

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

NELSON ISAIAS RIVAS ALONSO

Petitioner,

Case No. 25-CV-01660-LA

v.

SAM OLSON, ET AL.,

Respondents.

**RESPONDENT'S MEMORANDUM IN OPPOSITION
TO PETITION FOR A WRIT OF HABEAS CORPUS**

Now comes the Respondents¹, by their undersigned counsel, who respectfully submit this memorandum in opposition to the Petition for a Writ of Habeas Corpus.

INTRODUCTION

Petitioner is a foreign national² who was never lawfully admitted to the United States but has been living here since 2013. Currently he is detained at the Dodge County Jail in Juneau, Wisconsin by U.S. Immigration and Customs Enforcement ("ICE") during the administrative removal process. ECF 1 at p. 1,4. Pursuant to the provisions of 8 U.S.C. § 1225(b)(2), Petitioner has not been given bond. *Id.* Petitioner now seeks habeas relief from his mandatory detention, alleging that 8 U.S.C. § 1225(b)(2)—providing for mandatory detention—is inapplicable to

¹ The United States Attorney's Office does not formally represent the petitioner's jail custodians, however the arguments set forth in this brief apply fully to them.

² The term "foreign national" is used in this memorandum, although the equivalent statutory term of "alien" is used within the Immigration and Nationality Act ("INA").

foreign nationals who have entered the United States without inspection and resided in this country for a period. ECF 1 at p. 2. Instead, Petitioner alleges that 8 U.S.C. § 1226(a), which generally entitles a foreign national to a bond hearing at the outset of their detention, is instead applicable. *Id.* The Court should deny the petition because Petitioner has been properly detained under 8 U.S.C. § 1225(b)(2).

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen of Honduras who entered the United States as a minor in February 2013. ECF 1 at 10. Upon entering the United States, the Department of Homeland Security (“DHS”) issued Petitioner a Notice to Appear for removal Proceedings for being “an alien present in the United States who has not been admitted or paroled.” *Id.* Petitioner did not appear at his immigration hearing resulting in an order that he be removed from the United States in absentia on January 27, 2015. *Id.* at 11. On August 12, 2025, Petitioner was detained by United States Immigration and Customs Enforcement (“ICE”) while appearing for a traffic court hearing. *Id.* at 12.

On October 28, 2025, Petitioner filed a Petition for Writ of Habeas Corpus with the Court claiming that the mandatory detention provisions of 8 U.S.C. § 1225(b)(2) do not apply to noncitizens who were residing in the United States at the time of apprehension. *Id.* at 14. Instead, Petitioner contends section 1226(a) should apply instead. (*Id.*) Petitioner does not further address what, if any weight, the Court should afford the fact that Petitioner was indeed apprehended upon entry and ordered to appear for removal prior to his most recent detention. The Court should deny the Petition for the reasons explained below. Respondents’ mandatory detention of Petitioner is in line with 8 U.S.C. § 1225(b)(2).

LEGAL BACKGROUND

All foreign nationals seeking admission into the United States must be inspected by immigration officials. 8 U.S.C. § 1225(a)(3). Foreign nationals who are “present in the United States without being admitted or paroled” are deemed “inadmissible” and subject to removal from the country. 8 U.S.C. § 1182(a)(6)(A)(i). A well-recognized facet of American immigration law is that immigration officials are authorized to arrest foreign nationals who are in the country illegally and detain them during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960) (explaining the “impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation”); *see also Denmore v. Kim*, 538 U.S. 510, 523 (2003) (explaining that detention during removal proceedings “is a constitutionally valid aspect of the process”).

Congress has enacted a statutory framework for the civil detention of foreign nationals during the administrative removal process under the INA. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The INA establishes rules governing when certain foreign nationals may be detained or removed, with different detention provisions applying to different categories of foreign nationals. *See id.*

The detention and removal of “applicants for admission” is governed 8 U.S.C. § 1225. This section defines an “applicant for admission” as any “alien present in the United States who has not been admitted *or* who arrives in the United States.” 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines “admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” *Id.* at § 1101(a)(13)(A). To have been “admitted” to the United States therefore requires that the foreign national must have lawfully entered the country “after inspection and authorization by an immigration officer.” 8

U.S.C. § 1101(a)(13)(A). An “applicant for admission” under 8 U.S.C. § 1225 is therefore a foreign national who either is either present in the United States who has not lawfully entered the country or one who is arriving. *See Dep’t of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a foreign national “who tries to enter the country illegally is treated as an ‘applicant for admission’”). As explained by 8 U.S.C. § 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible.

The Supreme Court has explained that “applicants for admission fall into one of two categories, those covered by section 1225(b)(1) and those covered by section 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830, 200 L.Ed.2d 122 (2018). Section 1225(b)(1) describes foreign nationals who are “determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.* at 287. Applicants for admission who fall under section 1225(b)(1) are subject to expedited removal proceedings and shall be detained until removal. 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV). Conversely, section 1225(b)(2) serves as more of a catchall provision whereby if an immigration officer determines that an applicant is not “clearly and beyond a doubt entitled to be admitted” then they “shall be detained” subject to removal proceedings under 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2) thus generally provides for detention, during removal proceedings, for foreign nationals who are applicants for admission but who do not fall within Section 1225(b)(1) (i.e., arriving foreign nationals, or others subject to expedited removal). *See id.* There are limited circumstances that exist wherein DHS may, in the exercise of discretion, temporarily release an applicant for admission on parole “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Together, these categories of “applicants for admission” describe many—but not all—such foreign national applicants.

The INA also provides procedures for the arrest, detention, and removal of foreign nationals who do not meet the criteria of an “applicant for admission.” Section 1226 applies to foreign nationals who fall outside the above categories. *See* 8 U.S.C. § 1226. Section 1226 also provides procedures for the detention and removal of these individuals. *Id.* Section 1226 is not limited to applicants for admission, but instead, broadly applies to foreign nationals who have been admitted but are now pending removal decisions. *Id.* Under section 1226, immigration officials are expressly authorized to release foreign nationals on bond pending the adjudication of their removal proceedings. 8 U.S.C. § 1226(a)(2)(A).³ As a result, DHS regulations provide for the bonded release of foreign nationals falling under this provision if they “would not pose a danger to property or persons” and are “likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

In sum, Section 1225(b) governs the detention of “applicants for admission”—which Congress has defined to include any foreign national “present in the United States who has not been admitted”—while Section 1226(a) governs the detention of foreign nationals who have been previously admitted but are subject to removal proceedings. Section 1225(b) does not provide for release on bond during the removal process, while Section 1226(a) does.

If a foreign national is not released by an immigration officer, they may request a custody redetermination by an immigration judge at any time before a final order of removal is issued. *See* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody hearing, the immigration judge may decide whether to continue detention or release the individual on bond or conditional parole, based on a variety of factors that account for their ties to the United States, and evaluate whether they pose a flight risk or danger to the community. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(3),

³ Under 8 U.S.C. § 1226(e), foreign nationals who have committed certain crimes or terroristic activities or who present special foreign-policy considerations are ineligible for release on bond and must remain in custody.

1003.19(f), 1003.38, 1236.1(d)(3); *Lopez v. Barr*, 458 F. Supp. 3d 171, 178 (W.D.N.Y. 2020) (“The determination of the Immigration Judge 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].”).

STANDARD OF REVIEW

A petition for a writ of habeas corpus challenges the legality or constitutionality of the Government’s restraint or imprisonment of a petitioner. 28 U.S.C. § 2241. When reviewing a habeas petition, the court may consider affidavits and documentary evidence, such as records from any underlying proceeding. *Amponsah v. Beth*, No. 18-cv-199, 2018 WL 2944546, at *2 (E.D. Wis. June 12, 2018) (citing 28 U.S.C. §§ 2246, 2247). The court is not required to hold a hearing when the petition and response present only issues of law. 28 U.S.C. § 2243; *Toe v. Schmidt*, No. 24-cv-13, 2024 WL 493289, at *2 (E.D. Wis. Jan. 18, 2024) (citing 28 U.S.C. § 2243). Petitioner bears the burden to demonstrate that his detention is unlawful. *Walker v. Johnston*, 312 U.S. 275, 268 (1941).

ARGUMENT

I. PETITIONER IS PROPERLY DETAINED UNDER 8 U.S.C. § 1225(B)(2).

The court should hold that petitioner is properly detained under § 1225(b)(2). Not only do the textual elements of the statute support Respondents’ position, but the structure and history of the text do as well. 8 U.S.C. § 1225(b) governs the inspection of applicants for admission. In accordance with 8 U.S.C. § 1225(b)(2)(A), “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a...” 8 U.S.C. § 1225(b)(2)(A).

The term “applicant for admission,” is defined by section 1225 as any foreign national

“present in the United States who has not been admitted...” *See* 8 U.S.C. § 1225(a)(1). Under the statutes plain terms, all unadmitted foreign nationals in the United States are therefore “applicants for admission,” regardless of extraneous factors such as proximity to the border, length of time present, or subjective intent to apply for admission. *See id.* It is a well-recognized principle that “[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term’s ordinary meaning.” *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Petitioner is a foreign national, who is present in the United States who has not been admitted and therefore an “applicant for admission” based on the plain text of the statute. *See* ECF 1 at 10–11.

Likewise, an immigration officer has determined that Petitioner is “seeking admission.” *See* 8 U.S.C. § 1225(b)(2)(A). In fact, Petitioner himself acknowledges these intentions by outlining plans to apply for a marriage petition and a Cancellation of Removal for Certain Non-Permanent Residents (EOIR-42B). *See* ECF 1 at 12, 13. Under the INA, “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). A foreign national cannot “admitted” into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021); *Gomez v. Lynch*, 831 F.3d 652, 658 (5th Cir. 2016) (framing “admission” as “an occurrence” where an individual “presents himself at an immigration checkpoint” and gains entry, with status, which “describes [an individual’s] type of permission to be present in the United States”). Nor can a foreign national remain in the United States without a lawful entry because he is removable by virtue of not entering lawfully. *See* 8 U.S.C. § 1182(a)(6). Therefore, when an immigration officer encounters and examines an applicant for admission who wishes to remain in the United States (as does Petitioner), he or she is

necessarily “seeking admission” within the meaning of 8 U.S.C. § 1225(b)(2)(A). Past unlawful physical entry has no bearing on this analysis. *See id.* The alternative to “seeking admission” would be that the foreign national withdraw any application for admission and immediately depart from the United States. 8 U.S.C. § 1225(a)(4). Petitioner has not departed willingly but instead submits a Petition before this Court outlining his desire to remain. The Court should therefore reject any argument that Petitioner is not “seeking admission” as it is not a reasonable interpretation of section 1225(b)(2).

Finally, the text outlines that Petitioner must be “detained for a” removal proceeding. 8 U.S.C. § 1225(b)(2)(A). In this case, Petitioner has been placed in full removal proceedings, as opposed to expedited proceedings, where he will receive the benefits of the procedures (motions, hearings, testimony, evidence, and appeals) provided in 8 U.S.C. § 1229a. *See* Declaration of Joseph Canella (“Canella Decl.”) at ¶ 7. As a result, Petitioner meets this element within § 1225(b)(2)(A)’s text. *See Caminetti v. United States*, 242 U.S. 470, 485 (1917) (“Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.”). Therefore, no further exercise in statutory interpretation is necessary or permissible in this case and the Court should conclude that Petitioner’s detention under § 1225(b)(2) is lawful.

Petitioner points to prior agency practice of applying § 1226(a) to foreign nationals like himself but that argument is unpersuasive. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the plain language of the statute and *not* prior practice controls. *cf. Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. *Loper Bright* recognized that courts often change precedents and “correct [their] own mistakes.” 603 U.S. at 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). Longstanding agency practice carries little, if any, weight

under *Loper Bright*.

Moreover, as discussed in the Petition, the Board of Immigration Appeals (“BIA”) recent precedent decision in *Yajure-Hurtado* includes thorough reasoning on the proper interpretation of § 1252(a)(2). 29 I. & N. Dec. at 221–22. In that case, the BIA analyzed the statutory text and legislative history of section 1225. *Id.* at 223–25. As *Yajure-Hurtado* explained, it was congressional intent that foreign nationals present in the United States without inspection be considered “seeking admission.” *Id.* at 224, 228. Rewarding those who entered unlawfully with bond hearings, while subjecting those who present themselves at the border to mandatory detention without bond hearings would be an “incongruous result” and unreasonable interpretation of the INA. *Id.*

Petitioner highlights several decisions in which federal courts have rejected Respondents’ proposed interpretation of 8 U.S.C. § 1225(b). ECF 1 at 8. Petitioner’s list of cases is not comprehensive, it does not include any precedential case, or even any case originating from the Seventh Circuit. Indeed, the pendulum of federal courts have begun to swing in Respondents’ favor on this issue. *See Rojas v. Olson*, Case No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (order denying habeas petition and ruling that petitioner was “applicant for admission” under Section 1225 where petitioner had lived in United States without authorization for seven years); *Oliveira v. Patterson*, No. 25-cv-01463, (W.L.A. Nov. 4, 2025); *Sandoval v. Acuna*, No. 25-cv-01467, (W.L.A. Oct. 31, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025).

This Court recently addressed a substantively identical case in *Cirrus Rojas v. Olson*. There, Rojas filed a habeas petition as a foreign national who lived in the United States for several

years without authorization. *See Rojas*, 2025 WL 3033967 at 1. Rojas similarly argued that his detention pending removal proceedings was unlawful under 8 U.S.C. § 1225(b)(2)(A) and should instead be governed by 8 U.S.C. § 1226. *Id.* Ultimately, this Court found that Rojas detention did not violate the Constitution or federal law. *Id.* at 6. More specifically, this Court determined that Respondents' position was correct and that U.S.C. § 1225(b)(2)(A) is applicable to unadmitted foreign nationals found inside the United States requiring detention throughout removal proceedings. *Id.* at 8. More specifically, this Court found that under the plain terms of Section 1225, petitioners, such as Rojas, are deemed "applicants for admission" because "[i]n the end, the Court concludes that it must follow the most natural reading of the statutory text." *Id.* at 13. "[R]ead 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). As a result. This Court should deny the Petition before it.

II. PETITIONER'S DETENTION DOES NOT VIOLATE THE DUE PROCESS CLAUSE.

Petitioner's detention during removal proceedings does not violate any due process rights because he admittedly never effected a lawful entry. *See Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that, despite nine years of physical presence on parole, a foreign national "was still in theory of law at the boundary line and had gained no foothold in the United States"). Without a lawful entry or admission, petitioner has no more due process rights than what Congress has chosen to provide. *See DHS v. Thuraissigiam*, 591 U.S. 103, 114, 139–40 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *United States ex rel. Krauff v.*

Shaughnessy, 338 U.S. 537, 544 (1950) (“Whatever the procedure authorized by Congress is, it is due process[.]”); *cf. also Licea-Gomez v. Pilliod*, 193 F. Supp. 577, 580 (N.D. Ill. 1960) (“Nor does the fact that the excluded alien is paroled into the country . . . change his status or enlarge his rights. He is still subject to the statutes governing exclusion and has no greater claim to due process than if he was held at the border.”). Here, petitioner has been afforded those processes through his removal proceedings under 8 U.S.C. § 1229a(b)(4).

Congress created a detention system where applicants for admission, including those who entered the country unlawfully, are detained for removal proceedings under § 1225 and foreign nationals who have been admitted to the country are detained under § 1226. The Court has confirmed that statutes denying bond during removal proceedings do not violate due process when such proceedings have a definite end point. *See Denmore*, 538 U.S. at 531 (“Detention during removal proceedings is a constitutionally permissible part of that process.”); *see also Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (even after foreign national is ordered removed and detention may be indefinite, detaining him for up to 180 days is presumptively valid). As the Court summarized in *Cirrus Rojas*:

Given the caselaw and the well-defined procedures governing (and limiting) Cirrus Rojas’s detention, the Court rejects his due process challenge. Consistent with *Zadvydas* and *Denmore*, Cirrus Rojas has a recognizable liberty interest in connection with his pre-removal detention. But as *Denmore* held, and *Parra* explains, that liberty interest is limited. Cirrus Rojas is an alien who was found in the United States without authorization and is subject to removal proceedings. Consistent with federal law, he is being provided with the opportunity to oppose removal and using that opportunity to pursue an asylum claim. As explained in *Parra*, Cirrus Rojas’s liberty interest is limited, and he has the key to his release in his own pocket; he can choose to accept removal to his homeland under Section 1229a.

Cirrus Rojas, 2025 WL 3033967, at *12 (citing *Parra*, 172 F.3d at 958).

In this regard, petitioner has not submitted any evidence that he is being detained for any purpose beyond the resolution of his removal proceedings, or that he might be detained any longer

than it might take to carry out his removal to Honduras if he loses before the immigration judge. *Cf. Chaviano v. Bondi*, No. 25-cv-22451, 2025 WL 1744349, at *8 (S.D. Fla. June 23, 2025) (noting how hearings before an immigration court and opportunities for credible-fear interviews, together with a one-month detention, was not a sufficient basis for finding a due process violation, particularly where “detention, even for far longer periods, pending immigration proceedings” did not violate due process). Instead, Petitioner acknowledges that he entered the country without inspection and evaded detention for over a decade. *See* ECF 1 at 10-11. Petitioner has been given notice of the charges against him, has access to counsel, may attend hearings with an immigration judge, has requested bond with an immigration judge, and has the right to appeal the denial of his request for bond. *See* Canella Decl.; 8 U.S.C. § 1362. In fact, petitioner’s only plausible challenge to his detention is that he is detained under the wrong statute, which, even if true, would make his detention unlawful, but not unconstitutional. *See Al-Shabee v. Gonzales*, 188 F. App’x 333, 339 (6th Cir. 2006) (a petitioner’s “disagreement with the Immigration Judge’s order, however, does not constitute a violation of the Due Process Clause”).

Petitioner fails to show that his detention while he awaits the conclusion of his removal proceedings violates due process. *Denmore*, 538 U.S. at 531 (no due process violation in detaining foreign national pending removal proceedings); *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999) (“The private interest here is not liberty in the abstract, but liberty *in the United States* by someone no longer entitled to remain in this country but eligible to live at liberty in his native land[.]”). Conversely, the United States has “a powerful interest in maintaining the detention in order to ensure that removal actually occurs.” *Parra*, 172 F.3d at 958. As a result, the Court should deny any relief sought pursuant to argument that petitioner’s right to due process has been violated.

CONCLUSION

Based on the foregoing reasons, Petitioner is properly detained under 8 U.S.C. § 1225(b). Accordingly, Respondents respectfully request that the Court should deny Petitioner's habeas petition.

Respectfully submitted this 13th day of November 2025.

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