UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

DIEGO HERNANDEZ-BALACAZA, PETITIONER

v. CIVIL ACTION NO. 5:25-cv-00177-BJB

ADAM SMITH, Jailer, Christian County Detention Center;
SAM OLSON, Director of Chicago Field Office, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and
PAMELA BONDI, Attorney General of the United States, in their official capacities, RESPONDENTS

RESPONDENTS' MOTION TO DISMISS AND RESPONSE TO ORDER TO SHOW CAUSE

The United States, Respondents, on behalf of Samuel Olson, acting in his official capacity as Interim Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement (ICE), Kristi Noem, acting in her official capacity as Secretary, Department of Homeland Security, and Pamela Bondi, U.S. Attorney General,[1] respectfully request that the Court dismiss Diego Hernandez-Balacaza's (Petitioner's) habeas petition[2] for lack of jurisdiction. As explained more fully below, the Court lacks

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1 This response is filed on behalf of Federal Respondents Samuel Olson, Kristi Noem, and Pamela Bondi. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition also names Adam Smith, the Christian County Jailer, as a respondent.

2 This motion and response describes Petitioner's filing as a habeas petition, despite his contention

subject matter jurisdiction to review the Agency's action to detain Petitioner as it arises from the Agency's decision to commence his removal proceedings and would require the Court to answer legal questions. *See* 8 U.S.C. §§ 1252(b)(9), (g). Accordingly, the Court should dismiss the instant petition. If, however, the Court retains jurisdiction over the petition, the Court should deny the petition, because Petitioner is lawfully detained as an alien present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1225(b).

BACKGROUND

Hernandez-Balacaza is Removable as an Inadmissible Alien Present in the United States Without Being Admitted or Paroled and as an Alien Present Without Valid Entry Documents.

In this immigration case, Petitioner asks the Court for a writ of habeas corpus, under 28 U.S.C. § 2241, challenging the Department of Homeland Security (DHS), ICE's action to detain him, as part of the commencement of his removal proceedings. He is seeking, *inter alia*, a declaration that this action violates his due process rights and the Immigration and Nationality Act (INA). Accordingly, he requests the Court order his release.

that his detention violates the Administrative Procedures Act (APA). [Doc. 1, PageID#6-8.] Courts in this circuit do not permit "combined habeas corpus and other civil claims to proceed together in one case." *J.O.B. v. United States*, 2024 WL 4011825, at 7 (S.D. Ohio Aug. 30, 2024) (collecting cases), *R. & R. adopted*, 2024 WL 4223636 (S.D. Ohio Sept. 18, 2024); *Ruza v. Michigan*, 2020 WL 4670556, at 2 (W.D. Mich. Aug. 12, 2020), *aff'd*, No. 20-1841, 2021 WL 3856305 (6th Cir. Apr. 7, 2021) (same). Habeas petitions and civil actions "have distinct purposes and contain unique procedural requirements that make a hybrid action difficult to manage." *Ruza*, 2020 WL 4670556, at 2. Should, however, the Court construe this otherwise, we respectfully request the Court provide the United States with a briefing schedule to respond.

Hernandez-Balacaza, a native and citizen of Mexico, arrived in the United States without inspection at an unknow place and time. **[Exhibit 1**, Notice to Appear, at 1.] He does not possess any documents permitting him to be in the United States, and he was not admitted or paroled into the United States. **[Ex. 1**, at 4.]

Petitioner was arrested on October 13, 2025, after Hernandez-Balacaza stated to a Customs and Border Patrol officer that he was illegally present in the United States. **[Exhibit 2**, I-213 Narrative, at 2.] Petitioner was transported to an ICE Enforcement and Removal Operations detention center for further processing, including providing a Notice to Appear (NTA). **[Ex. 1.]**

While being processed, the Agent confirmed that Hernandez-Balacaza was present in the United States without being admitted or paroled after inspection. [*Id.* at 3.] Accordingly, the agent commenced removal proceedings by issuing Petitioner an NTA which stated he appeared removable as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), for entering the United States without being admitted or paroled, and under § 1182(a)(7)(A)(i)(I), for lacking valid documentation permitting entry to the United States. [*Id.* at 4.] His hearing before an Immigration Judge is scheduled for November 10, 2025. [*Id.* at 1.]

LEGAL FRAMEWORK

I. 8 U.S.C. § 1252 Limits the Court's Jurisdiction to Review Certain Immigration Decisions and Actions.

Relevant here, Congress included two separate provisions of the INA to prohibit the Court from entertaining certain habeas challenges—8 U.S.C. §§ 1252(b)(9), (g). First,

Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). This provision bars review of an alien's claim that the government is "selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights," because such claims represent a "challenge to the Attorney General's decision to 'commence proceedings' against them." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 474, 487 (1999) (quoting 8 U.S.C. § 1252(g)). Detention during removal proceedings is an "aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure").

Second, Section 1252(b)(9) provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). Indeed, Congress specified that "no court shall have jurisdiction, by habeas corpus under [28 U.S.C. § 2241] or any other habeas corpus provision . . . or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact." *Id.*; *see also id.* § 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal"). Habeas petitions challenging the legal basis for detaining in the first place require a court to answer

"legal questions" that arise from "an action taken to remove an alien," so the claims "fall within the scope of § 1252(b)(9)." *Jennings v. Rodriguez*, 583 U.S. 281, 295 n.3 (2018) (plurality opinion) (assuming that detention is an action taken to remove an alien).[3]

II. Alternatively, Petitioner Bears the Burden of Proving his Detention is Unlawful Under 8 U.S.C. § 1225(b).

Should the Court exercise jurisdiction over this case, the Court may only grant a writ of habeas corpus if the Petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241. Petitioner bears "'the burden to show that he is in custody in violation of the Constitution of the United States.'" *Morrison v. Holder*, 2012 WL 5830435, 2012 U.S. Dist. LEXIS 164910, at 6 (N.D. Ohio Nov. 16, 2012) (quoting *Dodge v. Johnson*, 471 F.2d 1249, 1251 (6th Cir. 1973)); *see also Martinez v. Larose*, 968 F.3d 555, 565 (6th Cir. 2020) (placing the burden on Petitioner to prove his removal is reasonably foreseeable).

As an inadmissible alien, Petitioner's detention is governed by 8 U.S.C. § 1225(b). The Supreme Court's decision in *Jennings* controls this determination. Therein, the Court explained, "the Government must determine whether an alien seeking to enter the country is admissible." *Jennings*, 583 U.S. at 281. An alien—such as Petitioner—"who arrives in the United States, or is present in this country but has not been admitted, is treated as an applicant for admission." *Id.* (cleaned up). This is further

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[3] *See also id.* at 317 (Thomas, J., concurring in part and concurring in the judgment) ("Section 1252(b)(9) is a general jurisdictional limitation that applies to all claims arising from deportation proceedings and the many decisions or actions that may be part of the deportation process. Detaining an alien falls within this definition . . . . The phrase any action taken to remove an alien from the United States must at least cover congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien's removal.") (cleaned up).

defined in 8 U.S.C. § 1225(a)(1) ("[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission") and 8 U.S.C. § 1101(a)(13)(A) ("[a]dmission" is "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer").

As an "applicant for admission," Hernandez-Balacaza must "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S at 287. Section 1225(b)(1), also known as Expedited Removal Proceedings, addresses both the detention and removal of "aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* (cleaned up). Such aliens "are normally ordered removed without further hearing or review . . . [unless the alien] indicates either an intention to apply for asylum . . . or a fear of persecution, then that alien is referred for an asylum interview." *Id.*

Section 1225(b)(2), however, "is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. Such aliens are subject to the 8 U.S.C. § 1229a removal statute and referred "for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country." *See Jennings*, 583 U.S. at 288 (cleaned up). Further, they "shall be detained" for those removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

I. The Court Should Dismiss This Habeas Petition, Because it Lacks Jurisdiction to Review it, Under 8 U.S.C. §§ 1252 (b)(9), (g).

The Court lacks jurisdiction to consider this petition under two provisions of the INA. First, 8 U.S.C. § 1252(g) strips the Court of subject matter jurisdiction over Petitioner's claims as they are "arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien . . . ." 8 U.S.C. § 1252(g); *see also Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at 8-9 (6th Cir. Aug. 13, 2025) (explaining that § 1252(g) applies to habeas claims and does not violate the Suspension Clause). Here, Petitioner is challenging ICE's decision to detain him, under 8 U.S.C. § 1225(b)(2), at the commencement of his removal proceedings, under U.S.C. § 1229a. The decision to detain, through processing him after his arrest on October 13, 2025, arose from the commencement of his removal proceedings, which began once the NTA was issued on October 14, 2025. [Ex. 1.] The detention, therefore, is "connected directly and immediately" with the commencement of Hernandez-Balacaza's removal proceedings. *See Tsering v. ICE*, 403 F. App'x 339, 343 (10th Cir. 2010) (cleaned up); *see also Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 943 (5th Cir.1999). Thus, the Court cannot review the Agency's decision to detain him.

"Other circuits have recognized this straightforward point." *Ozturk v. Hyde*, 2025 WL 2679904, at 2 (2d Cir. Sept. 19, 2025) (Menashi, J., concurring). "By its plain terms," Section 1252(g) "bars [the courts] from questioning [the government's] discretionary decisions to commence removal" of the Petitioner, which include the "decision to take

him into custody and to detain him during his removal proceedings." *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016); *see also Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) ("Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings."); *Suri v. Trump*, 2025 WL 1806692, at 11 (4th Cir. July 1, 2025) (Wilkinson, J., dissenting) (When the government detains an alien "pending a decision on whether the alien is to be removed—the detention arises from the commencement of proceedings or adjudication of cases."). Accordingly, "claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction." *Limpin v. United States*, 828 F. App'x 429, 429 (9th Cir. 2020); *see also Sissoko v. Rocha*, 509 F.3d 947, 949-50 (9th Cir. 2007) (petitioners' "detention arose from [the Agency]'s decision to commence expedited removal proceedings. As a result, 8 U.S.C. § 1252(g) applies to the [petitioners'] claim . . . . [W]e hold that 8 U.S.C. § 1252(g)'s jurisdiction-stripping language covers [their] false arrest claim . . . [which] directly challenges [the Agency's] decision to commence expedited removal proceedings."); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) ("We construe § 1252(g), which removes our jurisdiction over 'decisions to commence proceedings' to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.") (cleaned up).

It is true that Section 1252(g) does not cover "all claims" arising from decisions to commence proceedings, adjudicate cases, or execute removal orders. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020). But it continues to

bar review of narrow matters "arising from" those decisions—such as the Agency's decision to detain Petitioner. *See id.* Holding otherwise ignores the term "arising from" in the statute and flouts the maxim of statutory construction against superfluities. That maxim "instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous." *Hibbs v. Winn*, 542 U.S. 88, 89 (2004). Deciding that Section 1252(g) only revokes the Court's jurisdiction over the Agency's ultimate decision to commence proceedings, adjudicate cases, or executive removal orders renders the provision "arising from" superfluous. Accordingly, the Court should interpret section 1252(g) to revoke the Court's jurisdiction to review the Agency's decision to detain Petitioner, as it was "arising from" the Agency's decision to commence his removal proceedings.

Secondly, 8 U.S.C. § 1252(b)(9) strips the Court of jurisdiction to review Hernandez-Balacaza's habeas claims as the petition requires the Court to answer legal and factual questions "arising from any action taken or proceeding brought to remove . . ." him. *See* 8 U.S.C. § 1252(b)(9). Legally, Petitioner asks the Court to interpret the INA to determine which legal authority authorizes his detention during his removal proceedings. [*See generally* Doc. 1.] By making such a challenge, the adjudication of this habeas petition would require the Court to answer the "legal question" that arises from the Agency's "action taken to remove an alien." *See* 8 U.S.C. § 1252(b)(9). Further, Petitioner asks the Court to declare that "the continued detention of the Petitioner to lack statutory authorization." [Doc. 1, PageID#8.] Doing so would require the Court to make the factual determination that Petitioner is not removable as inadmissible,

because he was: (1) admitted or paroled into the United States, or (2) has documentation authorizing his presence in the United States.[4] It cannot do so.

If the Court exercised jurisdiction, in contravention of Section 1252(b)(9), to make the factual determination as to his admissibility and the legal holding identifying the statute governing his detention, it could create the absurd holding that "it is unconstitutional for the government to detain aliens pending removal for a reason that allows the government to remove them." *Ozturk*, 2025 WL 2679904 at 2 (Menashi, J., concurring). This is exactly what Congress sought to preclude in Section 1252(b)(9). "Congress channeled judicial review of removal proceedings into a single proceeding to avoid such an incoherent result." *Id.* By enacting Section 1252(b)(9), "Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process that previously had held sway in regard to removal proceedings." *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007) (citing H.R. Rep. No. 109-72, at 174). It designed the statutes "to consolidate and channel review of *all* legal and factual questions that arise from the removal of an alien into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals." *Id.* (emphasis in original). It is reasonable to conclude, therefore, that the jurisdictional bars do not prevent the adjudication of a claim that is "unrelated to any removal action or proceeding," *Delgado*

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4 Petitioner does not contest this factual basis. In any event, the record basis to justify Petitioner's arrest and subsequent detention cannot be separated from the factual support for the initiation of his removal proceedings. The factual support for his arrest is an assessment by a CBP Agent that he was "illegally present in the United States." [**Ex. 2** at 2.] This is the same assessment made to support commencing his removal proceedings through issuance of an NTA (and the subsequent decision to detain him). [*See* **Ex. 1** at 4 (noting that he was charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and § 1182(a)(7)(A)(i)(I)).]

v. Qurantillo, 643 F.3d 52, 55 n.3 (2d Cir. 2011) (cleaned up), or "independent of challenges to removal orders," H.R. Rep. No. 109-72, at 176 (2005). But when petitioners, such as Hernandez-Balacaza, are "challenging the decision to detain them in the first place" arguing there is no factual support for initiating removal proceedings or legal support for detaining them throughout the duration of those proceedings, that is a challenge to the removal proceedings that Congress has barred. *Jennings*, 583 U.S. at 294 (plurality opinion); *see also id.* at 314 (Thomas, J., concurring in part and concurring in the judgment) ("§ 1252(b)(9) removes jurisdiction over [aliens'] challenge to their detention.").

Accordingly, the Court should dismiss Petitioner's habeas petition for lack of jurisdiction, as it challenges decisions arising from the Agency's action to commence his removal proceedings, requires the Court to answer legal and factual questions, and in any event, may be presented before the immigration judge, the Board of Immigration Appeals (BIA), and then to the Sixth Circuit Court of Appeals—but not to this Court.

II. Alternatively, the Court Should Deny the Habeas Petition, Because Hernandez-Balacaza is Lawfully Detained Under 8 U.S.C. § 1225(b)(2).

As a preliminary matter, the Court should hold that Petitioner is being detained under 8 U.S.C. § 1225(b)(2). Even if the Supreme Court's decision in *Jennings* did not control this determination,[5] the Court should accord *Skidmore* deference to the BIA's

[5] *See Jennings*, 583 U.S. at 287 (An "applicant for admission," must "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).").

decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025) and hold that this statute properly applies to the Petitioner.

As the BIA determined, "aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A)[] and must be detained for the duration of their removal proceedings." *Hurtado*, 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300 (holding that these provisions of the INA "unequivocally mandate that aliens falling within their scope [of section 1225(b)(1) and (2)] shall be detained," and that "[u]nlike the word may, which implies discretion, the word shall usually connotes a requirement")). The Court should defer to this persuasive interpretation of the statute, even if it is not bound by it. *See Pemberton v. Bell's Brewery, Inc.*, 150 F.4th 751, 763, n. 4 (6th Cir. 2025) (explaining that *Skidmore* deference survived the Supreme Court's decision in *Loper Bright Enters v. Raimondo*, 603 U.S. 369, 402 (2024); *see also Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (explaining that agency has always been one of the factors that may give an Agency's interpretation "power to persuade, if lacking power to control"))).

Contrary to other holdings, *see e.g., Beltran Barrera v. Tindall*, 2025 WL 2690565, at 3 (W.D. Ky. Sep. 19, 2025), the BIA's decision is persuasive and accurately construes the statutory text. As the BIA explained, an "applicant for admission" under 8 U.S.C. § 1225(a)(1), by virtue of his entry without inspection, must necessarily be considered as "seeking admission," as the term of art is used in 8 U.S.C. § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220. This interpretation is supported by agency precedent, *see Matter of Lemus*, 25 I. & N. Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not

actually requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws"), and the Supreme Court's decision in *Jennings* which ignored the "seeking admission" portion of § 1225(b)(2)(A), instead interpreting the relevant portion of this provision to be whether an official determined they were "not clearly and beyond a doubt entitled to be admitted," *Jennings*, 583 U.S. at 281.

This interpretation also makes sense. A contrary reading creates a "legal conundrum," because there "is no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under . . . 8 U.S.C. § 1226(a)." *Hurtado*, 29 I. & N. Dec. at 221.

Moreover, the Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025), does nothing to contradict this interpretation. Section 1226(c) was amended to require the Attorney General to take into custody certain "criminal aliens" who are deemed inadmissible, under specific grounds, whom *also* "[are] charged with, . . . arrested for . . . convicted of . . . admits having committed or admits committing acts which constitute . . . burglary, theft, larceny, shoplifting, . . . assault of a law enforcement officer . . . or any crime that results in death or serious bodily injury to another" once that "alien is released." 8 U.S.C. § 1226(c)(1)(E). This detention statute, by its plain terms, applies only to certain criminal aliens being released from custody for

that crime. And nothing in this provision of the INA "alter[s] or undermine[s] the provisions of . . . 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute shall be detained for a proceeding under [8 U.S.C. 1229a]." *Hurtado*, 29 I. & N. Dec. at 222. If it did, the terms of 8 U.S.C. § 1225(b)(2)(A) would be rendered superfluous and thus, such interpretation "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.'" *Id.* (quoting *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)).

Petitioner does not contest his removability for being present in the United States without being admitted or paroled. Thus, the Court should treat him as an applicant for admission that is seeking admission. "Admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And an "[a]pplicant for admission" is "[a]n alien present in the United States who has not been admitted . . . ." 8 U.S.C. § 1225(a)(1). Read in tandem with the statute's plain terms, as the Court must do,[6] the INA makes clear

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[6] When interpreting a statute, "the inquiry 'begins with the statutory text, and ends there as well if the text is unambiguous.'" *In re Vill. Apothecary, Inc.*, 45 F.4th 940, 947 (6th Cir. 2022) (quoting *Binno v. Am. Bar Ass'n*, 826 F.3d 338, 346 (6th Cir. 2016)); *see also King v. Burwell*, 576 U.S. 473, 486 (2015). Each word in the statute should be read in line with "its ordinary, contemporary, common meaning." *Kentucky v. Biden*, 23 F.4th 585, 603 (2022) (quoting *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997)). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Beecham v. United States*, 511 U.S. 368, 372 (1994) ("The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences."). Often, "the 'meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.'" *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)); *see also Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.").

that all unadmitted and uninspected aliens are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. Indeed, the INA makes clear that "applicants for admission" may be required to testify as to their "purposes and intentions . . . in seeking admission." 8 U.S.C. § 1225(a)(5). It, therefore, follows that an "applicant for admission" and a person "seeking admission" are one and the same. To interpret otherwise would conflate two entirely distinct procedural postures—one who applies for admission and one who does not apply for admission. The law does not, and cannot rationally, impose an obligation to justify motives for an act that was never taken. Doing so would be akin to asking a person to state their reasons for entering a contract they never signed. As such, the Court should avoid this "patently absurd" interpretation which draws a distinction between the terms. *See United States v. Brown*, 333 U.S. 18, 27 (1948) (a court can reject the plain language interpretation of a statute if such an interpretation would lead to "patently absurd consequences"). While this may seem counterintuitive, "[w]hen a statute includes an explicit definition, [courts] must follow that definition." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up).

Although district courts have taken issue with ICE's interpretation of 8 U.S.C. § 1225, other courts have supported ICE's interpretation. In *Chavez v. Noem*, the Southern District of California explained that "[s]uch a reading of the statute comports with Congress' addition of § 1225(a)(1) by [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)]. Prior to IIRIRA, an 'anomaly' existed

'whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.'" *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228, at 4–5 (S.D. Cal. Sept. 24, 2025) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). The addition of § 1225(a)(1), thus, "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.'" *Torres*, 976 F.3d at 928; *see also Pipa-Aquise v. Bondi*, 2025 WL 2490657, at 2 (E.D. Va. Aug. 5, 2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at 2 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *but see, e.g.*, *Barrera*, 2025 WL 2690565.

As Petitioner is properly detained under 8 U.S.C. § 1225(b)(2), he cannot show that his detention violates his due process rights. "[D]ue process is flexible," and "calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also Landon v. Plasencia*, 459 U.S. 21, 34 (1982). As an applicant for admission detained under 8 U.S.C. § 1225(b)(2), he does not have due process rights beyond those provided in 8 U.S.C. § 1225. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). This "rests on fundamental propositions: the power to admit or exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Id.* at

139 (cleaned up).

Petitioner does not allege—nor can he—that the Agency failed to follow the procedures set forth in 8 U.S.C. § 1225. The record makes clear that he was given notice of the charges against him, he has access to counsel, and he will have an opportunity to be heard by an immigration judge on November 10, 2025. Accordingly, he cannot show that his detention violates any procedural due process rights.[7]

CONCLUSION

Because the Court lacks jurisdiction, the Court should dismiss the instant petition. Alternatively, the Court should deny the petition, because Hernandez-Balacaza is lawfully detained under 8 U.S.C. § 1225(b)(2) and the Agency has afforded him his due process rights.

Respectfully submitted,

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Timothy D. Thompson
Timothy D. Thompson
Jessica R. C. Malloy
Assistant United States Attorneys
717 W. Broadway
Louisville, KY 40202
(502) 582-6238
Timothy.Thompson@usdoj.gov
Jessica.Malloy@usdoj.gov
Counsel for the United States

[7] Alternatively, should the Court determine it maintains jurisdiction over this petition and make the legal determination that he is detained under 8 U.S.C. 1226, the Court should not grant Petitioner's request for release. Rather, the Court should require Petitioner to exhaust his administrative remedies and seek a bond determination from the Immigration Judge.

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2025, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system.

I further certify that on October 30, 2025, I emailed a copy of this pleading to the Christian County Jailer, who will provide hand delivery of this filing, the exhibits, and the proposed order to Petitioner. I also certify that on October 30, 2025, I emailed a copy of this filing, the exhibits, and the proposed order to marlen_m_19@hotmail.com. That email address was provided by Petitioner's former counsel, Hanna Kayali of the Victory Law Office.

/s/ Timothy D. Thompson
Timothy D. Thompson
Assistant United States Attorney