arriving alien is subject to mandatory detention under Section 1225(b), "an immigration judge 'may not' conduct a bond hearing to determine whether [the] arriving alien should be released into the United States during removal proceedings." *Id.* (quoting 8 C.F.R. § 1003.19(h)(2)(i)(B)). Arriving aliens who are detained pursuant to § 1225(b)(2)(A), however, may

be released from custody pursuant to DHS's discretionary parole authority. *See* 8 U.S.C. § 1182(d)(5)(A).

Under Section 1182(d)(5)(A), DHS "may ... in [its] discretion parole into the United States temporarily under such conditions as [it] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]" *Id.* Importantly, however, DHS's discretionary parole of an alien "shall not be regarded as an admission of the alien and when the purposes of such parole shall . . .have been served the alien shall forthwith return or be returned to the custody from which he was paroled[.]" *Id.* "[T]hereafter[,]" a formerly paroled alien's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

Contrary to his allegations in this case, Petitioner here is an "arriving alien" subject to the removal and detention provisions in 8 U.S.C. § 1225(b)(2). Petitioner, arrived on or about August 23, 2016, as a 13-year-old unaccompanied alien child ("UAC") and requested admission at the Ysleta Border Crossing in El Paso, Texas. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, August 23, 2016 (Form I-213, August 23, 2016). Under the Homeland Security Act of 2002 ("HSA"), a UAC is someone who: "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2) ("Section 279"). The HSA transferred the responsibility for care of UACs in Federal custody by reason of their immigration status to the Office of Refugee Resettlement ("ORR") within the Department of Health and Human Services ("HHS"). *Id.* § 279(a), (b)(1)(A). The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), provides that "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1) ("Section 1232"). Although the TVPRA transferred responsibility for care and custody of UACs to ORR, "it did not alter their immigration status." *Mendez Ramirez v. Decker*, et al., 612 F.Supp.3d 200, 206 (S.D.N.Y. 2020).

An individual is not a UAC if and when he is released to a parent's custody. *Id.* Moreover, a UAC ceases to be a UAC when he turns eighteen. *Id.* at 212 (citing 6 U.S.C. § 279(g) (2)(B) and *Matter of Castro-Tum*, 27 I. & N. Dec. 271, 277 n.4 (2018)). Petitioner here was released to his

father's custody in 2016 and thus ceased being a UAC. *See* Exh. C, Declaration of Deportation Officer Erasmo Suarez, ¶ 11. And Petitioner does not, and cannot, allege that he was under the age of eighteen at the time of his arrest in September of 2025. As such, despite the fact that he was an UAC when he arrived in the United States in 2016, he was not an UAC when he was detained in September of 2025. Consequently, he is in the same position as any "arriving alien," as contemplated by 8 U.S.C. § 1225. Petitioner himself acknowledges that § 1225(b) and its mandatory detention scheme "applies to people arriving at U.S. ports of entry or who recently entered the United States." Petition at ¶ 39. Thus, Plaintiff is subject to the statute's mandatory removal and detention provisions..

II. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are Subject to Mandatory Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A).

Even if Petitioner were not an "arriving alien" under 8 U.S.C. § 1225(a)(1), he would still be subject to detention as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A). "An alien present in the United States who has not been admitted or who arrives in the United States" is deemed an "applicant for admission," who is "seeking admission" into the country. 8 U.S.C. §§ 1225(a)(1); 1225(b)(2)(A).[1]

Section 1225(b)(2)(A) serves as a catchall provision that applies to all applicants for admission like Petitioner. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); 8 U.S.C. § 1225(b)(2)(A), (B). It allows for the placement of aliens in full removal proceedings under 8 U.S.C. § 1229a "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). Under the statute, all such applicants for admission "shall be detained." *Id*. (underscore added).

Thus, the plain language of 8 U.S.C. § 1225(b)(2)(A) expressly requires Petitioner's detention – regardless of whether he is an arriving alien. "The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances" which are not present here. *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *see Lamie*, 540 U.S. at 534 ("It is well

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[1] *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (construing 8 U.S.C. § 1225(b) and equating "applicants for admission," as used in (b)(1), with aliens "seeking admission," as used in (b)(2)).

established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." (quotation marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) "says anything whatsoever about bond hearings." 583 U.S. at 297. Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens.

The distinction the Attorney General drew in the 1997 Interim Rule (addressed in detail below) between "arriving aliens," *see* 8 C.F.R. §§ 1.2, 1001.1(q), and "aliens who are present without being admitted or paroled," Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997),[2] is unsupported by the plain statutory text. No provision within 8 U.S.C. § 1225(b)(2) refers to "arriving aliens," or limits that paragraph—and its requirement of detention—to arriving aliens. Instead, Congress expressly intended for it to apply generally in every "case of an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to "arriving aliens," it uses that specific term of art or similar phrasing. *See, e.g.*, *id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

III. An Immigration Judge Does Not Have Authority to Consider Release on Bond.

On September 5, 2025, the BIA issued its decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Yajure Hurtado*, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the

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[2] As discussed more below, the preamble language of the 1997 Interim Rule states that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10,323. However, preambular language is not binding and "should not be considered unless the regulation itself is ambiguous." *El Comite Para El Bienestar de Earlimart v. Warmerdam*, 539 F.3d 1062, 1070 (9th Cir. 2008); *see also Wards Cove Packing Corp. v. Nat'l Marine Fisheries Serv.*, 307 F.3d 1214, 1219 (9th Cir. 2002) ("[T]he plain meaning of a regulation governs and deference to an agency's interpretation of its regulation is warranted only when the regulation's language is ambiguous." (citing *Christensen v. Harris County*, 529 U.S. 576, 588 (2000))).

INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Yajure Hurtado*, 29 I&N Dec. at 220.

The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the alien's argument in *Yajure Hurtado*—essentially the same argument Petitioner makes here—that "because he ha[d] been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined that the alien's argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). The BIA's decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C. § 1225(b)(2), but also with the Supreme Court's 2018 decision in *Jennings* and other caselaw issued after *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Petitioner is mistaken in arguing that he is due a bond hearing pursuant to 8 U.S.C. § 1226(a). Relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General observed that section 236(a) (8 U.S.C. § 1226) provides an independent ground for detention upon the issuance of a warrant, but does not limit DHS's separate authority to detain aliens under 8 U.S.C. § 1225, whether pending expedited removal or full removal proceedings. *Id.*

Under the plain language of 8 U.S.C. § 1225(b), all "applicants for admission" who are found "not clearly and beyond a doubt entitled to be admitted" are subject to detention under 8 U.S.C. § 1225(b)—regardless of how long they have been present in the United States. *Cf. Niz-*

Chavez v. Garland, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit"). The conclusion that "§ 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

Given that 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention … throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, Immigration Judges do not have authority to redetermine the custody status of an alien present without admission.

"It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). "In the context of custody proceedings, an Immigration Judge's authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . . ." *Id.* at 46. The regulation clearly states that "the Immigration Judge is authorized to exercise the authority in [8 U.S.C. § 1226]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"); *see id.* § 1003.19(h)(2)(i)(B) ("[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. §1182(d)(5).]"). "An immigration judge is without authority to disregard the regulations, which have the force and effect of law." *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

IV. Legislative History Supports Respondents' Position that 8 U.S.C. § 1225 Requires Detention of All Aliens Who Entered the United States Without Admission—Regardless of Where or When they Arrived in the United States.

The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546

(1996) bolsters the understanding that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at ports of entry. *See* 8 U.S.C. § 1225(a) (1995) (discussing "aliens arriving at ports of the United States"); *id.* § 1225(b) (1995) (discussing "the examining immigration officer at the port of arrival"). Relatedly, any alien who was "in the United States" and within certain listed classes of deportable aliens was deportable. *Id.* § 1231(a) (1995). One such class of deportable aliens included those "who entered the United States without inspection or at any time or place other than as designated by the Attorney General." *Id.* § 1231(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were "seeking admission" at a port of entry or had been paroled into the United States. *See id.* §§ 1182(a), 1225(a) (1995). Deportation proceedings (conducted pursuant to former 8 U.S.C. § 1252(b) (1995)) and exclusion proceedings (conducted pursuant to former 8 U.S.C. § 1226(a) (1995)) differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the "important distinction" between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms commencing deportation, exclusion, or removal proceedings). The placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an "entry" within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1995) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession"); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has made an "entry" into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a "meaningfully interruptive" departure).

Former 8 U.S.C. § 1225 provided that aliens "seeking admission" at a port of entry who could not demonstrate entitlement to be admitted ("excludable" aliens) were subject to mandatory detention, with potential release solely by means of parole under 8 U.S.C. § 1182(d)(5) (1995). 8 U.S.C. § 1225(a)-(b) (1995). "Seeking admission" in former 8 U.S.C. § 1225 appears to have been understood to refer to aliens arriving at a port of entry.[3] *See id.* The legacy Immigration and

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[3] Given Congress's overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, Congress clearly did not intend for the former understanding of "seeking admission" to be retained in the new removal scheme. Generally, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to

Naturalization Service ("INS") regulations implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a port of entry had to be detained without parole if they had "no documentation or false documentation," 8 C.F.R. § 235.3(b) (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c) (1995). With regard to aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231, such aliens were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); 8 C.F.R. § 242.2(c)(1) (1995).

As a result, "'[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' while [aliens] who actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings.'" *Martinez v. Att'y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). "To remedy this unintended and undesirable consequence, the IIRIRA substituted 'admission' for 'entry,' and replaced deportation and exclusion proceedings with the more general 'removal' proceeding." *Id.* Consistent with this dichotomy, the INA, as amended by IIRIRA, defines *all* those who have not been admitted to the United States as "applicants for admission." IIRIRA § 302. As discussed above, the INA does not distinguish arriving aliens and aliens already in the country in 8 U.S.C. § 1225(b)'s requirement of detention.

Moreover, Congress's use of the present participle—seeking—in 8 U.S.C. § 1225(b)(2)(A) should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking," 8 U.S.C. § 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does

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incorporate its administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior construction canon of statutory interpretation "is of little assistance here because, . . . this is not a case in which 'Congress re-enact[ed] a statute without change.'" *Public Citizen Inc. v. U.S. Dep't of Health and Human Servs.*, 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption "of congressional ratification" of a prior statutory interpretation "applies only when Congress reenacts a statute without relevant change." *Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs Enforcement,* 543 U.S. 335, 349 (2005)).

not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that "having" is a present participle, which is "used to form a progressive tense" that "means presently and continuously" (citing Bryan A. Garner, *Garner's Modern American Usage* 1020 (4th ed. 2016))). The present participle "expresses present action in relation to the time expressed by the finite verb in its clause," *Present Participle*, MerriamWebster, http://www.merriamwebster.com/dictionary/present%20participle (last visited Aug. 7, 2025), with the finite verb in the same clause of 8 U.S.C. § 1225(b)(2)(A) being "determines." Thus, when pursuant to 8 U.S.C. § 1225(b)(2)(A) an "examining immigration officer determines" that an alien "is not clearly and beyond a doubt entitled to be admitted" the officer does so contemporaneously with the alien's present and ongoing action of seeking admission. Interpreting the present participle "seeking" as denoting an ongoing process is consistent with its ordinary usage. *See, e.g.*, *Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (alien inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but "seeking to remain in the country lawfully" applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th Cir. 2025) ("USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. § 1255(m) to undergo a medical examination . . ."). Accordingly, just as the alien in *Samayoa* is not only an alien present without admission but also seeking to remain in the United States, Petitioner in this case is not only an alien present without admission, and therefore an applicant for admission as defined in 8 U.S.C. § 1225(a)(1), but also an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A).

Lastly, Congress's significant amendments to the immigration laws in IIRIRA support DHS's position that such aliens are properly detained pursuant to 8 U.S.C. § 1225(b)—specifically, 8 U.S.C. § 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at ports of entry. A rule that treated an alien like Petitioner, who enters the country illegally, more favorably than an alien detained after arriving at a port of entry would "create a perverse incentive to enter at an unlawful rather than a lawful location." *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Thuraissigiam*, 591 U.S. at 140) (rejecting such a rule as propounded by the defendant). Such a rule reflects "the precise situation that Congress intended to do away with by enacting" IIRIRA. *Id.* "Congress intended to eliminate the anomaly 'under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens

who present themselves for inspection at a [POE]'" by enacting IIRIRA. *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

As discussed by the BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. at 222-24, during IIRIRA's legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* H.R. Rep. 104-469, pt. 1, at 107 (noting a "crisis at the land border" allowing aliens to illegally enter the United States). As alluded to above, one goal of IIRIRA was to "reform the legal immigration system and facilitate legal entries into the United States . . . ." H.R. Rep. No. 104-828, at 1 (1996). Nevertheless, after the enactment of IIRIRA, the DOJ took the position—consistent with pre-IIRIRA law—that "despite being applicants for admission, aliens who are present without being admitted or paroled . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10,323. Affording aliens present without admission, who have evaded immigration authorities and illegally entered the United States bond hearings before an immigration judge, but not affording such hearings to arriving aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to that goal. *Cf.* H.R. Rep. No. 104-469, pt. 1, at 225 (noting that IIRIRA replaced the concept of "entry" with "admission," as aliens who illegally enter the United States "gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]").

V. Applicants for Admission May Only Be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.

Applicants for admission, including arriving aliens like Petitioner, may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that 8 U.S.C. § 1182(d)(5) is the specific provision that authorizes release from detention under 8 U.S.C. § 1225(b), at DHS's discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized that "[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . . ." *Id.* at 288.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is "delegated solely to the Secretary of Homeland Security." *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor immigration judges have authority to parole an alien into the United States under 8 U.S.C. § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that "parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS" and "reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security"); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that "neither the [IJ] nor th[e] Board has jurisdiction to exercise parole power"). Further, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an immigration judge or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

Importantly, parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), and an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see* 8 C.F.R. §§ 1.2 (providing that "[a]n arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked"), 1001.1(q) (same). Parole does not place the alien "within the United States." *Leng May Ma*, 357 U.S. at 190. An alien who has been paroled into the United States under 8 U.S.C. § 1182(d)(5) "is not . . . 'in' this country for purposes of immigration law . . . ." *Abebe*, 16 I&N Dec. at 173 (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan*, 267 U.S. at 228). Following parole, the alien "shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States," 8 U.S.C. § 1182(d)(5)(A), including that they remain subject to detention pursuant to 8 U.S.C. § 1225(b)(2).

V. Section 1226 Does Not Impact the Detention Authority for Applicants for Admission.

Petitioner argues that he is eligible for a bond hearing as provided in 8 U.S.C. § 1226(a), but he is mistaken. Section 1226(a) is the applicable detention authority for aliens who have been admitted and are subject to removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. §§ 1226,

1227(a), and 1229a. The statute does *not* impact the directive in 8 U.S.C. § 1225(b)(2)(A) that "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 proceedings under [8 U.S.C. § 1229a]," *id.* § 1225(b)(2)(A).[4] As the Supreme Court explained, 8 U.S.C. § 1226(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings." *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a "permissive" detention authority separate from the "mandatory" detention authority under 8 U.S.C. § 1225).[5]

Generally, such aliens may be released on bond or their own recognizance, also known as "conditional parole." 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does

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[4] The specific mandatory language of 8 U.S.C. § 1225(b)(2)(A) governs over the general permissive language of 8 U.S.C. § 1226(a). "[I]t is a commonplace of statutory construction that the specific governs the general . . . ." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is "most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission" and in order to "eliminate the contradiction, the specific provision is construed as an exception to the general one"); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that "[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones"). Here, 8 U.S.C. § 1225(b)(2)(A) "does not negate [8 U.S.C. § 1226(a)] entirely," which still applies to admitted aliens who are deportable, "but only in its application to the situation that [8 U.S.C. § 1225(b)(2)(A)] covers." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

[5] Importantly, a warrant of arrest is not required in all cases. *See* 8 U.S.C. § 1357(a). For example, an immigration officer has the authority "to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation" or "to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest . . . ." *Id.* § 1357(a)(2); 8 C.F.R. § 287.3(a), (b) (recognizing the availability of warrantless arrests); *see Q. Li*, 29 I&N Dec. at 70 n.5. Moreover, DHS may issue a warrant of arrest within 48 hours (or an "additional reasonable period of time" given any emergency or other extraordinary circumstances), 8 C.F.R. § 287.3(d); doing so does not constitute "post-hoc issuance of a warrant," *Q. Li*, 29 I&N Dec. at 69 n.4. While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to 8 U.S.C. § 1226(a) detention authority under a plain reading of 8 U.S.C. § 1226(a), there is nothing in *Jennings* that stands for the assertion that aliens processed for arrest under 8 U.S.C. § 1225 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

not, however, confer the *right* to release on bond; rather, both DHS and immigration judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns under 8 U.S.C. § 1226(c). *See* 8 U.S.C. § 1226(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i); *see also id.* § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* 8 U.S.C. § 1226(c)(2).

Notably, 8 U.S.C. § 1226(c) references certain grounds of inadmissibility, 8 U.S.C. § 1226(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to 8 U.S.C. § 1226. 590 U.S. 222, 235 (2020); *see also Nielsen v. Preap*, 586 U.S. 392, 416-19 (2019) (recognizing that aliens who are inadmissible for engaging in terrorist activity are subject to 8 U.S.C. § 1226(c)). However, in interpreting provisions of the INA, the BIA does not view the language of statutory provisions in isolation but instead "interpret[s] the statute as a symmetrical and coherent regulatory scheme and fit[s], if possible, all parts into an harmonious whole." *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010) (internal quotation marks omitted) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). As the Supreme Court in *Barton* also noted, "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text . . . ." *Id.*; *see also Matter of Yajure Hurtado*, 29 I&N Dec. at 222 ("Interpreting the provisions of section [1226(c)] as rendering null and void the provisions of section [1225](b)(2)(A) (or even the provisions of section... 1225(b)(1)), would be in contravention of the 'cardinal principle of statutory construction,' which is that courts are to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.'" (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)). The statutory language of 8 U.S.C. § 1226(c)—including the most recent amendment pursuant to the Laken Riley Act, *see* 8 U.S.C. § 1226(c)(1)(E), merely reflects a "congressional effort to be doubly sure" that certain aliens are detained, *Barton*, 590 U.S. at 239.

To reiterate, to interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded 8 U.S.C. § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if 8 U.S.C. § 1226 was meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that "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 [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

VI. The Fact that Petitioner Entered the Country as an Unaccompanied Minor in 2016 Does Not Exempt Him from Mandatory Detention or Entitle Him to a Bond Hearing.

Petitioner argues that because he entered the country as an unaccompanied minor, he is exempt from the requirement of mandatory detention. Petition at ¶¶ 40-42. In support of his assertion, Petitioner notes that Congress has, in certain instances, made provisions for the protection of unaccompanied minors from adults in the administration of the INA. Petitioner points to 8 U.S.C. § 1232 and 6 U.S.C. § 279, which govern the detention, transfer, and placement of UACs. Petitioner construes 8 U.S.C. § 1232(a)(5)(D)(i) as exempting unaccompanied minors from non-contiguous countries from expedited removal, and notes that, under § 1232(b)(1), "the care and custody of all unaccompanied alien children … [are] the responsibility of the Secretary of Health and Human Services." Petition at ¶ 40 (quoting 8 U.S.C. § 1232). Petitioner argues that the enactment of these provisions for unaccompanied minors reflects Congress's intent to treat unaccompanied minors differently from adults who arrive without lawful admission. Petition at ¶ 41. Based on his assessment of Congress' intent, Petitioner argues that "the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like [him], who have already entered as a UAC and were residing in the United States at the time they were apprehended." *Id.* at ¶ 42.

But as the provisions Petitioner cites demonstrate, Congress is capable of enacting laws that treat unaccompanied minors differently with respect to the administration of the INA. Petitioner is asking the Court to judicially establish protections that Congress itself has not enacted. Congress has made no provision exempting individuals who entered the country as unaccompanied minors from the mandatory detention provision in 8 U.S.C § 1225(b)(2). Moreover, the provisions

Petitioner has cited as indicative of Congress's intent do not reflect any intent to shield unaccompanied minors from enforcement of the nation's immigration laws altogether. Section 8 U.S.C. § 1232(a)(5)(D)(i), for example, still allows for the placement of unaccompanied minors in removal proceedings, albeit with a right to counsel and the right to voluntary departure under 8 U.S.C. § 1229c that is not guaranteed to adults in removal proceedings.

Finally, Petitioner is not currently a UAC. As explained above, Petitioner ceased being a UAC when he was released into his father's custody in 2016. None of the provisions he cites concerning the care and custody of UAC's would apply to him.

CONCLUSION

Petitioner is properly detained under 8 U.S.C. § 1225(b). Accordingly, the Court should deny Petitioner's habeas petition.

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