UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-04127 (JRT/ECW)

Gertrudiz Bejarano Cruz,

Petitioner,

v.

Kandiyohi County Jail et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Gertrudiz Bejarano Cruz filed this petition for a writ of habeas corpus because he wants an immigration court to conduct a bond hearing in connection with his detention by the U.S. Immigration and Customs Enforcement ("ICE"). Bejarano Cruz initially filed the petition in the District of Massachusetts, but that court transferred the case to Minnesota in October 2025. Dkt. 5. This Court entered an Order to show cause a few days later, Dkt. 9, and Respondent Department of Homeland Security ("DHS") submits this Response to the petition.

The Court should dismiss Bejarano Cruz's habeas petition for lack of jurisdiction, because Congress has not empowered federal district courts to address the issues that he raises. On the merits, Bejarano Cruz is not entitled to habeas relief because his detention is mandatory—he is not eligible for bond or a bond hearing.

BACKGROUND

Respondent draws the following background from Bejarano Cruz's petition, the Declaration of Thomas P. Murphy ("Murphy Decl."), and the accompanying exhibits.

I. Factual and Procedural Background

Petitioner Bejarano Cruz is a citizen and national of Nicaragua. Murphy Decl. ¶ 4, Ex. A. On or about January 28, 2022, Cruz entered the United States near Hidalgo, Texas, without inspection. Murphy Decl. ¶ 5. He was served with a Notice to Appear Form I-862 and then released. Murphy Decl. ¶ 5. Three years later, ICE personnel served Bejarano Cruz with a Superseding Notice to Appear via mail. Murphy Decl. ¶ 6, Ex. B.

On September 28, 2025, ICE personnel in Minnesota encountered Bejarano Cruz at the Stearns County Jail, in response to a biometric match after his arrest for Driving While Intoxicated. Murphy Decl. ¶ 7. An officer identified himself to Bejarano Cruz and took him into custody. Murphy Decl. ¶ 7. On October 22, 2025, DHS served Bejarano Cruz with a Form I-261, charging removability under Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act. Murphy Decl. ¶ 8, Ex. C.

Bejarano Cruz's petition provides only limited details about his removal proceedings.[1] The gist of the petition is that Bejarano Cruz was denied a bond hearing by an immigration judge, who determined Bejarano Cruz was an "applicant for admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). Pet. ¶ 6(c). Bejarano Cruz disagrees with that determination and wants this Court to order the immigration judge to conduct a bond hearing. Pet. ¶ 15.

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[1] Bejarano Cruz says he is challenging a September 2025 decision of the Board of Immigration Appeals ("BIA"): *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Pet. ¶ 6(b). But Bejarano Cruz was not a party to that proceeding, and he lacks standing to directly challenge the BIA's decision. Respondent therefore construes Bejarano Cruz's petition to challenge the immigration judge's decision to apply *Hurtado* in this case rather than challenge *Hurtado* directly.

II. Legal Background

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens[2] as removable from the country, arrest those subject to removal, and detain them during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). "The rule has been clear for decades: '[d]etention during deportation proceedings [i]s . . . constitutionally valid.'" *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)), *rehearing by panel and en banc denied*, 2025 WL 837914 (8th Cir. Mar. 18, 2025); *see also Demore*, 538 U.S. at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). Indeed, removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

All of this explains why Congress enacted a multi-layered statutory framework for detaining noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, and 1231. Bejarano Cruz's petition in this case challenges which of two statutes governs his detention: § 1225 or § 1226.

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[2] The statutory term "alien" means any person not a citizen or national of the United States. 8 USC § 1101(a)(3). Respondents use the term "noncitizen" as the equivalent of the statutory term "alien." *See Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

A. Detention Under § 1225

Section 1225 governs inspection, the initial step in deciding who can enter the country and who can stay after entering. The statute states that all noncitizens "who are applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). And Congress specifically chose to deem any noncitizen "present in the United States who has not been admitted or who arrives in the United States" as an "applicant for admission" for purposes of 8 U.S.C. ch. 12. *Id.* § 1225(a)(1). Bejarano Cruz satisfies this definition and is therefore treated as an "applicant for admission" regardless of whether he wants to pursue legal status in the United States.

Section 1225 sets out the inspection procedures applicable to applicants for admission. Individuals "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Subsection (b)(1) applies to those "arriving in the United States" and "certain other"[3] noncitizens "initially determined to be inadmissible because of fraud, misrepresentation, or lack of valid documentation." Noncitizens falling under this provision are generally subject to expedited removal proceedings "without further hearing or review." *See* 8 U.S.C. § 1225(b)(1)(A)(i). But where the applicant "indicates an intention

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[3] The "certain other" noncitizens referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to a noncitizen who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that [he or she] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

to apply for asylum . . . or a fear of persecution," then immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If he or she does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he or she is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Subsection (b)(2) is broader, serving as a catchall provision for applicants who are not covered by § 1225(b)(1). Bejarano Cruz falls into this category: he is an applicant for admission, but he is not covered under (b)(1) because he is not "arriving" in the United States—he has been here for years. Subject to exceptions not applicable in this case, "if the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained for a removal proceeding." *Id.* § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or [noncitizens] arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" (citing *Jennings*, 583 U.S. at 299)). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Detention Under § 1226(a)

Section 1226 covers a different immigration process: arrest and detention of noncitizens pending removal. The statute provides that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). For noncitizens arrested under § 1226(a), the Attorney General and DHS have broad discretionary authority to detain a noncitizen during removal proceedings.[4] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions").

When a noncitizen is apprehended, a DHS officer makes an initial discretionary determination concerning release. 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the" noncitizen. 8 U.S.C. § 1226(a)(1). "To secure release, the [noncitizen] must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). If DHS releases the noncitizen, then the agency may

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[4] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

set a bond or condition for release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, then the noncitizen can request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for his ties to the United States and the possible risks of flight or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factor that must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

C. BIA Review of Custody Determinations

The BIA is an appellate body within the Executive Office for Immigration Review 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. *Id.* § 1003.1(a)(1). The BIA is "charged with the review of those

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

ARGUMENT

The parties' disagreement in this case comes down to whether Bejarano Cruz is detained pursuant to § 1225 or § 1226. ICE says it's § 1225, which governs the detention of noncitizens who are "applicants for admission." 8 U.S.C. § 1225(a)(3). Congress says so as well, expressly directing that noncitizens like Bejarano Cruz who get into the United States without being inspected "shall be deemed for purposes of this chapter an applicant for admission" and then detained pursuant to § 1225(b)(1) or § 1225(b)(2). *Id.* § 1225(a)(1). Under a straightforward reading of the statute, Bejarano Cruz is subject to mandatory detention under § 1225(b)(2). He is not entitled to a bond hearing, and the Court should deny his habeas petition.

I. Jurisdiction

As a threshold matter, this Court lacks jurisdiction over Bejarano Cruz's petition. Under § 1252(g), federal courts cannot review challenges—whether raised directly or roundaboutly—to the government's decision to commence removal proceedings against a

noncitizen. Bejarano Cruz's petition makes no mention of this issue, and he cannot overcome § 1252(g)'s jurisdiction-stripping provisions.

Congress has deprived courts of jurisdiction to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[5] Thus, unless authorized in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021). Section 1252(g) also bars district courts from hearing challenges to the *method* by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

This habeas petition stems from Bejarano Cruz's detention following a notice to appear that initiated removal proceedings. More precisely, Bejarano Cruz challenges ICE's

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[5] In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

choice to detain him pursuant to § 1225(b)(2) rather than § 1226. He expressly asks this Court to override ICE's choice and "order the Immigration Court to conduct a bond hearing." Pet. ¶ 15. That puts this petition in the crosshairs of § 1252(g). As other courts recognize, detention under these circumstances necessarily arises "from [the] decision to commence expedited removal proceedings." *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007); *see also Wang v. United States*, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Valencia-Mejia v. United States*, 2008 WL 4286979 (C.D. Cal. Sept. 15, 2008).

This Court recently acknowledged the rule as well, finding no jurisdiction to review a similar "1225/1226" habeas petition because the "[p]etitioner's removal proceedings commenced when he was issued a Notice to Appear in immigration court. By its plain terms, [§ 1252(g)] bars the Court from questioning ICE's discretionary decisions to commence removal and detain Petitioner during his removal proceedings." *S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025) (citations, alterations, and internal quotation marks omitted), *appeal voluntarily dismissed*, No. 25-2823 (8th Cir. Oct. 14, 2025); *but see, e.g.*, *Jose J.O.E. v. Bondi et al.*, 2025 WL 2466670, at *6-7 (D. Minn. Aug. 27, 2025) (finding jurisdiction to grant preliminary injunction).

As explained above, Bejarano Cruz was served with a Notice to Appear and Superseding Notice to Appear that initiated removal proceedings against him. The superseding notice explained that he was a noncitizen "present in the United States who has not been admitted or paroled." Murphy Decl. Ex. B, at 1. That is the exact category of noncitizen Congress deems to be an "applicant for admission" under § 1225. And Bejarano Cruz is being detained under § 1225(b)(2), while his removal proceedings are ongoing.

Indeed, the express purpose of subsection (b)(2) is to detain applicants for admission "***for a proceeding under section 1229a of this title***." (emphasis added) There is no detention under § 1225 without removal proceedings. *See Ali v. Sessions*, 2017 WL 6205789, at *2 (D. Minn. Dec. 7, 2017) ("Ali's claim clearly falls within the ambit of § 1252(g), as Ali's claim clearly 'arises from' the Secretary's decision to 'execute the removal order' by detaining Ali so that he can be removed to Somalia." (alterations omitted)). Because Bejarano Cruz's mandatory detention arises out of the commencement of removal proceedings against him, this Court lacks jurisdiction to review a habeas petition challenging that detention.

II. Merits

Turning to the merits, the Court should deny Bejarano Cruz's habeas petition because he is not entitled to a bond hearing. A plain reading of the statutes at issue confirms that Bejarano Cruz is subject to mandatory detention under § 1225(b)(2). That is the only reading that comports with the intent behind deeming noncitizens who arrive without admission or inspection as "applicants for admission. *See* 8 U.S.C. § 1225(a)(1).

A. Bejarano Cruz's Detention

Bejarano Cruz is asking to convert his § 1225(b)(2) detention into § 1226(a) detention. The Court should reject that request. Regardless of whether Bejarano Cruz thinks he is an "applicant for admission," the simple fact is that Congress deemed him to be one through § 1225(a)(1). As the record evidence shows, Bejarano Cruz meets the statutory criteria of a noncitizen "present in the United States who has not been admitted."

See Murphy Decl. ¶¶ 4-5, Ex. B. And under § 1225(b)(2), a noncitizen who is an applicant for admission and not subject to (b)(1) must be detained during removal proceedings.

In recent months, habeas petitioners like Bejarano Cruz have argued that there is no mandatory detention for a noncitizen who is an "applicant for admission" unless that person is arriving and seeking admission at the time he encounters an immigration officer. Although Bejarano Cruz does not make this specific argument in his petition, Respondent and the Court are obligated to liberally construes the petition because Bejarano Cruz is pro se. Nevertheless, basic canons of statutory interpretation foreclose reading § 1225 in a way that would lead to habeas relief in this case.

First, there is the plain text and meaning of the provisions at issue. Under § 1225(a)(1), an "applicant for admission" includes any noncitizen "present in the United States who has not been admitted or who arrives in the United States." Noncitizens who have been in the country for years fit within the first part of that definition, while noncitizens who appear at the border fit within the second part. Right away, that dooms the suggestion that § 1225 governs only arriving noncitizens.

Nor does § 1225(b)(2)'s use of the term "seeking admission" change the result. Section 1225(b)(2) does not create two subclasses of applicants for admission—one comprised of noncitizens who are seeking admission, and one comprise of noncitizens who aren't seeking admission. The phrases are merely two ways to say the same thing. Indeed, Congress took a similar approach in § 1225(a)(3), requiring inspection for all noncitizens "who are applicants for admission or otherwise seeking admission." Congress understood that being an applicant for admission is a way of "otherwise seeking admission," and

Congress required all noncitizens seeking admission (whether as applicants for admission or "otherwise") to be inspected under §1225(a)(5). To put this back into the context of § 1225(b)(2), Congress mandated detention for noncitizens who are applicants for admission (and thus, "seeking admission") if an immigration officer determines they are not clearly and beyond a doubt entitled to be admitted. Detention under § 1225(b)(2) has nothing to do with whether a noncitizen is arriving at the moment he is encountered; the trigger is "in the case of an [noncitizen] who is an ***applicant for admission***." 8 U.S.C. § 1225(b)(2) (emphasis added). As explained above, Congress deemed noncitizens present in the United States without admission to be "applicants for admission," choosing not to limit the definition to only arriving noncitizens. *Id.* § 1225(a)(1).

Second, there is the overall statutory structure. According to the Supreme Court, applicants for admission "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. The second category "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* This structure makes sense in the context of § 1225(b)'s detention provisions—(b)(1) applies to "arriving" or recently arrived noncitizens who must be detained pending *expedited* removal proceedings, and (b)(2) applies to all applicants who must be detained for a *non-expedited* removal proceeding under § 1229a. There is no third category of applicants for admission. Adopting the requirement that detention under (b)(2) is available only for arriving noncitizens who also seek admission would render the provision redundant to (b)(1).

Third, the mandatory detention provisions of § 1225 are more targeted than the discretionary detention provisions of § 1226. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to noncitizens "arrested and detained pending a decision" on removal. The statute says nothing about detaining applicants for admission. That is the role § 1225(b) plays, addressing detention for a narrower and specially defined category of noncitizens including those "present in the United States who ha[ve] not be admitted." *See* 8 U.S.C. § 1225(a)(1); *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of [noncitizens] as 'applicants for admission,' and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen]."). Because Bejarano Cruz falls within the specific detention authority of § 1225(b), the Court should not adopt a statutory construction that forces him into the general provisions of § 1226(a).

* * *

This Court would not be the first tribunal to uphold a noncitizen's mandatory detention under § 1225(b)(2) even when he has been present in the United States for years. A federal district court in Massachusetts recently confirmed that a noncitizen, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025). The *Pena*

court explained that this resulted in the "continued detention" of a noncitizen during removal proceedings as commanded by statute. *Id.* To borrow from *Pena*:

> The authority of ICE to detain aliens who are present in the country unlawfully derives from 8 U.S.C. §1225. That statute authorizes the detention of any alien who 1) is "an applicant for admission" to the country and 2) is "not clearly and beyond doubt entitled to be admitted." An alien is an "applicant for admission" if he has arrived to or is present in the country but has not yet been lawfully granted admission.

Pena, 2025 WL 2108913, at *1 (citations omitted).

The BIA has likewise recognized for decades that "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." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (original emphasis). That reasoning led to the BIA's decision in *Hurtado*, which resolved the exact issues Bejarano Cruz raises in his petition. Bejarano Cruz disagrees with *Hurtado*, but this Court should nevertheless adopt the BIA's analysis as persuasive given the board's expertise in administering and applying the immigration provisions at issue.

B. Congressional Intent

When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.*

(citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history is relevant here, nothing within it "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat noncitizens arriving at ports of entry worse than those who successfully enter the nation's interior without inspection. Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal [noncitizens] who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to [noncitizens] who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

Bejarano Cruz's habeas petition asks this Court for a statutory interpretation that ignores Congress's goal. His construction means that noncitizens like him who "crossed the border unlawfully" are in a better position than those who follow the rules and "present themselves for inspection at a port of entry." *Id.* This cannot be the law. Accepting Bejarano Cruz's position means that noncitizens who present at ports of entry are subject to

mandatory detention under § 1225, while those who evade detection and cross without inspection are rewarded with eligibility for a bond under § 1226(a).

C. Prior Agency Practices

In recent habeas petitions raising these issues, some petitioners have pointed to DHS and ICE's past approach to § 1225 and § 1226. Bejarano Cruz makes no such argument in his petition, but it would not help him in any event. Prior agency practices carry little weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432-33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). Here, "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up). Past agency practices that were inconsistent with that natural reading are irrelevant.

CONCLUSION

For the foregoing reasons, the Court should dismiss Bejarano Cruz's habeas for lack of jurisdiction or deny it on the merits. Furthermore, Respondent respectfully suggests that no evidentiary hearing is necessary. The relevant facts are not in dispute, and the only question is what legal conclusion the Court should draw from those facts. *See United States v. Winters*, 411 F.3d 967, 973 (8th Cir. 2005); *Wallace v. Lockhart*, 701 F.2d 719, 729-30 (8th Cir. 1983).

Dated: November 12, 2025

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