

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 25-24941-CIV-ALTONAGA**

**GUILLERMO VARGAS GOMEZ,**

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**

Respondents,<sup>1</sup> by and through the undersigned Assistant United States Attorney, and in compliance with the Court's Order to Show Cause entered on Tuesday, October 28, 2025 [D.E. 4], provide this Response to Petitioner, Guillermo Vargas Gomez's Petition for Writ of Habeas Corpus ("Petition"), filed on October 24, 2025 [D.E. 1], and for the reasons set forth below, request the Court dismiss the Petition.

**FACTUAL BACKGROUND**

The Petitioner, Guillermo Vargas Gomez (Petitioner), is a native and citizen of Guatemala. See Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated September

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<sup>1</sup> A writ of habeas corpus must "be directed to the person having custody of the person detained." See 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. As Petitioner is currently detained at Krome Service Processing Center ("Krome"), a detention facility in Miami, Florida, his immediate custodian is Assistant Field Office Director (AFOD) Charles Parra. Accordingly, the proper Respondent in the instant case is AFOD Parra, in his official capacity, and all other Respondents should be dismissed.

7, 2025. Petitioner entered the United States without inspection at an unknown place and unknown date. *Id.*

On or about August 19, 2018, Petitioner was arrested in Palm Beach County, Florida for the offense of Domestic Battery. (*State of Florida v. Guillermo V. Gomez*, Case No. 50-2018-MM-009468-AXXX-MB). *See* Exh. B, DV Arrest.

On August 20, 2018, Petitioner was encountered and taken into U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) custody. *See* Exh. A., Form I-213; Exh. C, Detention History; and Exh. D, Form I-286, Notice of Custody Determination dated August 20, 2018. At the time of his apprehension, Petitioner was served Form I-286, Notice of Custody Determination, where he was informed that he would remain in ERO's custody during the pendency of his removal proceedings. *See* Exh. D, Form I-286, Notice of Custody Determination. Petitioner was detained at the Krome Service Processing Center ("Krome"). *See* Exh. C, Detention History.

On August 20, 2018, Petitioner was placed in removal proceedings by the issuance of a Notice to Appear (NTA), based on his removability in violation of INA § 212(a)(6)(A)(i) as amended, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, and § 212(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. *See* Exh. E, NTA. Petitioner's removal proceedings are ongoing before the immigration court.

On August 27, 2018, Petitioner requested a bond redetermination hearing before the immigration judge. On September 10, 2018, the immigration judge declined to take action on Petitioner's bond redetermination request but stated that he would revisit the request at the next hearing. *See*, Exh. F., Immigration Judge's Order dated September 10, 2018. On the same date, after his bond hearing, Petitioner had a master calendar hearing where he admitted the allegations in his NTA and conceded the charges of removability under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). *See* Exh. G, Notice of Hearing for September 10, 2018. Petitioner was scheduled for another master calendar hearing and bond redetermination hearing on September 24, 2018. *See* Exh. H, Notice of Hearing for September 24, 2018.

On September 24, 2018, Petitioner renewed his request for bond redetermination. On the same date, the immigration judge granted bond in the amount of \$7,500. *See*, Exh. I., Immigration Judge's Order granting bond dated September 24, 2018. On or about September 27, 2018, ICE released Petitioner after he posted bond. *See*, Exh. C., Detention History.

On October 01, 2018, the immigration judge granted Petitioner's motion for a change venue to a non-detained docket. *See*, Exh. J, Immigration Judge Order granting a change of venue dated October 01, 2018.

On September 06, 2025, Petitioner was arrested in Palm Beach County, Florida for two counts of illegally harvesting saw palmetto berries and providing a false name to law enforcement officers. (*State of Florida v. Guillermo Vargasgomez*, Case No. 50-2025-CF-007199-AXXX-MB). *See* Exh. K, Sept. 6 arrest.

On September 07, 2025, Petitioner was taken into ICE custody. *See* Exh. A., Form I-213; Exh. C, Detention History; and Exh. L, Form I-200, Warrant for Arrest of Alien dated September 07, 2025.

On September 12, 2025, Petitioner was transferred to Krome. *See* Exh. C, Detention History. In addition, venue for Petitioner's removal proceedings was transferred to a detained docket at Krome. *See* Exh. M. Form I-830E, Notice to EOIR: Alien Address. Petitioner's next master calendar hearing is scheduled for November 06, 2025. He has not requested a bond re-determination hearing before the immigration court.

To date, Petitioner remains in ICE custody at Krome. *See* Exh. C, Detention History.

## **ARGUMENT**

### **I. PETITIONER'S PRIOR BOND WAS PROPERLY REVOKED**

Section 236 of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1226, provides, in pertinent part:

#### **(a) Arrest, Detention and Release**

On a warrant issued by the Attorney General,<sup>2</sup> an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General –

- (1) may continue to detain the arrested alien; and
- (2) may release the alien on—
  - (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
  - (B) conditional parole; but
- (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

#### **(b) Revocation of bond or parole**

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<sup>2</sup> Although the statute and regulations refer to the "Attorney General," these references should, in light of the Homeland Security Act of 2002, be read as references to the Secretary of Homeland Security. *See* Homeland Security Act § 471, 6 U.S.C. § 291 (abolishing the former Immigration and Naturalization Service); *id.* § 441, 6 U.S.C. § 251 (transferring immigration enforcement functions from the Department of Justice to the Department of Homeland Security); 8 U.S.C. § 1103(a)(1) ("The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens...").

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

*See* 8 U.S.C. § 1226(a)-(b) (emphasis added). ICE has authority to revoke an alien's bond when additional facts weighing against a release on bond come to light, as they did here. 8 U.S.C. § 236(b). The reasoning of *Matter of Sugay*, 17 I. & N. Dec. 637 (B.I.A. 1981) shows that ICE does not need to return to Immigration Court to revoke Petitioner's bond. In *Sugay*, information elicited at a deportation hearing subsequent to an immigration judge's reduction of bond hearing revealed concerning information justifying revocation of bond. The Board of Immigration Appeals in *Sugay* found meritless the argument that the district director was without authority to revoke bond after a bond redetermination hearing. *Id.* at 639. The court concluded that the alien still had recourse to "other administrative authority for release from custody" under then controlling provisions. *Id.* The court found persuasive that the "newly developed evidence brought out at the deportation hearing" (which included fleeing a murder conviction in his origin country, criminal activity in the United States, and weak ties) represented a "considerable change in circumstances" justifying the director's decision. *Id.* As in *Sugay*, there was a material change here between the time Petitioner was released on bond in September of 2018, and then upon discovery of Petitioner's further criminal activity.

Further, Petitioner has not exhausted his administrative remedies as it relates to his bond revocation and detention, and as such, any review by this Court would be improper. As of the date of this Response, Petitioner has not been before an Immigration Judge to challenge the revocation of his bond. Petitioner has ignored Section 236(e) of the INA, codified at 8 U.S.C. § 1226(e), which governs judicial review of detention matters. Section 236(e) provides:

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court

may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 1226(e). The plain language of Section 236(e) of the INA provides that a discretionary judgment to detain an alien or to release on bond may not be reviewed by the courts. Moreover, where Petitioner has failed to exhaust his administrative remedies, the Court should dismiss the petition as there has not been a review of his bond revocation under Section 236.

## **II. THE COURT SHOULD DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS AS PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225.<sup>3</sup>**

### **A. Applicants for admission are subject to detention under 8 U.S.C. § 1225.**

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . . ) . . . .” 8 U.S.C. § 1225(a)(1); see *Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”). Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress

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<sup>3</sup> Respondents recognize that this Court previously granted a Habeas Petition in *Alvarez Puga v. Assistant Field Office Director Krome, et al.*, No. 25-24535-CV-CMA (S.D. Fla. Oct. 15, 2025) rejecting similar arguments. However, Respondents maintain and preserve this argument for the record in light of evolving precedence on this issue.

has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . .”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted” (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or attempting to come into the United States at a port-of-entry [(“POE”)] . . . .” 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . .”). An applicant for admission seeking admission at a United States POE “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

Here, Petitioner did not present himself at a POE but instead entered the United States at an unknown location and date between POEs and without having been admitted after inspection

by an immigration officer. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under 8 U.S.C. § 1225(b)(1)<sup>4</sup> or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). Immigration officers have discretion to apply expedited removal under 8 U.S.C. § 1225(b)(1) or to initiate removal proceedings before an IJ under 8 U.S.C. § 1229a. *E-R-M- & L-R-M-*, 25 I&N Dec. at 524; *see also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

**B. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A).**

Applicants for admission who DHS places in § 1229a removal proceedings are subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens

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<sup>4</sup> Section 1225(b)(1) authorizes immigration officers to remove certain inadmissible aliens “from the United States without further hearing or review” if the immigration officer finds that the alien, “who is arriving in the United States or is described in [8 U.S.C. § 1225(b)(1)(A)(iii)] is inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)].” 8 U.S.C. § 1225(b)(1)(A)(i); *see* 8 C.F.R. § 235.3(b)(2)(i). If the Department of Homeland Security (DHS) wishes to pursue inadmissibility charges other than 8 U.S.C. § 1182(a)(6)(C) or (a)(7), DHS must place the alien in removal proceedings under 8 U.S.C. § 1229a. 8 C.F.R. § 235.3(b)(3). Additionally, an alien who was not inspected and admitted or paroled, but “who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with [8 U.S.C. § 1225(b)(2)] for a proceeding under [8 U.S.C. § 1229a].” *Id.* § 235.3(b)(1)(ii); *id.* § 1235.6(a)(1)(i) (providing that an immigration officer will issue and serve an NTA to an alien “[i]f, in accordance with the provisions of [8 U.S.C. § 1225(b)(2)(A)], the examining immigration officer detains an alien for a proceeding before an immigration judge under [8 U.S.C. § 1229a]”).

present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and aliens “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing before the IJ.

Applicants for admission who DHS places in 8 U.S.C. § 1229a removal proceedings are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287; see 8 U.S.C. § 1225(b)(2)(A), (B). Under 8 U.S.C. § 1225(b)(2)(A), “an alien who is an applicant for admission” “shall be detained for a proceeding 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) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings “shall be detained.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances,’ . . . .” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); see *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (“It is well 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),<sup>5</sup> finds no purchase in the statutory text. No provision within 8 U.S.C. § 1225(b)(2) refers to “arriving aliens,” or limits that paragraph to arriving aliens, as Congress intended for it to apply generally “in the 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).

On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present

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<sup>5</sup> 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))).

in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the 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.<sup>6</sup>

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 that “because he has 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 this 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 subsequent to *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

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<sup>6</sup> Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

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))).

Similarly, 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 also held—in an analogous context—that aliens present without admission and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the BIA held that an alien who illegally crossed into the United States between POEs and was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). *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”).<sup>7</sup> *Florida’s* conclusion

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<sup>7</sup> Though not binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., *Moore’s Federal Practice* § 134.02[1] [d], p. 134–26 (3d ed.2011)) (providing that “[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case”); *Evans v. Skolnik*, 997 F.3d 1060, 1067 (9th Cir. 2021) (same), the U.S. District Court for the Northern District of Florida’s decision is instructive here. *Florida* held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either 8 U.S.C. §§ 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention under 8 U.S.C. § 1225(b) meaningless.” *Id.*

“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 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, IJs do not have authority to redetermine the custody status of an alien present without admission.

Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed directly into removal proceedings under 8 U.S.C. § 1229a. He is therefore subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. “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 [IJ] 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 [IJ] 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).

Aliens present without admission in 8 U.S.C. § 1229a removal proceedings are both applicants for admission under 8 U.S.C. § 1225(a)(1) and aliens seeking admission under 8 U.S.C. § 1225(b)(2)(A). As discussed above, such aliens placed in removal proceedings under 8 U.S.C. § 1229a are applicants for admission as defined in 8 U.S.C. § 1225(a)(1), subject to detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for a bond redetermination hearing before the IJ. Such aliens are also considered “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). To be sure, “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Lemus*, 25 I&N Dec. at 743; *see Yajure Hurtado*, 29 I&N Dec. at 221; *Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that “an application for admission [i]s a continuing one”).

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated “applicants for admission” with aliens “seeking admission.” *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens “seeking admission” to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that “[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] ‘shall be detained for a [removal] proceeding’ . . . .” *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)). The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) “applies primarily to aliens *seeking entry* into the United States (‘*applicants for admission*’ in the language of the statute).” *Id.* at 297 (emphases added). The Court therefore

considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission.

Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to 8 U.S.C. § 1225(b) detention: “In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2).” *Id.* at 289. This was recently reiterated by the BIA in *Matter of Q. Li*, which held that for aliens “seeking admission into the United States who are placed directly in full removal proceedings, [8 U.S.C. § 1225(b)(2)(A)] . . . mandates detention ‘until removal proceedings have concluded.’” 29 I&N Dec. At 68 (quoting *Jennings*, 583 U.S. at 299).

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 under the current statutory scheme, 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 POEs. *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 POE 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 POE 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 POE.<sup>8</sup> *See id.* The legacy Immigration and Naturalization

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<sup>8</sup> 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 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*

Service (“INS”) regulations implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a POE 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.

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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*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 Oct. 30, 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

avored aliens who illegally entered without inspection over aliens arriving at POEs. A rule that treated an alien who enters the country illegally, such as Petitioner, more favorably than an alien detained after arriving at a POE would “create a perverse incentive to enter at an unlawful rather than a lawful location.” *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9<sup>th</sup> Cir. 2024) (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 IJ, 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]”).

Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ.

### **CONCLUSION**

For the foregoing reasons, the Respondents respectfully request that this Court deny the Petitioner’s Petition and dismiss this case in its entirety.

Respectfully Submitted,

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