

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA

TABLE OF AUTHORITIES

INTRODUCTION ..... MONROE DIVISION ..... 1

STATEMENT OF FACTS ..... 1

MARIA JESUS LOPEZ-CHAVEZ ..... CIVIL ACTION NO. 25-cv-01668 ..... 2

LEGAL PROPOSITIONS ..... 2

VERSUS ..... CHIEF JUDGE DOUGHTY ..... 3

PAMELA BONDI, ET AL ..... MAGISTRATE JUDGE McCLUSKY ..... 3

A. § 1225(b) – Inspection Procedures ..... 4

B. Apprehension and Detention under INA 236, 8 U.S.C. § 1226 ..... 6

ARGUMENT ..... 8

I. Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and is entitled to a **RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS** ..... 8

II. Petitioner's argument that § 1226 (and not § 1225) should apply to her detention. On behalf of Federal Respondents, Brian Acuna, Kristi Noem and Pamela Bondi

1. § 1225 applies to an alien that is present in the United States who has not been admitted. .... 11

2. Jurisprudence 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 ..... 12

3. Applying § 1225 to "applicants for admission" who are present in the U.S. does not render the provisions of § 1226 superfluous ..... 14

4. Congress intended to establish detention for all applicants for admission under § 1225 ..... 15

III. Petitioner's involuntary detention does not violate due process under the Fifth or Fourteenth Amendment ..... 19

IV. This Court lacks jurisdiction over this matter ..... 20

1. 8 U.S.C. §§ 1252 Channels All Challenges to Removal Orders and Removal Proceedings to the Courts of Appeals ..... 22

2. 17M(a) precludes judicial review of the Attorney General's decisions regarding Petitioner's detention or release ..... 24

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

INTRODUCTION ..... 1

STATEMENT OF FACTS ..... 1

LEGAL FRAMEWORK ..... 2

A. Inspection and Detention under INA Section 235, 8 U.S.C. § 1225 ..... 3

1. § 1225(a) – Definition of Applicant for Admission..... 3

2. § 1225(b) – Inspection Procedures ..... 4

B. Apprehension and Detention under INA 236, 8 U.S.C. § 1226..... 6

ARGUMENT..... 8

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

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..... 11

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 ..... 12

3. Applying § 1225 to “applicants for admission” who are present in the U.S. does not render the provisions of § 1226 superfluous ..... 14

4. Congress intended to *mandate* detention for all applicants for admission under § 1225..... 15

III. Petitioner’s mandatory detention does not violate due process under the Fifth or Fourth Amendment..... 19

IV. This Court lacks jurisdiction over this matter ..... 22

1. 8 U.S.C. §§ 1252 Channels All Challenges to Removal Orders and Removal Proceedings to the Courts of Appeals ..... 22

2. 1226(e) precludes judicial review of the Attorney General’s decisions regarding Petitioner’s detention or release..... 24

TABLE OF AUTHORITIES

V. The Petitioner is not entitled to EAJA fees.....25

CONCLUSION.....25

*Amman v. I.N.S.*, 529 U.S. 129, 137, 112 S.Ct. 515, 116 L.Ed.2d 496 (1991) ..... 24

*Archie v. Patterson, et al*, No. 25-1693, 2025 WL 3252707 (W.D.La. Nov. 21, 2025) ..... 16, 19

*Barnes v. B'zoz*, 65 F.4th at 784 ..... 24, 25

*Bornia v. Rea*, 590 U.S. 222, 229 (2020) ..... 7, 13

*Eden v. Texas*, 597 U.S. 785 (2022) ..... 5

*Comcast v. United States*, 242 U.S. 470 (1917) ..... 13

*Carroll v. Lamborn*, 342 U.S. 524 (1952) ..... 7, 19

*Chavez v. Norm*, 25-cv-01323,  
2023 WL 2730225 (S.D. Cal. Sept. 24, 2025)..... 17, 19

*Dennis v. King*, 538 U.S. 510 (2003) ..... 15, 16, 19, 20, 21, 22, 24

*Dep't of Homeland Security v. Thuraissigaly*, 591 U.S. 103 (2020) ..... 10

*Digital Realty Tr., Inc. v. Somers*, 573 U.S. 189 (2018) ..... 8

*Genlyer-Batista*, 2025 WL 2638672..... 17

*Je et Guerra*, 24 I. & N. Dec. 57, 40 (BIA 2016)..... 7

*Jay v. Boyd*, 351 U.S. 345 (1956) ..... 11

*Jarvis v. Rodriguez*, 583 U.S. 281 (2018)..... 3, 4, 5, 6, 12, 13, 14, 17, 19, 20, 21, 23, 24

*Jehovah v. Cristian Chavez*, 594 U.S. 523 (2021) ..... 6

*Juan Carlos Garcia Aleman v. Thompson, et al*, 25-cv-856,  
(JCF 20) (W.D.Tx. Oct. 30, 2025) ..... 1

*Kalman v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994)..... 22

*Kim v. Bush, et al*, No. 25-cv-491, 2025 WL 3113644 (W.D.La. Nov. 6, 2025) (adopting report and  
recommendation, 2025 WL 3113644, Oct. 22, 2025)..... 16, 18, 21

*Lane v. Troup*, 75-cv-00576,  
2024 WL 2760331 (D. Neb. Sept. 30, 2025) ..... 17, 19

*Martinez v. Army Com. of U.S.*, 691 F.3d 408 (3d Cir. 2012) ..... 16

*Matter of Adair*, 211, S. N. Dec. 1102, 1113 (BIA 1999) ..... 6

**TABLE OF AUTHORITIES**

page(s)

**FEDERAL CASES**

*Ardestani v. I.N.S.*, 529 U.S. 129, 137, 112 S.Ct. 515, 116 L.Ed.2d 496 (1991) ..... 24

*Andrade v. Patterson, et al*, No. 25-1695, 2025 WL 3252707 (W.D.La. Nov. 21, 2025) ..... 16, 19

*Barco v. Witte*, 65 F.4th at 784 ..... 24, 25

*Barton v. Barr*, 590 U.S. 222, 229 (2020) ..... 7, 15

*Biden v. Texas*, 597 U.S. 785 (2022) ..... 5

*Caminetti v. United States*, 242 U.S. 470 (1917)..... 11

*Carlson v. Landon*, 342 U.S. 524 (1952) ..... 7, 19

*Chavez v. Noem*, 25-cv-02325,  
2025 WL 2730228 (S.D. Cal. Sept. 24, 2025)..... 17, 18

*Demore v. Kim*, 538 U.S. 510 (2003) ..... 15, 16, 19, 20, 21, 22, 24

*Dep’t of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020) ..... 10

*Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149 (2018) ..... 8

*Garibay-Robledo*, 2025 WL 2638672..... 17

*In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)..... 7

*Jay v. Boyd*, 351 U.S. 345 (1956) ..... 11

*Jennings v. Rodriguez*, 583 U.S. 281 (2018)..... 3, 4, 5, 6, 12, 13, 14, 17, 19, 20, 21, 23, 24

*Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) ..... 6

*Juan Carlos Garcia-Aleman v. Thompson, et al*, 25-cv-886,  
(ECF 20) (W.D.Tx. Oct. 30, 2025)..... 1

*Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994)..... 22

*Kum v. Ross, et al*, No. 25-cv-451, 2025 WL 3113644 (W.D.La. Nov. 6, 2025) (adopting report and  
recommendation, 2025 WL 3113646, Oct. 22, 2025)..... 16, 18, 21

*Lopez v. Trump*, 25-cv-00526,  
2025 WL 2780351 (D. Neb. Sept. 30, 2025)..... 17, 18

*Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408 (3d Cir. 2012) ..... 16

*Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)..... 6

*Matter of D-J*, 23 I. & N. Dec. at 575..... 7

*Matter of Hurtado*, 29 I&N Dec. 216, \*227 (BIA 2025) ..... 7, 12, 16, 18

*Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) ..... 12

*Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ..... 5

*Matushkina v. Nielsen* 877 F.3d 289 (7th Cir. 2017)..... 9

*McDonnell v. United States*, 579 U.S. 550 (2016)..... 12

*Montoya Cabanas v. Bondi, et al*, 25-cv-4830,  
2025 WL 3171331 (S.D.Tx. Nov. 13, 2025)..... 17

*Oliveria v. Patterson*, 25-cv-01463,  
2025 WL 3091705 (W.D.La. Oct. 9, 2025) ..... 16, 19

*Pena v. Hyde*, 25-cv-11983, 2025  
WL 2108913 (D. Mass. July 28, 2025) ..... 17, 18

*Reed v. Goertz*, 598 U.S. 230 (2023) ..... 21

*Rene Garibay-Robledo v. Noem*, 25-cv-177,  
2025 WL 2638672 (N.D. Tex. Oct. 24, 2025) ..... 18

*Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471 (1999) ..... 23

*Rotkiske v. Klemm*, 589 U.S. 8 (2019) ..... 17

*Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021) ..... 9

*Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ..... 19

*Barrios Sandoval v. Acuna, et al* No. 25-01467, 2025 WL 3048926 (W.D.La. Oct. 31, 2025)..... 16, 19

*Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008)..... 1

*Wong Wing v. United States*, 163 U.S. 228 (1896)..... 15, 19

*Zadvydas v. Davis*, 533 U.S. 678 (2001)..... 20

**FEDERAL STATUTES**

8 U.S.C. § 1101(a)(3)..... 6, 8, 15

8 U.S.C. § 1101(a)(13)..... 9

8 U.S.C. § 1101(a)(13)(A)..... 8, 9, 12

8 U.S.C. § 1101(a)(13)(C)..... 12

8 U.S.C. § 1101(a)(13)(C)(vi) ..... 9

8 U.S.C. § 1182..... 13

8 U.S.C. § 1182(a)(6)..... 9

8 U.S.C. § 1182(a)(6)(A)(i) ..... 2, 3

8 U.S.C. § 1182(a)(7)(A)(i)(I)..... 2

8 U.S.C. § 1182(d)(5)(A)..... 5

8 U.S.C. § 1225..... 2, 3, 4, 11, 12, 13, 14, 15

8 U.S.C. § 1225(a) ..... 3, 15

8 U.S.C. § 1225(a)(1)..... 1, 3, 8, 10, 12, 13, 14, 18, 19

8 U.S.C. § 1225(a)(3)..... 3, 9

8 U.S.C. § 1225(a)(4)..... 9

8 U.S.C. § 1225(b)..... 4, 8, 12, 14, 15, 17, 20

8 U.S.C. § 1225(b)(1) ..... 4, 5, 14, 19

8 U.S.C. § 1225(b)(1)(A)(i)..... 4, 5

8 U.S.C. § 1225(b)(1)(A)(ii)..... 4

8 U.S.C. § 1225(b)(1)(A)(iii)..... 4

8 U.S.C. § 1225(b)(1)(B)..... 5

8 U.S.C. § 1225(b)(1)(B)(ii) ..... 5

8 U.S.C. § 1225(b)(1)(B)(iii)(IV)..... 5, 15

8 U.S.C. § 1225(b)(2) ..... 4, 5, 8, 10, 11, 14, 16, 17, 18, 19, 21, 25

8 U.S.C. § 1225(b)(2)(A) ..... 1, 5, 8, 9, 10, 11, 15, 18

8 U.S.C. § 1225(b)(2)(B)(ii) ..... 8

8 U.S.C. § 1226..... 2, 6, 11, 12, 13, 14, 15, 25

8 U.S.C. § 1226(a) ..... 6, 7, 12, 17

8 U.S.C. § 1226(a)(1)..... 6

8 U.S.C. § 1226(a)(2) ..... 6

8 U.S.C. § 1226(c) ..... 7, 12, 19, 20, 21

8 U.S.C. § 1226(e)..... 21, 23, 24

8 U.S.C. § 1227(a) ..... 7

8 U.S.C. § 1227(a)(1)(A)..... 9

8 U.S.C. § 1229a..... 1, 2, 4, 5, 10, 11, 14, 19, 23  
 8 U.S.C. § 1229a(d)..... 10  
 8 U.S.C. § 1229c(a)(1)..... 10  
 8 U.S.C. § 1231..... 2  
 8 U.S.C. § 1231(a)(6) ..... 20  
 8 U.S.C. § 1252..... 21, 22  
 8 U.S.C. § 1252(b)(9) ..... 22, 23  
 8 U.S.C. § 1252(g) ..... 22, 24  
 28 U.S.C. § 2412..... 24

**FEDERAL RULES**

8 C.F.R. § 236.1(c)(8) ..... 6  
 8 C.F.R. § 236.1(d)(1)..... 7  
 8 C.F.R. § 236.1(d)(3)..... 7  
 8 C.F.R. § 1003.19 ..... 7  
 8 C.F.R. § 1003.19(f) ..... 7  
 8 C.F.R. § 1003.38 ..... 7  
 8 C.F.R. § 1236.1(c)(8) ..... 6  
 8 C.F.R. § 1236.1(d)..... 7  
 8 C.F.R. § 1236.1(d)(3)..... 7

**OTHER AUTHORITIES**

The Laken Riley Act..... 7

## INTRODUCTION

The Petitioner is a Mexican national who illegally entered the United States at an unknown location and without inspection. Petitioner is currently detained at the Richwood Correctional Center in Monroe, LA and is in removal proceedings under 8 U.S.C. § 1229a before an immigration court. 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 claims that (1) her detention violates the Immigration and Nationality Act and related bond regulations, and (2) her detention violates the Due Process Clause of the Fifth Amendment, and she seeks a writ of habeas and a court order for Respondents to provide her with an individualized bond hearing. These arguments have no merit and this court lacks jurisdiction to provide her the relief requested. Accordingly, the Petition should be dismissed.

## STATEMENT OF FACTS

The Petitioner crossed into the United States at an unknown location on an unknown date. Exhibit 1, DHS Form I-862, Notice to Appear. She was not admitted or paroled after inspection by an immigration officer. *Id.*, see also Pet. ¶ 2. The petition offers no real explanation regarding her whereabouts within the United States between allegedly entering in June of 2000 and now. Pet. ¶¶ 2, 27. Instead, Petitioner is only known to have entered the United States from Mexico without being inspected by an immigration officer and then taken into custody on August 23, 2025, in Arkansas. *Id.*; see also Ex. 1. Petitioner was not in possession of a valid passport or any documentation to be in the United States and was charged with violating section 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act.<sup>1</sup> See Ex. 1, pp. 1,4. Petitioner was placed in removal proceedings

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<sup>1</sup> 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.

pursuant to INA section 240 and ordered to appear on September 8, 2025, for an immigration hearing.<sup>2</sup> *Id.* Petitioner's next master calendar hearing before the immigration court is scheduled for December 2, 2025. See Exhibit 2, EOIR Notice of In-Person Hearing.

Therefore, 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 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. 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).

### **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 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

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<sup>2</sup> INA section 240 refers to 8 U.S.C. § 1229a governing removal proceedings before an immigration court.

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. *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 (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.<sup>3</sup>

### ARGUMENT

#### **II. 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). Pet. ¶¶ 29-54. However, Petitioner is very clearly properly detained under § 1225(b)(2) because she unambiguously meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of 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), +. 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

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<sup>3</sup>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).

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).<sup>4</sup> 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. *See* Ex.1 and Pet. ¶¶ 2, 27.

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 “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)<sup>5</sup>. Therefore, the inquiry is whether an

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<sup>4</sup> 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).

<sup>5</sup> § 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”.

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. Ex. 1. 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 proceedings, a foreign national can concede removability and accept removal, in which case she 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 his 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 her for violating the law, provide her 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 she will receive the benefits of the procedures in immigration court (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. *See* Ex. 2. Therefore, she also meets this textual element within § 1225(b)(2)(A) because she 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.

**III. 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. ¶¶ 14-21, 32. 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) because 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).<sup>6</sup>

**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 Wing v. United States*, 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

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<sup>6</sup> 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).

("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). *Andrade v. Patterson, et al*, No. 25-1695, 2025 WL 3252707 (W.D.La. Nov. 21, 2025) (denying habeas relief and TRO for inadmissible alien present in the country without admission or parole for 4 years because the alien is an "applicant for admission subject to mandatory detention under § 1225(b)(2)"); *Oliveria v. Patterson, et al*, No. 25-01463, 2025 WL 3095972 (W.D.La. Nov. 4, 2025) (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, et al* No. 25-01467, 2025 WL 3048926 (W.D.La. Oct. 31, 2025) (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)); *Kum v. Ross, et al*, No. 25-cv-451, 2025 WL 3113644 (W.D.La. Nov. 6, 2025) (adopting report and recommendation, 2025 WL 3113646, Oct. 22, 2025) (applying 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) and finding mandatory detention was lawful under § 1225(b)(2)); *Montoya*

*Cabanas v. Bondi, et al*, 25-cv-4830, 2025 WL 3171331 (S.D.Tx. Nov. 13, 2025) (holding that mandatory detention under § 1225(b)(2) is lawful for an alien present in the country for over 20 years without admission); *Rene Garibay-Robledo v. Noem*, 25-cv-177, 2025 WL 2638672 (N.D. Tex. Oct. 24, 2025) (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. Sept. 30, 2025) (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. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde*, 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) (Denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)).

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, Pet. ¶¶ 16, 19, 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.

Conversely, recent decisions of this court are applicable and support the Respondents application of § 1225(b)(2) mandatory detention to this Petitioner. In its very detailed analysis, this court held in *Barrios Sandoval v. Acuna* 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. 2025 WL 3048926 (W.D.La. Oct. 31, 2025). This holding was mirrored in *Oliveria v. Patterson* involving a petitioner allegedly present in the country for over 3 years, but without admission or parole, and *Andrade v. Patterson*, involving a petitioner allegedly present in the country for over 4 years, but without admission or parole. See *Oliveira*, 2025 WL 3095972 (W.D.La. Nov. 4, 2025), and *Andrade*, 2025 WL 3252707 (W.D.La. Nov. 21, 2025); see also *Kum*, 2025 WL 3113644 (W.D.La. Nov. 6, 2025); *Montoya Cabanas*, 2025 WL 3171331 (S.D.Tx. Nov. 13, 2025); *Rene Garibay-Robledo*, 2025 WL 2638672 (N.D. Tex. Oct. 24, 2025); *Lopez*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez*, WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena*, 2025 WL 2108913 (D. Mass. July 28, 2025).

Accordingly, this Court should follow its reasoning in the *Andrade*, *Oliveira*, *Sandoval*, and *Kum* decisions, as well as those of sister courts, and 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.

#### **IV. Petitioner's mandatory detention does not violate due process under the Fifth or Fourth 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. *See Demore*, 538 U.S. at 531.

Likewise, Petitioner’s temporary detention pending her removal proceedings does not violate due process. She has only been detained for roughly twelve weeks as her process unfolds. Specifically, her next master calendar hearing before the immigration judge is set for December 2, 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 pending up to a removal hearing. Congress, however, has furnished exactly this type of

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 [ECF 14 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. Like 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).<sup>7</sup> 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—

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<sup>7</sup> 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).

multiple times over—in § 1252. As *Jennings* explained, habeas cannot be used to “challeng[e] the 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. His challenge is inextricably bound up with the adjudication of his 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 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.

**VI. The Petitioner is not entitled to EAJA fees.**

Petitioner asks this Court to award her costs and reasonable attorneys' fees in this action as provided under the Equal Access to Justice Act, 28 U.S.C. § 2412. Pet. P. 10, ¶ d. 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 at 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 claims for equivalent 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 attorneys' fees and costs under EAJA.

Respectfully submitted,

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