IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JACINTO CRUZ MUNOZ,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-350-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE TO PETITION
AND RESPONSE TO ORDER TO SHOW CAUSE

On October 31, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition") asserting that (1) his detention violates his Fifth Amendment due process rights because he is not subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), and (2) the nature and circumstances of his arrest were unlawful. ECF No. 1. Petitioner also filed a Motion for Temporary Restraining Order ("TRO") on the same day. ECF No. 2. Respondent responded to that Motion on November 3, 2025. ECF No. 7. On the same day, the Court held a hearing on the Motion for TRO. ECF No. 8. On November 4, 2025, the Court issued an Order for "the parties [to] show cause [within seven days] why [this] action[] should not be consolidated under Federal Rule of Civil Procedure 42[]" with other actions raising similar claims for relief. ECF No. 9. The Order to Show Cause notes the Court's prior ruling in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), concerning a similar challenge to the detention authority at issue in this case. *Id.*

[1] In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents. "[T]he default rule [28 U.S.C. § 2241 petitions] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

Petitioner's circumstances are distinguishable from those of the petitioner in *J.A.M.*, and § 1225(b)(2)(A) authorizes his detention even under the Court's reasoning in *J.A.M.*[2] Thus, as explained below, the Court should not consolidate this action, and the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Mexico who has been mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1225(b)(2)(A) at Stewart Detention Center since July 18, 2025. Waters Decl. ¶¶ 4-5, 17.

Petitioner entered the United States without inspection or admission at an unknown place and on an unknown date. *Id.* ¶ 4. On July 18, 2025, Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") encountered Petitioner after a traffic stop in Jackson County, Georgia, and he entered ICE/ERO custody. *Id.* ¶ 5 & Ex. A. On July 23, 2025, he was served with a Notice to Appear ("NTA") charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) based on his unlawful presence in the United States without admission. *Id.* ¶ 6 & Ex. B. On August 14, 2025, he was also charged with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) based on his lack of a valid entry document at the time of his application for admission. *Id.* ¶ 6 & Ex. C.

On July 28, 2025, Petitioner requested a bond hearing. *Id.* ¶ 7. The immigration judge ("IJ") denied bond for lack of jurisdiction based on a finding that Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A). Waters Decl. ¶ 7 & Ex. D. On August 13, 2025, Petitioner again requested bond, and the IJ denied bond for failure to show changed circumstances. *Id.* ¶ 8 & Ex. E. Petitioner conceded his charge of removability under § 1182(a)(6)(A)(i) on August 16, 2025, and later

[2] Respondent also respectfully reasserts his disagreement with some of the reasoning in *J.A.M.* Respondent recognizes that the Court rejected aspects of Respondent's position in *J.A.M.*, but in order to preserve for appeal his arguments on the applicability of 8 U.S.C. § 1225(b)(2) to Petitioner, irrespective of whether Petitioner is "seeking admission," as the Court found relevant in *J.A.M.*, Respondent includes those arguments herein.

conceded the charge under § 1182(a)(7)(A)(i)(I) on September 16, 2025. *Id.* ¶¶ 9-10 & Ex. F. On September 16, 2025, the IJ reset the case to October 7, 2025, so Petitioner could seek relief from removal. *Id.* ¶ 10 & Ex. G. On that date, Petitioner filed a Form EOIR-42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, and the IJ set a hearing for October 16, 2025. *Id.* ¶ 11 & Exs. H, I. On October 11, 2025, Petitioner moved to terminate proceedings based on his approved I-130 and I-601A applications. *Id.* ¶¶ 12-13 & Exs. J, K. After several continuances the merits hearing on the Form EOIR-42B is now set for November 20, 2025. Waters Decl. ¶¶ 14-16 & Exs. L, M. N. ICE/ERO is presently removing non-citizens subject to final orders of removal to Mexico. *Id.* ¶ 18.

LEGAL FRAMEWORK

Congress enacted a multi-layered statutory scheme for the detention of aliens pending a final order of removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The interplay between these statutes is at issue here.

"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. 281, 286 (2018). Section 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 defines "applicant for admission" 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).

Paragraph (b) of § 1225 dictates the 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. Section 1225(b)(1) applies to those "arriving in the United

States" and "certain other"[3] aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). But 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 alien does not indicate intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removal from the United States. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] 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 inapplicable exceptions, "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." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (B.I.A. 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, . . . 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" (citing *Jennings*, 583 U.S. at 299)). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit."

[3] These "certain other aliens" are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures 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." The statute therefore explicitly confirms application of its inspection procedures to those already in the country, including for a period of years.

8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

"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.* For aliens arrested under §1226(a), the Attorney General and DHS have broad discretionary authority to detain an alien during removal proceedings. *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." 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 (B.I.A. 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 DHS determines that an alien detained under § 1226(a) should remain detained during removal proceedings, the alien may request a bond hearing before an IJ. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The IJ decides whether release is warranted based on a variety of factors, including ties to the United States and risks of flight or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). 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, whether to detain or release an alien during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

In *In the Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), the Board of Immigration Appeals ("BIA") recently held that non-citizens unlawfully present in the United States without prior inspection and admission are applicants for admission within the meaning of § 1225(a)(1) and subject to mandatory pre-final order of removal detention pursuant to § 1225(b)(2)(A) under the plain meaning and legislative history of that provision. 29 I. & N. Dec. at 220-28. Accordingly, those non-citizens are not entitled to bond hearings before IJs pursuant to § 1226(a) its implementing regulations. *Id.*

ARGUMENT

Petitioner claims (1) his detention violates his Fifth Amendment due process rights because only 8 U.S.C. § 1226(a) governs his detention, but he has not received a bond hearing under that provision, Pet. ¶¶ 93-95, ECF No. 1; and (2) his arrest was unlawful, *id.* ¶¶ 96-104. Further, the Court has directed Respondent to show cause why this case should not be consolidated with other cases asserting similar claims. ECF No. 9.

As explained below, Petitioner's circumstances are distinguishable from those of the petitioner in *J.A.M.* such that this case is inappropriate for consolidation. In addition to Respondent's other grounds for denial of the Petition (which Respondent expressly reserves herein), Petitioner is subject to mandatory detention pursuant to § 1225(b)(2)(A) because he is "seeking admission" as

the Court in *J.A.M.* found was necessary for that subsection to apply. Thus, this case should not be consolidated with other cases that are not distinguishable from *J.A.M.*

Moreover, the Petition is ripe for review and should be denied for four reasons. ***First***, Petitioner is subject to mandatory detention pursuant to § 1225(b)(2)(A) even under the Court's reasoning in *J.A.M.* ***Second***, as Respondent argued in *J.A.M.*, the Court lacks subject matter jurisdiction under 8 U.S.C. § 1252(e)(3), and Petitioner is subject to mandatory detention under § 1225(b)(2)(A) under the plain language of that statute. ***Third***, detention pursuant to § 1225(b)(2)(A) complies with due process under decades of precedent supporting mandatory detention of non-citizens during pending removal proceedings. ***Fourth***, the Court lacks jurisdiction over Petitioner's claim challenging his arrest.

I. *J.A.M.* is distinguishable and consolidation is inappropriate because Petitioner is an "applicant for admission" who is "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A).

Petitioner asserts that the BIA's precedential decision in *In the Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), is erroneous to the extent the BIA held that non-citizens unlawfully present in the United States without admission—like Petitioner here—are applicants for admission subject to mandatory detention pre-final order of removal pursuant to § 1225(b)(2)(A). Pet. ¶¶ 38-62, 93-95. As explained below, the plain language and legislative history dictate that all applicants for admission are subject to detention pursuant to § 1225(b)(2)(A).

The Court, however, rejected this argument in *J.A.M.* Assuming the Court continues to apply the reasoning of *J.A.M.*, that case is distinguishable, and the Petition should be denied because the facts of this case show that Petitioner falls within the scope of § 1225(b)(2)(A) even under the Court's interpretation of that provision. Specifically, Petitioner is an applicant for admission who is "seeking admission" by pursuing cancellation of removal pursuant to 8 U.S.C. § 1229b(b). Given this distinction from *J.A.M.*, the Court should not consolidate this action because it presents a

different question of fact and law.

Section 1225(b)(2)(A) provides in full:

> 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.

(emphasis added). "Applicant for admission" is a term of art, which 8 U.S.C. § 1225(a)(1) defines as "[a]n alien present in the United States who has not been admitted or who arrives in the United States." Here, Petitioner is an applicant for admission within the meaning of § 1225(a)(1) because he was unlawfully present in the United States without admission. *See* Waters Decl. ¶ 6 & Ex. B. Indeed, Petitioner conceded his charge of inadmissibility on this basis. *Id.* ¶ 9.

In *J.A.M.*, the Court interpreted the plain language of § 1225(b)(2)(A) and held that the statute's mandatory-detention provision applies to only applicants for admission who are also "seeking admission." *J.A.M.*, 2025 WL 3050094, at *2-5. "Seeking admission" is not defined in the INA, so the Court "construe[d] it based upon its ordinary everyday meaning." *Id.* at *3 (citation omitted). Defining "seek" as "an active verb," the Court interpreted an "alien seeking admission" to mean "one who is attempting to obtain lawful admission into the United States." *Id.*; *see also id.* ("[T]he statute applies to aliens who are actively seeking admission to the United States."). The Court recognized that an applicant for admission falls within the scope of § 1225(b)(2)(A) not only when he seeks admission "upon his arrival to the United States" but also if he does so "at some later time[.]" *Id.* Although the Court found that the non-citizen in *J.A.M.* was an applicant for admission within the meaning of § 1225(a)(1), the Court concluded that § 1225(b)(2)(A) did not govern the non-citizen's detention because "he was not attempting to be lawfully admitted." *Id.*

As discussed above, Petitioner is an "applicant for admission" within the meaning of § 1225(a)(1) because he is unlawfully present in the United States without prior admission. But

Petitioner is also "seeking admission" under the Court's interpretation of that term in *J.A.M.* This is evident from Petitioner's removal proceedings, where Petitioner has filed an application to be deemed lawfully admitted and is actively pursuing that relief.

In removal proceedings, an IJ "usually completes two separate inquiries. First, a court must find that an alien is removable. Second, a court may find that some other kind of statutory relief prevents removal." *Vasquez-Hernandez v. Holder*, 590 F.3d 1053, 1055 (11th Cir. 2010). Here, the first inquiry is complete: Petitioner conceded his charge of inadmissibility for unlawful presence pursuant to § 1182(a)(6)(A)(i), and the IJ sustained the charge accordingly. Waters Decl. ¶ 9-10. But the second inquiry is ongoing because Petitioner has applied for cancellation of removal, which constitutes a ground of statutory relief under this second inquiry. *Id.* ¶ 11 & Ex. H; *see Vasquez-Hernandez*, 590 F.3d at 1055.

8 U.S.C. § 1229b(b) governs cancellation of removal for "nonpermanent residents" like Petitioner. It provides that "[t]he Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States" if the alien meets the enumerated requirements. 8 U.S.C. § 1229b(b). "Lawfully admitted for permanent residence" is defined as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws[.]" 8 U.S.C. § 1101(a)(20). If an alien receives cancellation of removal under § 1229b(b), the alien "adjusts to the status of an alien lawfully admitted for permanent residence," and immigration authorities "shall record the alien's lawful admission for permanent residence as of the date of the Attorney General's cancellation of removal[.]" 8 U.S.C. § 1229b(b)(3). To apply for cancellation of removal, an alien must submit a "Form EOIR-42, Application for Cancellation of Removal, to the Immigration Court having administrative control over the Record of Proceeding of the underlying removal proceeding[.]" 8 C.F.R. § 1240.20(a).

Here, unlike in *J.A.M.*, Petitioner is "seeking admission" because he has filed an EOIR-42B application for cancellation of removal pursuant to 8 U.S.C. § 1229b(b). Waters Decl. ¶ 11 & Ex. H. By filing this application, Petitioner is seeking to "***adjust to the status of an alien lawfully admitted for permanent residence***[.]" 8 U.S.C. § 1229b(b) (emphasis added). If the application is granted, Petitioner will be deemed lawfully admitted for permanent residence as of the time the decision is made. 8 U.S.C. § 1229b(b)(3). Accordingly, by applying for cancellation of removal, Petitioner "is attempting to obtain lawful admission into the United States." *J.A.M.*, 2025 WL 3050094, at *3. As a result, under this Court's interpretation of the statute, Petitioner is mandatorily detained under § 1225(b)(2)(A) because he is an "applicant for admission" who is "seeking admission."

A contrary holding would render § 1225(b)(2)(A) surplusage. *See United States v. Mills*, 75 F.4th 1213, 1223 (11th Cir. 2024) ("The surplusage canon counsels [courts] to avoid an interpretation that makes another part of the statutory text needlessly superfluous." (citation omitted)). As the Court acknowledged in *J.A.M.*, an applicant for admission may seek admission within the meaning of § 1225(b)(2)(A) "at some later time" *after* his unlawful entry. *J.A.M.*, 2025 WL 3050094, at *3. But this must be the case because § 1225(b)(1) includes its own mandatory-detention provision for arriving aliens who are seeking admission *before* entering the country. *See* 8 U.S.C. § 1225(b)(1)(iii)(IV). Under the Court's interpretation, § 1225(b)(2) applies to applicants for admission who are seeking admission *after* entering the country. *J.A.M.*, 2025 WL 3050094, at *3. For § 1225(b)(2) to have any application whatsoever, it must apply to applicants for admission—like Petitioner—who are "seeking admission" after their unlawful entry. Otherwise, § 1225(b)(2) would be duplicative of § 1225(b)(1).

Because Petitioner is an applicant for admission who is—under the Court's interpretation in *J.A.M.*—"seeking admission," he is mandatorily detained pursuant to § 1225(b)(2)(A). Accordingly,

§ 1226(a) does not apply, and his due process claim should be denied to the extent he claims he is entitled to a bond hearing under § 1226(a) and its accompanying regulations.

II. As Respondent argued in *J.A.M.*, the Court lacks jurisdiction over Petitioner's claim, and the plain language and legislative history of 8 U.S.C. § 1225(b)(2)(A) establish that Petitioner falls within its scope.

In *J.A.M.*, Respondent argued that (1) under 8 U.S.C. § 1252(e)(3), the Court lacks jurisdiction to judicially review the implementation of § 1225(b), and (2) under the plain language and legislative history of the statute, applicants for admission are subject to mandatory detention under § 1225(b)(2)(A). Respondent acknowledges that the Court rejected those arguments in *J.A.M.* but briefly sets them forth here to preserve its rights.

A. The Court lacks jurisdiction over Petitioner's due process claim to the extent it challenges the implementation of 8 U.S.C. § 1225(b).

Petitioner seeks judicial review of ICE/ERO and the immigration courts' interpretation of § 1225(b)(2) and their determination that he falls within its scope. Pet. ¶¶ 44-52. However, the Court lacks jurisdiction over this claim pursuant to 8 U.S.C. § 1252(e)(3). That section bars this Court from conducting "judicial review of determinations under section 1225(b) of this title and its implementation." 8 U.S.C. § 1252(e)(3). Rather, only the U.S. District Court for the District of Columbia is vested with jurisdiction to judicially review the implementation of § 1225(b). *Id.* Unlike other provisions within § 1252(e), subsection (e)(3) applies broadly to judicial review of § 1225(b)—not just determinations under § 1225(b)(1). *Compare* 8 U.S.C. § 1252(e)(2) (limiting "[j]udicial review of any determination made under section 1225***(b)(1)***" (emphasis added)) *with id.* § 1252(e)(3) (limiting [j]udicial review of determinations made under section 1225***(b)***" (emphasis added)). Thus, Petitioner's challenge to the implementation of the detention authority pursuant to § 1225(b)(2) must be brought in the U.S. District Court for the District of Columbia within 60 days of such implementation. 8 U.S.C. § 1252(e)(3)(B). Because § 1252(e)(3) vests jurisdiction only in

the District of Columbia, this Court lacks jurisdiction.

B. The plain language and legislative history of 8 U.S.C. § 1225(b)(2)(A) establish that Petitioner falls within its scope.

Statutory interpretation must begin with the plain language of the statute. *United States v. Steele*, 147 F.3d 1316, 1318 (11th Cir. 1998) (en banc). Because Petitioner is an applicant for admission within the meaning of § 1225(a)(1) for the reasons set forth above, he is necessarily "seeking admission" to trigger mandatory detention pursuant to § 1225(b)(2)(A). This is evident from a comparison to other portions of the INA. *See Durr v. Shinseki*, 638 F.3d 1342, 1349 (11th Cir. 2011) ("[I]n construing a statute, [courts] do not look at one word or term in isolation, but instead [courts] look to the entire statutory context." (internal quotations, alterations, and citations omitted)). 8 U.S.C. § 1225(a)(3) clarifies that all applicants for admission are "seeking admission," but other aliens may also be "otherwise seeking admission." Further, 8 U.S.C. § 1101(a)(13)(C) provides that aliens are "seeking an admission" based solely on their lack of prior admission—not just the affirmative request for admission. Finally, Congress did not include the separately-defined term "application for admission," 8 U.S.C. § 1101(a)(4), in the text of § 1225(b)(2)(A), indicating that "seeking admission" does not require the affirmative filing of a formal application for admission. *See Dean v. United States*, 556 U.S. 568, 573 (2009) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotations, alterations, and citation omitted)).

The legislative history of § 1225(b)(2)(A) also establishes that Congress intended for applicants for admission who are unlawfully present in the United States—like Petitioner—to fall within its scope. Congress promulgated § 1225(b)(2)(A) through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208. In passing IIRIRA,

Congress "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Under IIRIRA, "only noncitizens who have been 'admitted'—that is, who lawfully entered the country—receive greater protections from government action." *Doe v. United States*, 137 F.4th 1277, 1285 (11th Cir. 2025). In discussing the scope of § 1225(b)(2) specifically, Congress did not incorporate a requirement for applicants for admission to also be "seeking admission," indicating the two terms are synonymous. *See* H.R. Rep. No. 104-469, pt. 1, at 229. Thus, an interpretation of § 1225(b)(2)(A) to apply to all applicants for admission who are unlawfully present in the United States aligns with Congress's stated intent in passing IIRIRA and ignores Congress's explanation of the scope of § 1225(b)(2) itself.

Because Petitioner is an applicant for admission within the meaning of § 1225(a)(1), he is subject to mandatory pre-final order of removal detention under § 1225(b)(2)(A) and therefore is not entitled to a bond hearing pursuant to § 1226(a) and its accompanying regulations.

III. Mandatory detention under 8 U.S.C. § 1225(b)(2)(A) complies with due process.

Apart from his claims regarding the scope of § 1225(b)(2)(A), Petitioner also claims that his detention violates due process because he has not received a bond hearing. Pet. ¶¶ 98-101. Because Petitioner's claim focuses on the dispute of statutory interpretation discussed above, it is unclear whether Petitioner separately asserts that his *detention under § 1225(b)(2)(A)* violates due process because he has not received a bond hearing. It is also unclear whether Petitioner claims § 1225(b)(2)(A) violates procedural or substantive due process. To the extent Petitioner raises such a claim under either framework, the Petition should be denied.

As a starting point for due process, Congress and the Executive have plenary power over the admission of non-citizens like Petitioner. "For reasons long recognized as valid, the responsibility

for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, "over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has "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." *Id.* (collecting cases).

"[A] concomitant of that power [over the admission of aliens] is the power to set the procedures to be followed in determining whether an alien should be admitted." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). "[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972).

A. Procedural Due Process

To the extent Petitioner raises a procedural due process challenge, as an applicant for admission, Petitioner's due process rights are limited to those provided by statute under longstanding Supreme Court and district precedent. Because § 1225(b)(2)(A) does not permit bond hearings, continued detention complies with due process.

"Excludable aliens have fewer rights than do deportable aliens, and those seeking initial admission to this country have the fewest of all." *Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985). "Aliens seeking admission to the United States . . . have no constitutional rights with regard to their applications and must be content to accept whatever statutory rights and privileges they are granted by Congress." *Jean v. Nelson*, 727 F.2d 957, 968 (11th Cir. 1984).

In recognition of Congress and the Executive's plenary powers to determine the procedures

for admission, over the course of more than a century, the Supreme Court has consistently held in multiple contexts that the due process rights of aliens seeking admission into the United States—like Petitioner here—are limited to only the procedures provided by statute. *Thuraissigiam*, 591 U.S. at 138-40 ("[A]n alien . . . has only those rights regarding admission that Congress has provided by statute."); *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." (citations omitted)); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." (internal quotations and citation omitted)); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("[T]he decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.").

This Court has applied these principles in addressing the issue presented here. In *D.A.V.V. v. Warden, Irwin County Detention Center*, No. 7:20-cv-159-CDL-MSH, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020), an applicant for admission filed a habeas petition, claiming, *inter alia*, that her mandatory detention under § 1225(b)(1) without a bond hearing violated due process. 2020 WL 13240240, at *1-2. The Court denied the alien's claim because "longstanding Supreme Court precedent" makes clear that such an applicant for admission's "procedural due process rights entitle them only to the relief provided by the INA." *Id.* at *6 (citing *Thuraissigiam*, 591 U.S. at 140; *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Nishimura Ekiu*, 142 U.S. at 660). "[B]ecause the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing." *Id.* (citations omitted).[4]

[4] Courts throughout the country have reached the same conclusion as this Court: non-admitted aliens' due process rights are limited to the procedures provided by statute, and they do not have a due process right to a bond hearing. *See Mendoza-Linares v. Garland*, No. 21-cv-1169, 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *Petgrave v. Aleman*,

The Court should apply this same principle here. Like the detention under § 1225(b)(1) at issue in *D.A.V.V.*, § 1225(b)(2)(A) "unequivocally mandate[s] that aliens falling within [its] scope shall be detained," *Jennings*, 583 U.S. at 297, and does not "say[] anything whatsoever about bond hearings," *id.* at 299. Because Petitioner's procedural due process rights are limited to those provided by statute, any procedural due process claim should be denied.

B. Substantive Due Process

To the extent Petitioner claims mandatory detention under § 1225(b)(2)(A) violates substantive due process, that claim should be denied. Substantive due process protects "only those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (internal quotations and citation omitted). A law affecting a "fundamental liberty interest," complies with due process if it "is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993) (internal quotations and citations omitted).

Petitioner's substantive due process claim fails because "the through line of history" is that the federal government has "sovereign authority to set the terms governing the admission and exclusion of noncitizens." *Muñoz*, 602 U.S. at 911-12. The Supreme Court has never held that aliens who have "entered the country clandestinely" have a liberty interest to remain. *Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903). And even if they do, "[w]hen the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Demore*, 538 U.S. at 528. In applying these fundamental principles, for over a century, the Supreme Court has held that pre-final order of removal detention complies with due

529 F. Supp. 3d 665, 676-79 (S.D. Tex. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 332-336 (W.D.N.Y. 2021); *Ford v. Ducote*, No. 20-1170, 2020 WL 8642257, at *2 (W.D. La. Nov. 2, 2020); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020); *Mendez-Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020); *Gonzalez Aguilar v. McAleenan*, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019); *Moore v. Nielsen*, 4:18-cv-01722-LSC-HNJ, 2019 WL 2152582, at *3 (N.D. Ala. May 3, 2019).

process even in the absence of a bond hearing. *Id.* at 511 ("[D]etention during [removal] proceedings is a constitutionally valid aspect of the process."); *Flores*, 507 U.S. at 306 ("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings."); *Carlson*, 342 U.S. at 538 ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid.").

The only time the Supreme Court has identified due process concerns with immigration detention was in *Zadvydas v. Davis*, 533 U.S. 678 (2001), in the context of ***post***-final order of removal detention. There, detention was potentially indefinite and "did not serve its purported immigration purpose" because removal was "no longer practically attainable." *Demore*, 538 U.S. at 527. By contrast, ***pre***-final order of removal detention under § 1225(b)(2)(A) "necessarily serves the purpose of preventing aliens from fleeing prior to or during their removal proceedings" and has "a definite termination point"—the conclusion of removal proceedings. *Id.* at 527-29. Because Petitioner's three-month detention does not unnecessarily infringe on any recognized liberty interest and serves a compelling government interest, his detention complies with substantive due process.

IV. The Court lacks subject matter jurisdiction over Petitioner's challenge to his arrest.

Petitioner claims his arrest violates the Administrative Procedure Act ("APA") because it was warrantless and lacked an assessment of potential flight. Pet. ¶¶ 96-104. This claim should be denied because it is not cognizable in this habeas proceeding, and the Court lacks jurisdiction over the claim.

First, Petitioner's claim is not cognizable in habeas because it attempts to raise a civil claim concerning the nature of his arrest—not a challenge to his ongoing detention. The scope of the Court's habeas jurisdiction is limited to reviewing the legality of detention and cannot be used as a

mechanism to review collateral issues. "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Thuraissigiam*, 591 U.S. at 125 n.20. "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody[.]" *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Although the scope of the writ of habeas corpus has been extended beyond that which the most literal reading of the statute might require, the Court has never considered it a generally available federal remedy for every violation of federal rights." *Lehman v. Lycoming Cty. Children's Servs. Agency*, 458 U.S. 502, 510, (1982). "Simply stated, habeas is not available to review questions unrelated to the cause of detention. Its sole function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). Habeas "cannot be utilized as a base for the review of a refusal to grant collateral administrative relief or as a springboard to adjudicate matters foreign to the question of the legality of custody." *Id.* at 936.

Here, Petitioner's APA claim regarding his arrest does not challenge ICE/ERO's authority to detain him. Rather, the claim challenges only the procedures used in effectuating Petitioner's arrest. But the procedures used during that arrest are collateral to the cause of Petitioner's detention: his continued removal proceedings. Indeed, under both Petitioner and Respondent's interpretation of the relevant statutes, ICE/ERO is statutorily authorized to detain Petitioner during his removal proceedings: according to Petition, under § 1226(a); and according to Respondent, under § 1225(b)(2)(A). Thus, Petitioner's claim is collateral to the present authority for his detention.

Moreover, Petitioner has filed a habeas petition—not a civil complaint. This Court addressed this issue in *Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). There a non-citizen filed a habeas petition challenging his continued detention.

Villafuerte, 2018 WL 6626640, at *1. The non-citizen also raised an APA claim concerning the denial of his application for immigration status. *Id.* at *1-2. The Court held that Petitioner's APA claim was "not cognizable" for two reasons. First, the non-citizen sought a form of "collateral administrative relief" which is not properly within the purview of habeas corpus. *Id.* at *2 (quotations and citations omitted). Second, it was "inappropriate" to permit the non-citizen to raise a civil claim because the non-citizen filed a habeas petition with a far lower filing fee. *Id.* Because Petitioner's civil APA claim concerning the procedures utilized during his arrest is collateral to the present cause of his detention, that claim is not cognizable in habeas and should be denied.

Second, even if Petitioner's claim is generally cognizable in habeas, the Court lacks subject-matter jurisdiction over the claim.[5] 8 U.S.C. § 1252(g) is a jurisdiction-stripping provision in the INA, which provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

The Eleventh Circuit's opinion in *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), makes clear that the Court lacks jurisdiction over Petitioner's claim concerning the circumstances of his

[5] Because 8 U.S.C. § 1252(g) precludes jurisdiction over Petitioner's claim by statute, the APA is not an independent source of jurisdiction. 5 U.S.C. § 701(a); *Brasil v. Sec'y, Dep't of Homeland Sec.*, 28 F.4th 1189, 1192 (11th Cir. 2022) ("Ff a statute precludes judicial review, federal courts lack subject matter jurisdiction." (citation omitted)).

arrest. There, a non-citizen raised Fourth Amendment claims, alleging, *inter alia*, that ICE/ERO officers "wrongfully procur[ed] a warrant for his arrest" and "arrest[ed] him unlawfully." *Gupta*, 709 F.3d at 1064. The district court dismissed the non-citizen's complaint, finding that 8 U.S.C. § 1252(g) deprived it of subject-matter jurisdiction. *Id.* On appeal, the Eleventh Circuit affirmed, finding that "securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings" within the purview of section 1252(g). *Id.* at 1065; *see also id.* (holding that the non-citizen's "claims that [the ICE/ERO agents] illegally procured an arrest warrant, that the agents illegally arrested him, and that the agents illegally detained him each arise from an action taken to commence removal proceedings.").

Here, like the non-citizen in *Gupta*, Petitioner challenges ICE/ERO's actions in arresting him, alleging that the arrest was unlawful. Petitioner's arrest "constitutes an action taken to commence proceedings" within the meaning of section 1252(g). *Gupta*, 709 F.3d at 1065. As this Court has previously held, district courts lack jurisdiction over such claims. *See Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) ("Plaintiff's claims that she was falsely arrested when she was transferred into ICE custody . . . 'challenge[] the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.'" (quoting *Gupta*, 709 F.3d at 1065 (alterations in original))). Petitioner's APA claim challenging the circumstances of his arrest should be denied.

CONCLUSION

For these reasons, Respondent respectfully requests that the Court decline to consolidate this case and deny the Petition.

Respectfully submitted this 12th day of November, 2025.

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