UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

IDALIA RIOS MARTINEZ	)	**CIVIL ACTION NO: 6:25-cv-01652**
	)	
VERSUS	)	**JUDGE SUMMERHAYS**
	)	
KRISTI NOEM, *ET AL.*	)	**MAGISTRATE JUDGE WHITEHURST**
	)	

RESPONSE IN OPPOSITION TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

On behalf of Respondents,
Brian Acuna, Kristi Noem and Pamela Bondi

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

FEDERAL STATUTES

FEDERAL RULES

OTHER AUTHORITIES

INTRODUCTION

The Petitioner is a Mexican national who illegally entered the United States at an unknown location along the United States/Mexico border and without inspection. Consequently, based on a plain reading of the applicable statutes, she is deemed an applicant for admission, 8 U.S.C. § 1225(a)(1), and detention is mandatory for the duration of her removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner is currently detained at the South Louisiana ICE Processing Center and is in removal proceedings before an immigration court. Petitioner is seeking release from ICE detention claiming that (1) her detention violates the Immigration and Nationality Act and related bond regulations, (2) her detention violates the Due Process Clause of the Fifth Amendment, and (3) her detention violates the Administrative Procedure Act. These arguments have no merit, and the Petition should be dismissed.[1]

STATEMENT OF THE ISSUE

The argument in this case is not whether the Petitioner was present in the United States or at the border at the time she was detained for removal. Instead, the core issue in this case is what the proper detention authority and due process requirements are for an alien who is present in the United States without being admitted. The Board of Immigration Appeals for the Executive Office for Immigration Review ("BIA") specifically addressed this issue in *Matter of Yajure Hurtado*, finding in a precedential decision that an immigration judge lacks authority to hold a bond hearing for an alien

[1] Although Petitioner's pleading is styled "Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief", the complaint does not present any argument as to why injunctive relief would be proper or necessary in this case. Accordingly, Respondents have not specifically addressed the factors necessary to obtain injunctive relief under *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008), but reserve the right to do so in the event the Court determines such argument would be necessary to address the Petitioner's claims for release from detention in this habeas matter.

who is present in the United States without having been admitted pursuant to section 235 of the Immigration and Nationality Act, 8 U.S.C. § 1225 ("INA"). 29 I&N Dec. 216 (BIA Sept. 5, 2025). Accordingly, lower immigration courts have been denying bond for this category of aliens under this precedential decision and 8 U.S.C. § 1225, which requires mandatory detention for all unadmitted aliens regardless of whether they are placed in expedited removal under § 1225(b)(1) or in standard removal proceedings under § 1225(b)(2). These aliens have subsequently been petitioning district courts for habeas relief citing the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), as support for the proposition that if the unadmitted, undocumented alien is physically "present in" the United States, they are no longer an "applicant for admission" under § 1225 and can only be detained pursuant to the provisions of § 1226, which they claim requires an individualized bond hearing. For the reasons explained below, (the same reasons adopted by other district courts in this district and others),[2] the *Jennings* decision does not support this proposition, and this proposition is in contravention of the clear and unambiguous provisions of the INA and its legislative history.

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[2] See, *Oliveira v. Patterson et al.*, 25-cv-1463, 2025 WL 3095972 (W.D. La. 11/4/25) (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Barrios Sandoval v. Acuna*, 25-cv-1467, 2025 WL 3048926 (W.D. La. 10/31/25) (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Garibay-Robledo v. Noem*, 25-cv-177, 2025 WL 2638672 (N.D. Tex. 10/24/25) (denying TRO to inadmissible alien present in the country for over 30 years without admission for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Lopez v. Trump*, 25-cv-00526, 2025 WL 2780351 (D. Neb. 9/30/25) (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez v. Noem*, 25-cv-02325, 2025 WL 2730228 (S.D. Cal. 9/24/25) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde*, 25-cv-11983, 2025 WL 2108913 (D. Mass. 7/28/25) (Denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)); *Kum v. Ross, et al*, No. 25-cv-451, ECF 15, (W.D. La. Nov. 6, 2025)(adopting report and recommendation, ECF 14, Oct. 22, 2025) ("Kum's detention is mandatory and lawful under §1225(b)).

STATEMENT OF FACTS

The Petitioner crossed into the United States at an unknown location and at an unknown time, although she alleges that she crossed at the United States/Mexico border in 2002 without inspection. ECF No. 1, ¶ 2. She was admittedly not admitted or paroled after inspection by an immigration officer. ECF No. 1, ¶¶ 1 & 27. In September 2025, Petitioner was detained for driving without a license and was placed in ICE custody. ECF No. 1, ¶ 2. On September 25, 2025, Department of Homeland Security (DHS) served Petitioner with a Notice to Appear charging her with removability under INA sections 212(a)(6)(A)(i) and 212(a)(7)(a)(i)(I).[3] Exhibit A, Notice to Appear. That Notice placed Petitioner in removal proceedings pursuant to INA section 240 and ordered Petitioner to appear on October 8, 2025, for an immigration hearing. *Id.* Petitioner currently has a master calendar hearing scheduled for December 5, 2025. ECF No. 1, ¶ 2.

Based upon the foregoing, Petitioner is currently in removal proceedings before an immigration court under section 240 of the INA, 8 U.S.C. § 1229a, because she is an alien present in the United States without being admitted or paroled pursuant to INA, or who arrived in the U.S. at a time and place other than as designated by the Attorney General under section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and also because she is an undocumented alien under section 212(a)(7)(A)(i)(I), 8 U.S.C. 1182(a)(7)(A)(i)(I). Ex. 1.

LEGAL FRAMEWORK

In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and

[3] INA section 212(a)(6)(A)(i) refers to 8 U.S.C. 1182(a)(6)(A)(i) and generally provides that an alien who arrives in the U.S. at any time or place other than as designated by the Attorney General or is present in the U.S. without admission or parole, is inadmissible. INA section 212(a)(7)(A)(i)(I) refers to 8 U.S.C. 1182(a)(7)(A)(i)(I) and generally provides that an undocumented alien is inadmissible.

in preparation for execution of removal orders. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The interplay between these statutes is at issue here.

A. Inspection and Detention under INA Section 235, 8 U.S.C. § 1225

1. § 1225(a) – Definition of Applicant for Admission

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. at 286. 8 U.S.C. § 1225 governs inspection, the initial step in this process, *id.*, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled "ALIENS TREATED AS APPLICANTS FOR ADMISSION"—dictates who "shall be deemed for purposes of this chapter an applicant for admission," defining that term to encompass *both* an alien "present in the United States who has not been admitted *or* [one] who arrives in the United States . . .". *Id.* § 1225(a)(1) (emphasis added). The "or" in this statute is disjunctive and indicates that these are two different types of aliens both of which are considered an applicant for admission: (1) present and not admitted, or (2) arriving in the U.S.

Likewise, INA 212(a)(6)(A)(i), 8 USC 1182(a)(6)(A)(i), entitled "Illegal entrants and immigration violators" declares that an "alien present in the United States without being admitted or paroled, *or* who arrives in the United States at any time or place other than as designated by the Attorney General" is inadmissible. (emphasis added). Accordingly, under the INA, there are two types of applicants for admission, 8 U.S.C. § 1225(a)(1), and two types of "illegal entrants" who are inadmissible, 8 U.S.C. § 1182(a)(6)(A)(i). These defining statutes are terms of art and are not mutually exclusive. An alien can be an applicant for admission who is not an inadmissible illegal entrant by arriving at a designated port of entry and presenting for inspection. Conversely, an alien can be an applicant for admission who is also an inadmissible illegal entrant in one of two ways: (1) by arriving

in the United States at a time and place other than a designated port of entry, ***or*** (2) by being present in the United States without being admitted or paroled. *See* 8 U.S.C. §§ 1225(a)(1) and 1182(a)(6)(A)(i).

2. § 1225(b) – Inspection Procedures

Paragraph (b) of § 1225 governs the inspection procedures applicable to *all* applicants for admission. They "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. § 1225(b)(1) applies to those "arriving in the United States" and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i), (iii). The "certain other aliens" referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply 1225(b)(1)'s expedited removal to an alien 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 the alien 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 multiple years.

Applicants for admission falling under the specifications of subsection (b)(1) are generally subject to expedited removal "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). That includes those applicants for admission who cannot show that they have been present in the United States for at least two years prior to the determination of inadmissibility. Importantly, the two-year physical presence requirement does *not* excuse an applicant from mandatory detention under § 1225, as will be explained below, but only determines whether the applicant will be subject to expedited removal under 1225(b)(1) if they have not been present in the United States for more than two years, or subject to standard removal proceedings under § 1229a if they have been present (albeit not admitted or paroled) for more than two years. Additionally, where the applicant "indicates an intention

to apply for asylum . . . or a fear of persecution," 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 the applicant 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 subject to mandatory detention until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i) and (B)(iii)(IV) (stating that the alien "shall be detained"). An applicant for admission is further subject to mandatory detention while undergoing the § 1225(b)(1)(B) asylum procedures until a final determination is made. *Id.*

§ 1225(b)(2) is "broader" than (b)(1), serving as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1). *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a [removal] proceeding under § 1229a." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens. . .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). The key distinction between sections (b)(1) and (b)(2) of 1225 is that only section (b)(1) provides for expedited removal, while section (b)(2) provides for standard removal proceedings under § 1229a. However, both sections require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the conclusion of § 1229a removal proceedings.

While an applicant is subject to the mandatory detention provisions of § 1225(b), 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). However, the INA remains very clear that

even "such parole of such alien shall not be regarded as an admission of the alien" and when the purpose of parole, in the discretion of DHS, has been served, the alien should be returned to custody and treated as any other applicant for admission. *Id.*

B. Apprehension and Detention under INA 236, 8 U.S.C. § 1226

8 U.S.C. § 1226 applies to "aliens", which means *any* person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). "Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more... classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," it provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien 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).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the alien."

[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—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens 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).

8 U.S.C. § 1226(a)(1). "To secure release, the alien 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); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If, following apprehension under § 1226(a), DHS determines that an alien should remain detained during the pendency of his or her removal proceedings, the alien may 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 then conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for ties to the United States and risks of flight or danger to the community. *See In re 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].").

§ 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest pursuant to § 1226(a), whether to detain or release an alien during his or her 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). Moreover, § 1226(c) specifies a class of aliens who cannot be released and shall be detained in custody during the pendency of removal

proceedings (i.e. the determination of whether the alien is to be removed from the United States), encompassing aliens who have committed certain criminal acts or acts of terror.[5]

C. Review of custody determinations at the BIA

The BIA is an appellate body within the Executive Office for Immigration Review (EOIR). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 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 Immigration Judge custody determinations. 8 C.F.R. §§ 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).

ARGUMENT

I. Petitioner is properly detained under 8 U.S.C. §1225(b)(2) and is not entitled to release.

Petitioner claims that she is not properly detained under INA § 235(b), 8 U.S.C. § 1225(b), and can only be detained, if at all, pursuant to 8 U.S.C. § 1226(a). ECF No. 1, ¶¶ 55-57. However, Petitioner is very clearly properly detained under § 1225(b)(2) because he unambiguously meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of

[5] The Laken Riley Act amended §1226 to add subsection (c). However, the Laken Riley Act's addition of § 1226(c) does not invalidate §1225(b)'s mandatory detention requirement merely because it could appear redundant. As the Supreme Court has acknowledged, "redundancies are common in statutory drafting … redundance in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute…" *Barton v. Barr*, 590 U.S. 222, 229 (2020). Even Justice Scalia acknowledged in *Reading Law*, that "Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach." Importantly, the statutes at issue were "implemented at different times and intended to address different issues. The INA is a complex set of legal provisions created at different times and modified over a series of years. Where these provisions impact one another, they cannot be read in a vacuum." *Matter of Hurtado*, 29 I&N Dec. 216, *227 (BIA 2025).

the statute support Respondents' interpretation. The applicable detention statute, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous. Including its definitions, this statute is only three sentences long. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A). It states:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, 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 of this title.

8 U.S.C. § 1225(b)(2)(A).[6] The first relevant term is "applicant for admission," which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any alien (a person who is not a citizen or national of the United States, 8 U.S.C. § 1101(a)(3)) "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, under its plain terms, all unadmitted foreign nationals in the United States are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. *See id.* While this may seem like a counterintuitive way to define an "applicant for admission," "[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). Thus, under the plain text of the statute, Petitioner is unambiguously an "applicant for admission" because she is a foreign national, she was not admitted, and she was present in the United States when she was apprehended by ICE. ECF No. 1, ¶¶ 4 & 27 (stating Petitioner is from Mexico and crossed the United States border without admission).

The next relevant portion of the statute is whether an examining immigration officer determined that Petitioner was "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines

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[6] The first clause referencing subparagraphs (B) and (C) is not relevant to this case except to note that (B) specifically excludes aliens to whom paragraph 12(b)(1) applies from the provisions of paragraph 12(b)(2). *See*, 8 U.S.C. §1225(b)(2)(B)(ii).

"admission" 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)[7]. Therefore, the inquiry is whether an immigration officer determined that Petitioner was seeking a "lawful entry." *See id.* A foreign national's past unlawful physical entry has no bearing on this analysis. *See id.* This element of "lawful entry" is important here for two reasons. First, a foreign national cannot legally be 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)(recognizing that "admission" means "lawful entry"). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he or she did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A). Indeed, the charges of removal against Petitioner are based on her unlawful entry due to being present without being admitted or paroled, or arriving in the United States at any time or place other than as designated by the Attorney General. Exhibit A. So, unless Petitioner obtains a lawful admission in the future, she will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), and 1227(a)(1)(A).

The INA provides two examples of foreign nationals who have not yet been admitted but are not "seeking admission." The first is someone who withdraws his or her application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). This means even in removal

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[7] § 1101(a)(13) also contains subsection (B), which addresses humanitarian parole and specifies that these parolees will not be considered admitted, and subsection (C), which addresses categories of certain aliens present in the United States are nonetheless regarded as "seeking an admission" and includes an alien "attempting to enter at a time and place other than as designated by immigration officers OR *has not been admitted to the United States after inspection and authorization by an immigration officer*". See, § 8 U.S.C. 1101(a)(13)(C)(vi) (emphasis added). This subsection further reiterates a clear statutory intent that aliens present in the United States without inspection and admission are considered to be "seeking admission".

proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the United States for more than two years who have not been lawfully admitted and who do not agree to immediately depart are seeking admission and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is *not* the same as an expedited removal under § 1225(b)(1). Instead, under the clear provisions of §1225(b)(2), removal proceedings must proceed as outlined under § 1229a. Accordingly, Petitioner is still "seeking admission" under § 1225(b)(2) because she has not agreed to depart, and she has not yet conceded her removability or allowed her removal proceedings to play out – she wants to be admitted via her removal proceedings. *See Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (discussing how "[a]n 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)" is deemed "an applicant for admission").

The court should find that Petitioner is still "seeking admission" to the United States. Petitioner has not agreed to immediately depart, which logically means that she must be seeking to remain in this country, which requires an "admission" (i.e. a "lawful entry" as discussed above). Petitioner's interpretation that she is not an applicant for admission under § 1225 defies the legal presumption created by the definition of "applicant for admission," which characterizes *all* unlawfully present foreign nationals as applying for admission until they are either removed or successfully obtain a lawful entry. *See* 8 U.S.C. § 1225(a)(1). Further, treating Petitioner as if she is no longer "seeking admission" would reward him for violating the law, provide him, with better treatment than a foreign national who lawfully presented themselves for inspection at a port of entry, and encourage others to enter unlawfully - defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a "perverse incentive to enter at an unlawful rather than a lawful location"). Accordingly, Petitioner's interpretation of "seeking

admission" under § 1225 and the perverse result its application would achieve is patently unreasonable.

The final textual requirement here is that Petitioner "*shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). As explained above, Petitioner is not in expedited removal at all. She has instead been placed in full removal proceedings where he will receive the benefits of the procedures in immigration court (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. Petitioner in fact states in her pleading that she has a master calendar hearing scheduled for December 5, 2025. ECF No. 1, ¶ 2. Therefore, she also meets this textual element within § 1225(b)(2)(A) because he is in 1229a removal proceedings and is thus subject to mandatory detention during the pendency of these proceedings.

In sum, the plain text of § 1225(b)(2) unambiguously applies to Petitioner. "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." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies even where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g.*, *Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts "must adopt the plain meaning of a statute, however severe the consequences"). 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.

II. Petitioner's argument that § 1226 (and not § 1225) should apply to her detention is flawed.

1. § 1225 applies to an alien that is present in the United States who has not been admitted.

Petitioner's argument that being present in the United States limits the scope of § 1225(b)(2)(A) is unpersuasive. The BIA has long recognized 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). Petitioner "provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA [8 U.S.C. § 1226(a)]." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

Statutory language "is known by the company it keeps." *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.

2. *Jennings* does not mandate that all aliens "present in the U.S." can only be subject to detention under INA 236, 8 U.S.C. § 1226.

Petitioner cites the Supreme Court's decision in *Jennings* as support for the proposition that if the unadmitted, undocumented alien is physically "present in" the United States, they are no longer an applicant for admission under § 1225 and can only be detained pursuant to the provisions of § 1226, which they claim requires an individualized bond hearing. Pet. ¶¶ 42-43. However, this is not at all what the Supreme Court held in *Jennings*, and the Court's analysis actually supports the Respondents' position that Petitioner is an "applicant for admission" and, thus, subject to mandatory detention under § 1225(b)(2) during the pendency of her removal proceedings.

In *Jennings*, the Supreme Court reviewed the Ninth Circuit's imposition of a six-month time limit on any detention under §§ 1225(b) and 1226 and periodic bond hearings under § 1226(a). *Jennings*, at 292. The Supreme Court concluded that detentions pursuant to §§ 1225(b)(1) and 1225(b)(2) do not contain six-month time limitations and instead, the duration of mandatory detention extends

through the completion of the removal proceedings. *Id.* at 302. Similarly, the Court concluded that detentions pursuant § 1226(c) do not have a six-month time limit and § 1226(a) does not require periodic reviews of the bond determinations. *Id.* at 305-306.

Unfortunately, when describing §§ 1225 and 1226 in *Jennings*, the Supreme Court used imprecise language which suggests a dichotomy, that § 1225 is for recently arriving aliens (i.e. entering at the border) and § 1226 is for aliens who reside here (i.e. are "present within the United States"), without regard to the alien's admission status. *Id.* at 289. This dichotomy, however, is not supported by the clear language of the INA. The *Jennings* Court likely did not foresee the confusion its language could create because *Jennings* involved an alien who was previously granted lawful permanent residence status. *Id.* at 291. As such, he was not an inadmissible alien nor an applicant for admission. *See* 8 U.S.C. § 1182 and §1225(a)(1). Instead, he was an admitted alien. *See*, 8 U.S.C. § 1101(a)(13)(A) and (C).

In contrast, an inadmissible alien who entered illegally and not at a designated port of entry (like the Petitioner in this case) remains an "applicant for admission" and is not entitled to the same rights under the INA as those afforded to admitted aliens. Further, an inadmissible alien should clearly not be entitled to *more* rights than an alien entering lawfully at a port of entry to seek admission. Inadmissible aliens who are present in the United States are intended by Congress to be treated as applicants for admission, which the *Jennings* Court recognized:

> Under . . . 8 U.S.C. § 1225, an alien who "arrives in the United States," *or* "is present" in this country but "has not been admitted," is treated as an applicant for admission."

Id. at 287. (emphasis added). The presence of the conjunction "or" in the statute clearly indicates *two* categories of aliens who are considered "applicants for admission" in § 1225. The *Jennings* Court did not focus on the second category of aliens, those present in the country but not admitted, such as the Petitioner in this case. And the *Jennings* Court did not hold that an alien entering illegally and being apprehended within the interior of the United States renders § 1225 inapplicable such that the

Petitioner should avoid mandatory detention during the pendency of removal proceedings and be eligible for a bond hearing under § 1226.

3. Applying § 1225 to "applicants for admission" who are present in the U.S. does not render the provisions of § 1226 superfluous.

The argument that DHS's interpretation of § 1225 would render § 1226 unnecessary is incorrect. The crux of this dispute is one of statutory interpretation. § 1225(b) provides for mandatory detention of any alien "who is an applicant for admission." And "applicants for admission" specifically includes all aliens present in the United States who have not been admitted or who arrive in the United States. 8 U.S.C. § 1225(a)(1). Accordingly, whether an alien is inside the U.S. at the time of encounter with an ICE official does not matter if that alien entered at an unknown location, successfully evaded U.S. Border Patrol for some unknown amount of time and effected an unlawful entry into the interior of the United States. That alien nonetheless remains an "applicant for admission" who is subject to mandatory detention once apprehended unless paroled by the Department of Homeland Security ("DHS") in its sole discretion.

Notwithstanding the mandatory detention provisions of both § 1225(b)(1) and (b)(2), § 1226 can clearly apply to another category of aliens that are not covered under § 1225 - those who are present in the United States and are *not* applicants for admission. Although already admitted, therefore not an applicant for admission within the definition of § 1225(a)(1), an alien may still become removable for certain reasons, subjecting them to "arrest and detention pending a decision on whether the alien is to be removed from the United States", which is a proper application of § 1226. This was precisely the case with the petitioner in *Jennings*, who was not an applicant for admission under § 1225 because he was a lawful permanent resident. Instead, that petitioner was detained pursuant to § 1226 while the government sought to remove him after a 2004 criminal conviction which called his lawful permanent residence status into question. Accordingly, he was potentially entitled to a bond hearing

under the provisions of § 1226 and he was not subject to mandatory detention under 1225(b)(2) for the reason that he was not an "applicant for admission". The *Jennings* decision was not based on the fact that the petitioner was "present in the United States," despite the imprecise language used by the Supreme Court in its decision.

A careful reading of § 1225 clearly shows that it only pertains to applicants for admission – which does not encompass every category of alien that may be present in the United States. § 1225 prescribes the specific procedures for inspection by the immigration officers to determine whether to admit or remove applicants for admission (i.e. whether under § 1229a proceedings or by expedited removal) and requires mandatory detention during that process. Conversely, § 1226 applies to "aliens", which means *any* person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). Therefore, § 1226 does not exclude applicants for admission and authorizes arrest, revocation of bond and parole, and detention. § 1226 also does not permit discretionary detention or bond for those aliens who are also "applicants for admission" under § 1225(a), because that would be inconsistent with the obvious statutory intent to detain aliens who are applicants for admission on a non-discretionary basis as set forth in §§ 1225(b)(1)(B)(iii)(IV) and (b)(2)(A).[8]

4. Congress intended to *mandate* detention for all applicants for admission under § 1225.

Congress provided that mandatory detention pending removal proceedings is the norm—not the exception—for those who enter the country without inspection and who lack documents sufficient for admission or entry. *See* 8 U.S.C. § 1225(b)(2). And for good reason: detention pending removal proceedings is the historical norm and, in this context, reflects the reality that aliens have avoided inspection by sneaking into the United States. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong*

[8] Even if there is overlap, that is not a basis to render 1225(b) null and void. *See*, *Barton v. Barr*, 590 U.S. 222, 239 (2020).

*Wing v. United State*s, 163 U.S. 228, 235 (1896)). When Congress enacted 8 U.S.C. § 1225(b) as part of the immigration reforms of 1996, it determined that treating all unadmitted aliens similarly in terms of detention and removal eliminated unintended consequences and perverse incentives that pervaded the prior system, under which undocumented aliens who entered without inspection received more procedural protections—including the ability to seek release on bond—than those who presented themselves for inspection at ports of entry. In essence, the pre-1996 law favored those that entered the U.S. illegally and clandestinely, which Congress sought to end. Through mandatory detention of applicants for admission, Congress further ensured that the Executive Branch can give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531.

The legislative history is instructive. As explained by the BIA in *Yajure Hurtado*, 29 I&N 216 (BIA Sep. 5, 2025), before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IRRIRA"), the INA provided for inspection of only immigrants arriving at a port of entry. *Id.* at 222. Aliens in the United States were put into removal proceedings but were bond eligible. *Id.* at 223.

> Congress acted, in part, to remedy the "unintended and undesirable consequence" of having created a statutory scheme where aliens who entered without inspection "could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," including the right to request release on bond, while aliens who had "actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings,'" and were subject to mandatory custody. (Citing *Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). . . Thus, after the 1996 enactment of the IIRIRA, aliens who enter the United States without inspection or admission are "applicants for admission" under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), and subject to the inspection, detention, and removal procedures of section 235(b) of the INA.

Id. at 223.

This history supports the result required by the plain language of the statute itself. Indeed, other district courts, including courts from within this district, have recognized that mandatory detention of inadmissible aliens for the duration of their removal proceedings is required by 1225(b)(2). *Oliveira,* 2025 WL 3095972 (denying habeas relief to inadmissible alien present in the country without admission

or parole for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Barrios Sandoval,* 2025 WL 3048926 (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Garibay-Robledo,* 2025 WL 2638672 (denying TRO to inadmissible alien present in the country for over 30 years without admission for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Lopez,* 2025 WL 2780351 (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez,* 2025 WL 2730228) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena,* 2025 WL 2108913 (denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)); *Kum,* 25-cv-451, [ECF 14], report and recommendation to deny and dismiss habeas petition (W.D. La. 10/22/25), adopted (W.D. La. 11/06/25).

Petitioner argues that the plain language of § 1225(b)(2) does not matter, because the government has in the past treated certain aliens who enter without inspection but who are arrested in the interior as subject to discretionary detention under § 1226(a). But this prior practice has no bearing on the legal issues here, as detention is mandated by the plain language of the statute, and Congress's mandate is supported by eminently reasonable grounds. After all, where (as here) "the words of a statute are unambiguous, this first step of the interpretive inquiry [*i.e.*, construing the statutory text] is [the court's] last." *Rotkiske v. Klemm*, 589 U.S. 8, 13 (2019) (citation omitted).

Respondents are aware of prior rulings in this District and others rejecting this argument in similar cases, but Respondents respectfully maintain that this Petitioner is nonetheless an applicant for admission subject to mandatory detention under § 1225(b)(2) in light of the legislative history, the reasoning outlined by the Supreme Court in *Jennings*, and the aforementioned decisions of sister courts supporting this proper application of the INA. The contrary decisions of other districts cited by

Petitioner are not binding on this Court and should not override the clear congressional mandate of detention under the provisions of 8 U.S.C. §1225(b). Additionally, the two contrary decisions from this District cited by Petitioner (*Kostak and Lopez-Santos*, discussed below) were rendered before or very shortly after the *Hurtado* BIA decision was published and those courts did not enjoy the full discussion of the legislative history and statutory analysis of the *Hurtado* decision when rendering these decisions on an expedited basis. Additionally, and most importantly, these decisions did not order release of the detainee and only ordered the government to provide a bond hearing to the detainee in immigration court within a specified time frame under § 1226(a). Accordingly, the Court should not order release under the reasoning of those decisions.

First, the decision in *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) was rendered by the court prior to the BIA's issuance of its precedential decision in *Hurtado* and, in that case, the court did not order release of the detainee. Instead, in considering a motion for temporary restraining order seeking release from detention and finding (without a full statutory analysis) a 'likelihood of success on the merits' of the petitioner's claim that she was not subject to mandatory detention under § 1225(b)(2)(A), the court ordered the government to provide petitioner with an individualized bond hearing. The court noted a statement by the Supreme Court in *Jennings* that "the decision of who may enter and who may remain 'generally begins at the Nation's borders and ports of entry, where the [g]overnment must determine whether an alien seeking to enter the country is admissible.'". *Id.* at *3 (citing *Jennings*, 583 U.S. at 287). The court further noted that *Jennings* stated that § 1225(b) "applies primarily to aliens seeking entry into the United States." *Id.* Finally, the court noted that § 1226 "applies to aliens already present in the United States". *Id.* (citing *Jennings*, at 303). *Id.* While these observations are not wrong, this analysis stopped short and failed to observe that § 1225 and §1226 are not mutually exclusive (as explained above), and that while a determination of admission "generally begins at the border", those cases do not encompass the situation where an alien

crossed the border illegally and eluded immigration authorities while unlawfully present in the United States for some amount of time. Therefore, while § 1225 primarily applies to aliens seeking entry into the United States (i.e. "applicants for admission"), that term does not exclude those applicants that have crossed the border illegally and are now present in the United States unlawfully without admission or parole.

Further, in *Lopez-Santos v. Noem, et al*, No. 25-cv-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025), the district court granted the habeas petition in part only six days after the *Hurtado* decision was rendered by the BIA. In this case, the court found that the petitioner was not subject to mandatory detention and expedited removal under § 1225 and ordered the government to provide a bond hearing before an immigration judge. Like the Petitioner in the instant case, the petitioner in *Lopez-Santos* entered the United States on an unknown date and at an unknown location without admission or parole. In its decision, the court focused mainly on the issue of expedited removal, accepting petitioner's statement that he had resided continuously in the United States for the past twenty years and noting that expedited removal is not available under § 1225 if the applicant has been physically present in the United States for the 2-year period immediately prior to the date of determination of admissibility, citing provisions of § 1225(b)(1). *Id.* at *4. The court then further stated that because the Notice to Appear from ICE did not designate the petitioner for expedited removal but instead designated him for standard removal proceedings under § 240 of the INA, the petitioner should not be subject to mandatory detention under § 1225. *Id.* at *5. Therefore, without any discussion of § 1225(b)(2) at all, the court found that the petitioner was detained under § 1226(a) and must be afforded a bond hearing. While the court correctly noted that section 240 of the INA, which corresponds to 8 U.S.C. § 1229a removal proceedings, is not expedited removal under § 1225(b)(1), the court also stopped its statutory analysis too soon when it failed to consider the provisions of §1225(b)(2)(A) which, as explained above, specifically provide for standard removal proceedings of an applicant for

admission under § 1229a, while still mandating detention during those proceedings. Therefore, while the petitioner in *Lopez-Santos* was not subject to expedited removal, he was still subject to mandatory detention under § 1225(b)(2)(A) and should not have been found eligible for a bond hearing under § 1226(a).

Additionally, Respondents note another decision from this district that was rendered very recently, *Carlos Ventura Martinez v. Trump, et al*, No. 25-cv-01445, 2025 WL 2642278 (W.D. La. Oct. 22, 2025). In that case, the immigration judge granted bond to the petitioner, but that was later overturned and vacated by the BIA in accordance with the precedential ruling in *Hurtado*. *Id.* at *1. The district court in *Martinez* granted Petitioner a temporary restraining order and preliminary injunction ordering that the immigration judge's initial bond be reinstated under § 1226. *Id.* at *5. In its opinion, the district court found that, "as an alien already present in the United States," he was subject to § 1226 and not § 1225. *Id.* The district court focused on the term "arriving" in § 1225(a) and found that "present" only invoked § 1226. *Id.* However, this analysis failed to consider that an "alien" as described in § 1226 is not the same as an "applicant for admission" under § 1225. Instead, "alien" and "applicant for admission" are two distinctly defined terms in the INA, as discussed above, and § 1225 specifically applies to the class of aliens who are treated as "applicants for admission":

> **(1) Aliens treated as applicants for admission**
>
> 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….) shall be deemed for purposes of this chapter an applicant for admission.

§ 1225(a)(1) (emphasis added). The statute specifically defines two categories of an "applicant for admission": (1) those who are present without admission, OR (2) those who arrive in the United States. Therefore, either subset of aliens can be treated as applicants for admission whether they are arriving or are already present without admission. The district court in *Martinez* did not consider the second category of alien who is also an applicant for admission when it ruled that § 1226 must apply

simply because the petitioner was already present in the United States and no longer arriving.[9] The petitioner in that case, just like the Petitioner in this case, was present *without admission*, making them both applicants for admission who are subject to mandatory detention under § 1225(b), specifically (b)(2) since the petitioners were both present in the United States without admission for longer than two years, which means that they are both subject to § 1229a removal proceedings (and not expedited removal under § 1225(b)(1)).

Conversely, recent decisions of sister courts are instructive and support the Respondents application of § 1225(b)(2) mandatory detention to this Petitioner. In its very detailed analysis, the court in *Barrios Sandoval v. Acuna*, et al No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025), held that a petitioner allegedly present in the country for over nine years, but without admission or parole, was lawfully detained under § 1225(b)(2) and therefore not entitled to a bond hearing.[10] This holding was mirrored in *Oliveria v. Patterson, et al,* No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025), involving a petitioner allegedly present in the country for over 3 years, but without admission or parole. The court in *Barrios Sandoval* and *Oliveria* engaged in a multi-part statutory analysis of 8 U.S.C. §§ 1225 and 1226 including: (1) who qualifies as an "applicant for admission" under § 1225(a), (2) whether detention is required for all "applicants for admission" under §1225(b), (3) what class of aliens (not "applicants for admission") §1226 applies to, and (4) why the proper application of 1225(b) mandatory detention does not render § 1226 superfluous. *Id.* The court noted the distinction between §1225(b)(1) and (b)(2), where (b)(1) sets forth expedited removal procedures and (b)(2) is for "standard" removal proceedings under § 1229a. *Id.* Importantly though, the court found that *both* sections require

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[9] Appeals are pending in both the *Kostak* and *Martinez* cases. *See Kostak v. Trump*, 25-30620 (5th Cir. 10/30/25) and *Martinez v. Trump,* 25-30621 (5th Cir. 10/30/25).

[10] Although argued in the briefing, the court did not consider jurisdiction stating, "[b]ecause the Court determines that the Petitioner is not entitled to habeas relief under the facts presented, the Court declines to determine the applicability of the jurisdiction-stripping provisions of the INA cited by the Respondents." *Barrios Sandoval*, 2025 WL 3048926 at *2; *Oliveira,* 2025 WL 3095972.

mandatory detention until the conclusion of the inspection process – whether by expedited removal or the conclusion of the § 1229a removal proceedings. *Id.* The court gave an example of how § 1226 can be properly applied, as the Supreme Court did in *Jennings v. Rodriguez,* 538 U.S. 281 (2018). Finally, the court explained how its analysis differed from that of other district court decisions that have rejected Respondents' argument that § 1225(b) mandatory detention applies to petitioners like the ones in both *Barrios Sandoval* and *Oliveira*, as well as the instant case, where that petitioner is present without admission, regardless of the time that alien has resided unlawfully in the United States.

Similarly, the district court in *Kum v. Ross, et al*, No. 25-cv-451, ECF 15, (W.D. La. Nov. 6, 2025)(adopting report and recommendation, ECF 14, Oct. 22, 2025), correctly applied the definition of "applicant for admission" to a petitioner who was present in the United States without having been admitted or paroled under § 1225(a)(1). The court noted, as Respondents aver in this case, that an applicant for admission is subject to mandatory detention pending full removal proceedings under § 1225(b)(2)(A), also citing *Jennings*, 583 U.S. at 299, and 8 C.F.R. § 235.3(b)(3) (a noncitizen placed into Section 1229a removal proceedings in lieu of expedited removal proceedings under Section 1225(b)(1) "shall be detained" pursuant to 8 U.S.C. § 1225(b)(2)). The court further noted that an applicant for admission under § 1225(b) has no statutory entitlement to a bond hearing, citing both *Thuraissigiam,* 591 U.S. at 111, and *Jennings*, 583 U.S. at 302. Accordingly, the court denied and dismissed the habeas petition in that matter.

Further, a district court in Northern District of Texas recently denied an injunction and request for a bond hearing under § 1226, noting the very real distinction between an "arriving alien" and an "applicant for admission" with respect to the application of § 1225(b) and its mandatory detention requirement. *See Garibay-Robledo,* 2025 WL 2638672. The *Robledo* opinion states:

> To be sure, an arriving alien is an applicant for admission: Subsection 1225(a)(1) defines applicant for admission, in part, as "[a]n alien . . . who arrives in the United States." But the same provision *also* defines an applicant for admission as "[a]n alien

> present in the United States who has not been admitted." *Id.* This is not the most intuitive definition of the term, but it is the one that Congress enacted into law.

Id. at *4. (emphasis added). The court conducted a review of legislative history and further noted that by defining "applicants for admission" broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally. *Id.* at *6-7.

Accordingly, this Court should follow the reasoning of the *Oliveira, Barrios Sandoval, Kum* and *Garibay-Robledo* decisions and decline to extend the holdings of *Kostak, Martinez,* and *Lopez-Santos* to the facts of this case. Instead, the Court should find that Petitioner is properly detained under § 1225(b)(2) and subject to mandatory detention as an applicant for admission during the pendency of her removal proceedings under § 1229a.

III. Alternatively, the Court should require administrative exhaustion before ordering a bond hearing.

When Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs" whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* Here, the court may require that Petitioner obtain a denial of bond in immigration court and at least attempt to appeal any denial of bond to the BIA, before considering the merits of her claims. *See, e.g.*, *Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 876–77 (E.D. Wis. 2007).

As alluded to above, Congress has provided a robust administrative hearing and appeal process for foreign nationals in removal proceedings that include evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). Requiring Petitioner to exhaust that process before seeking review in federal court may reduce the number of similar cases filed in this court, even though Petitioner may ultimately be unable to obtain the relief she seeks through the administrative

process based on the recent decision by the BIA in *Hurtado*. However, the BIA's decision from approximately one month ago may not be the last word in that matter. *Yajure Hurtado* could still possibly be subject to en banc review. *See* 8 C.F.R. § 1003.1(a)(5). In addition, the Attorney General may exercise her "referral and review power" in that matter, which allows her to review and overrule decisions made by the BIA. *See* 8 U.S.C. § 1103(g)(2) ("The Attorney General shall . . . review such administrative determinations in immigration proceedings . . . as the Attorney General determines to be necessary."); 8 C.F.R. § 1003.1(h)(1) ("The [BIA] shall refer to the Attorney General for review of its decision all cases that . . . (i) The Attorney General directs the [BIA] to refer to h[er]."). Petitioner's arguments regarding the futility of the administrative process completely ignore these potential pathways for further review and disregard the importance of allowing the administrative appeal judges to apply their special subject matter expertise in interpreting the extensive provisions of the INA.

Therefore, before the request to order a bond hearing is ripe for consideration by this Court, Petitioner should exhaust her administrative remedies by proceeding with her hearing in immigration court and, if denied a bond hearing, seeking appellate review of these administrative decisions to the BIA, which would be her right under the applicable provisions of the INA.

IV. Petitioner's mandatory detention does not violate due process under the Fifth Amendment.

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Petitioner. See 8 U.S.C. § 1225(a)(1). And Congress directed that aliens like Petitioner shall be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States

law. That is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with this power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (aliens already ordered removed and awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as unnecessarily restrictive in other contexts, such as during the pendency of removal proceedings under § 1225(b) and § 1226(c). This was an express holding of *Jennings,* stating "In Parts III-A and III-B [of the opinion], we hold that, subject only to express exceptions, §§ 1225(b) and 1226(c) authorize detention until the end of applicable proceedings." *Jennings,* at 296-97. The Supreme Court in *Jennings* explained in detail why the *Zadvydas* opinion does

not provide authority to graft a time limit onto the text of § 1225(b) (as opposed to § 1231(a)(6), which authorizes the detention of aliens who have already been removed from the country), noting that § 1225(b) uses the word "shall" instead of "may", specifies a clear time frame for detention during the pendency of proceedings, and provides an express exception to detention, which signals that there are no other circumstances under which a § 1225 detainee may be released. *Id.* at 298-300.

Further, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings. 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. *Id.* at 512. In light of Congress's interest in dealing with illegal immigration by keeping aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns. *See id.* generally.

Likewise, Petitioner's temporary detention pending her removal proceedings does not violate due process. She has only been detained since September 2025 as her process unfolds. Specifically, her next hearing before the immigration judge is set for December 5, 2025. Resolution one way or another is undoubtedly forthcoming. Petitioner's ample available process in her current removal proceedings demonstrates no lack of procedural due process—nor any deprivation of liberty "sufficiently outrageous" required to establish a substantive due process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023). Here, Petitioner is detained for the limited purpose of removal proceedings. Petitioner's detention is not punitive or for other reasons than to address her removability from the United States. Her detention under § 1225(b)(2) is also not indefinite, as it will end upon the conclusion of her removal proceedings, which are moving expeditiously. A period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. The *Jennings* Court,

while examining a constitutional challenge, refused to put a six-month deadline on a 1225(b)(2) detention. *Jennings*, 583 U.S. at 302. Moreover, as the court noted in its report and recommendation in *Kum,* even lengthy detention is mandatory and lawful under § 1225(b). *Kum,* No. 25-cv-00451 at *4, n. 2 (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional).

In his habeas corpus challenge in *Demore*, the alien did not contest Congress' general authority to remove criminal aliens from the United States. Nor did he argue that he was not "deportable" within the meaning of § 1226(c). Rather, the alien in that case argued that the Government may not, consistent with the Due Process Clause of the Fifth Amendment, detain him for the period necessary for his removal proceedings. Similar to the alien in *Demore*, Petitioner is alleging that she should not be detained during the pendency of her removal proceedings. However, Congress made the decision to detain her during the removal proceedings which is a "constitutionally permissible part of that process." *See Demore,* 538 U.S. at 531.

V. This Court lacks jurisdiction over this matter.

Even though Respondents can successfully oppose the merits of Petitioner's challenge to DHS's detention classification under the INA as argued above, the District Court lacks jurisdiction to even consider the merits of this matter under 8 U.S.C. §§ 1252 and 8 U.S.C. §1226(e), for the reasons set forth below.

1. 8 U.S.C. § 1252 Channels All Challenges to Removal Orders and Removal Proceedings to the Courts of Appeals

Petitioner's petition and requests for relief are a collateral attack on her removal proceedings dressed up as a request for a bond hearing. Congress, however, has foreclosed exactly this type of challenge. Multiple provisions of 8 U.S.C. § 1252 strip this Court of jurisdiction over Petitioner's

request, and Petitioner cannot sidestep that the substance of her claims are barred by § 1252 by restyling them as something else.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Here, Congress has spoken with unmistakable clarity. § 1252(b)(9) mandates that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order." It further specifies that "no court shall have jurisdiction, by habeas corpus . . . or by any other provision of law," to review such questions except in that context. 8 U.S.C. § 1252(b)(9). § 1252(g) is equally categorical, barring jurisdiction over "any cause or claim" arising from the government's decision to "commence proceedings," "adjudicate cases," or "execute removal orders." 8 U.S.C. § 1252(g).

Petitioner's claims fall squarely within these prohibitions. She is not challenging the conditions of confinement or the length of detention—issues courts have occasionally recognized as falling outside § 1252(b)(9)'s sweep. *See Jennings*, 583 U.S. at 294 (plurality opinion).[11] Instead, she asks this Court to second-guess DHS's decision to commence proceedings under § 1229a and whether and how an immigration judge, subject to precedential decisions of the BIA, grants bond in the midst of these ongoing removal proceedings. That is precisely the sort of interference Congress barred—multiple times over—in § 1252. As *Jennings* explained, habeas cannot be used to "challeng[e] the

[11] As Justice Thomas explained in his concurrence in *Jennings*, "Section 1252(b)(9) is a 'general jurisdictional limitation' that applies to 'all claims arising from deportation proceedings' and the 'many decisions or actions that may be part of the deportation process. 'Detaining an alien falls within this definition—indeed, this Court has described detention during removal proceedings as an 'aspect of the deportation process.' . . . The phrase 'any action taken . . . to remove an alien from the United States' must at least cover congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien's removal." *Jennings*, 583 U.S. at 317-18 (Thomas, J., concurring in part and concurring in the judgment) (citations omitted).

decision to detain them in the first place." *Id.* The Supreme Court has been explicit: detention pending removal is a "specification of the decision to 'commence proceedings' which . . . § 1252(g) covers." *Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999).

§ 1252(b)(9) is extraordinarily (and intentionally) broad, channeling "all questions of law and fact" that "arise from" removal actions into the petition-for-review process. *Id.* at 9. Courts may retain jurisdiction to hear claims entirely independent of removal, but not those—like Petitioner's—that strike at the heart of the government's authority to detain during removal proceedings. Her challenge is inextricably bound up with the adjudication of her case before the immigration court and therefore falls directly within the statute's jurisdiction-stripping provisions. In short, Petitioner is inviting this Court to disregard Congress's carefully constructed jurisdictional framework and insert itself into ongoing removal proceedings. Congress could not have been clearer: questions about whether, when and under what circumstances an alien is detained during removal proceedings must be addressed through the statutory review process, not through habeas collateral attacks. Because §§ 1252(b)(9) and 1252(g) categorically bar this Court from intervening, denial of the motion for preliminary injunction and dismissal for lack of jurisdiction is mandatory.

2. 1226(e) precludes judicial review of the Attorney General's decisions regarding Petitioner's detention or release.

If this Court finds that Petitioner can only be detained pursuant to the provisions of INA 236(a), which is denied by Respondents, then this Court must likewise find that it is precluded from reviewing any decision by the Attorney General to detain petitioner and to deny bond. 8 U.S.C. § 1226(e) provides:

> **(e) Judicial Review**. The Attorney General's discretionary judgment regarding the application of [Section 1226] shall not be subject to review. No court may set aside any action or decision by the Attorney General under [Section 1226] regarding detention of any alien or the revocation or denial of bond or parole.

Accordingly, § 1226(e) precludes an alien from challenging discretionary judgment or decision by the Attorney General regarding his or her detention or release. *See Jennings*, 138 S. Ct. at 841 (*citing Demore v. Kim*, 538 U.S. 510, 516 (2003)).

The Supreme Court noted in *Jennings* that 1226(e) does not preclude challenges to the statutory framework that permits the alien's detention without bail. *Id.* Therefore, the Supreme Court ultimately found that 1226(e) did not preclude judicial review in that case. *Id.* However, this case is distinguishable from *Jennings* such that judicial review should be precluded under 1226(e) for the reasons outlined by the Supreme Court in both *Jennings* and *Demore.* In *Jennings*, the petitioner represented a class of aliens who were challenging the extent of the Government's detention authority under the INA, whether INA 235(b) and 236(a) contained an implicit limit on the length of detention allowable while removal proceedings are ongoing, and, if that challenge failed, whether the entire statutory scheme was unconstitutional under the Fifth Amendment. *Id.* In this case, Petitioner is not challenging the constitutionality of the statutory provisions of the INA as enacted by Congress in sections 235 and 236. Instead, Petitioner is directly challenging the Attorney General's decision to detain her under section 235 and the Immigration Judge's denial of a section 236(a) bond hearing. Accordingly, these challenges fall squarely into the types of challenges clearly precluded by 1226(e) and this Court should decline to review them.

3. The Court lacks jurisdiction over an APA claim.

In her prayer for relief from the Court and without further elaboration on this issue, Petitioner seeks a declaration that her detention violates the Administrative Procedure Act. ECF No. 1, Prayer for Relief. Regardless of the vagueness of this request, this argument fails based on the jurisdictional requirements under the APA.

A final agency action is required for APA review. 5 U.S.C. § 706. An action is "final" when it (1) "mark[s] the consummation of the agency's decision-making process," and (2) is one "from which

legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citation omitted). "Final agency action 'is a term of art that does not include all [agency] conduct such as, for example, constructing a building, operating a program, or performing a contract,' but instead refers to an 'agency's [final] determination of rights and obligations whether by rule, order, license, sanction, relief, or similar action.'" *Nat'l Veterans Legal Servs. Program v. United States DOD*, 990 F.3d 834, 839 (4th Cir. 2021) *quoting Vill. of Bald Head Island v. U.S. Army Corps of Eng'rs*, 714 F.3d 186, 193 (4th Cir. 2013) (*citing Bennett*, 520 U.S. at 177-78). A challenged action fails the first prong if it is "of a merely tentative or interlocutory nature" and does not express an agency's "unequivocal position." *Holistic Candlers and Consumer's Ass'n v. FDA*, 664 F.3d 940, 943 (D.C. Cir. 2012) (citations omitted). A non-final action contemplates further administrative consideration or modification prior to the agency's adjudication of rights or imposition of obligations. *See id.* at 945.

Petitioner challenges her detention by ICE, which is not a final agency action that is reviewable by this Court under the APA. Instead, the challenge is squarely barred by 8 U.S.C. § 1252(g)—as the Supreme Court held in a remarkably similar case. In § 1252(g), Congress clearly provided that "no court" has jurisdiction over any cause or claim "arising from the decision or action ... to commence proceedings, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. By its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to commence removal proceedings. *See Reno v. AADC*, 525 U.S. 471, 482 (1999). In short, the decision as to the method by which removal proceedings are commenced, which is the genesis of Petitioner's detention, is a discretionary one that is not reviewable by a district court under §1252(g). *See id.* at 487.

Crucially, the Supreme Court has held that a prior version of § 1252(g) barred claims similar to those brought here. See *AADC*, 525 U.S. at 487-92. In a case in which aliens alleged that the "INS

was selectively enforcing the immigration laws against them in violation of their First and Fifth Amendment rights," *id.* at 473-74, and the Government admitted "that the alleged First Amendment activity was the basis for selecting the individuals for adverse action," *id.* at 488 n.10, the Supreme Court nonetheless held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)," *id.* at 487*; see Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908-09 (6th Cir. 2020). *AADC* confirms that an alien cannot avoid the reach of §1252(g) by alleging continued detention while executing a removal order in violation of his or her constitutional rights. *See, e.g., AADC*, 525 U.S. at 487-92; *Ragbir v. Homan*, 923 F.3d 53, 73 (2d Cir. 2019); *Zundel v. Gonzales*, 230 F. App'x 468, 475 (6th Cir. 2007); *Humphries v. Various Fed. U.S. INS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999).

The APA simply offers no relief in this case. The INA provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action" to remove an alien are "available only in judicial review of a final order [of removal]." 8 U.S.C. § 1252(b)(9) (emphasis added). Thus, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals." 8 U.S.C. §1252(a)(5), (b)(2).

Additionally, the allegations of the Petition do not clearly identify what mandatory internal policies ICE has allegedly violated. Petitioner alleges she is eligible for a bond hearing under § 1226. However, DHS did not deny Petitioner a bond hearing arbitrarily and capriciously, as would be required to find a violation of the APA. Regardless, there is no final decision regarding Petitioner's removal, since she has her next hearing in immigration court on December 5, 2025. Accordingly, the APA simply does not apply to this matter.

4. The Court lacks jurisdiction to grant declaratory relief.

In her prayer for relief from the Court, Petitioner seeks several declarations as follows: (1) that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, (2) that Petitioner's detention violates the INA, and specifically 8 U.S.C. § 1226(a), and (3) that Petitioner's detention violates the Administrative Procedure Act. ECF No. 1, Prayer for Relief. The Petition makes no mention of the authority under which the Court can grant such declaratory relief. However, as set forth above, the INA specifically precludes judicial review of a claim by an alien arising from the decision or action of the Attorney General to commence proceedings (in this case under § 1225(b)(2)(A), which requires mandatory detention) or to adjudicate cases (in this case, to hold removal proceedings in accordance with § 1229a). Therefore, to the extent Petitioner is seeking declaratory relief, this Court lacks subject matter jurisdiction to grant it.

Petitioner challenges her detention by ICE, which is squarely barred by 8 U.S.C. § 1252(g)—as the Supreme Court held in a remarkably similar case. In § 1252(g), Congress clearly provided that "no court" has jurisdiction over any cause or claim "arising from the decision or action ... to commence proceedings, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. By its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to commence removal proceedings. *See Reno v. AADC*, 525 U.S. 471, 482 (1999). In short, the decision as to the method by which removal proceedings are commenced, which is the genesis of Petitioner's detention, and the adjudication of her immigration proceedings is a discretionary one that is not reviewable by a district court under §1252(g). *See id.* at 487.

VI. The Petitioner is not entitled to EAJA fees.

Petitioner asks this Court to award costs and reasonable attorneys' fees in this action as provided under the Equal Access to Justice Act, 28 U.S.C. § 2412. ECF No. 1, Prayer for Relief. However, Petitioner is not entitled to such relief in this matter. "EAJA is a limited waiver of sovereign immunity allowing for the imposition of attorney's fees and costs against the United States in specific civil actions." *Barco v. Witte*, 65 F.4th 782, 784 (citing *Ardestani v. I.N.S.*, 529 U.S. 129, 137, 112 S.Ct. 515, 116 L.Ed.2d 496 (1991)). The "threshold issue" in *Barco* was whether "EAJA expressly and unequivocally waives the United States' sovereign immunity regarding attorney's fees in immigration habeas corpus actions." *Barco*, 65 F.4th at 785. Finding that habeas corpus proceedings are not purely civil proceedings, but are hybrid" cases, the Court concluded that EAJA's limited waiver of sovereign immunity does not extend to immigration habeas corpus actions. *Id.* Therefore, regardless of the resolution of Petitioner's substantive claims, the Court should reject her request for EAJA fees.

CONCLUSION

For the reasons explained above, Petitioner's petition for writ of habeas corpus and complaint for declaratory and injunctive relief should be denied and Petitioner's detention should remain undisturbed for the duration of her removal proceedings. As an inadmissible alien seeking admission, she is subject to mandatory detention for the duration of her removal proceedings pursuant to 8 U.S.C. § 1225(b)(2) and is therefore not entitled to a bond hearing under § 1226. Additionally, Petitioner is not entitled to any of the requested declaratory relief nor any attorneys' fees and costs under EAJA.

Respectfully submitted,

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