IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ALEJANDRO YORDI TORRES,

Petitioner,

v.

THOMAS BERGAMI, et al.,

Respondents.

Civil Action No. 3:25-cv-02981-B-BN

REPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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Introduction

The Petitioner is a Mexican Cuban who illegally entered the United States at an unknown location and without inspection. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a before an immigration court. Consequently, based on a plain reading of the applicable statutes, he is deemed an "applicant for admission," 8 U.S.C. § 1225(a)(1), and detention is mandatory for the duration of his removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner is seeking release from ICE detention claiming that (1) his detention violates the Immigration and Nationality Act, and (2) his detention violates the Due Process Clause of the Fifth Amendment. These arguments have no merit, and the Petition should be dismissed.

I. Statement of Facts

The Petitioner, a citizen and national of Cuba, crossed into the United States at an unknown location and at an unknown time App. p.3. However, he was not admitted or paroled after inspection by an immigration officer when he entered the United States. *Id.* Petitioner was not in possession of a valid passport or any documentation to be in the United States and was charged in a Notice to Appear (NTA) on August 2, 2022. *Id.* Petitioner was issued an order of release on recognizance by the Department of Homeland Security ("DHS") Enforcement and Removal Operations ("ERO"). *Id.* Petitioner was ordered to appear before an immigration judge in Dallas, Texas, on September 19, 2022. However, DHS never filed this NTA with the Executive Office for Immigration Review ("EOIR"). *Id.*

On August 14, 2023, Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, with United States Citizenship and Immigration Services ("USCIS"). App. p. 3. That application remains pending. Thereafter on October 12, 2023, Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with USCIS. That application also remains pending. *Id.*

On October 20, 2025, Petitioner was encountered by ERO at the Dallas Field Office during a routine performance of non-detained lobby duties. Upon interview, ERO issued a custody redetermination, and Petitioner was taken into ICE custody. On October 23, 2025, Petitioner was personally served with a Notice to Appear ("NTA") and was ordered to appear before an Immigration Judge on November 13, 2025. App. p. 6. On October 24, 2025, DHS filed the NTA with EOIR. Petitioner's next hearing is scheduled for December 4, 2025. App. p. 10. Therefore, Petitioner is currently in removal proceedings before an immigration court under section 240 of the INA, 8 U.S.C. § 1229a, because he 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). App. p. 6.

II. 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 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. Section 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.*

Section 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

Section 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.[1] *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

[1] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

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].").

Section 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.[2]

C. Review of Custody determinations at the BIA

The BIA is an appellate body within the Executive Office for Immigration Review (EOIR). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including Immigration Judge custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1).

III. Argument

A. Petitioner is properly detained under 8 U.S.C. § 1225(B)(2).

Petitioner claims that he is not properly detained under INA § 235(b), 8 U.S.C. § 1225(b). ECF 1. ¶¶ 52-53. However, Petitioner is very clearly properly detained under §

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[2] 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). 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).

1225(b)(2) because he unambiguously meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support Respondents' interpretation. The applicable detention statute, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous. Including its definitions, this statute is only three sentences long. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A). It states:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A).[3] 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."

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[3] 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).

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 he is a foreign national, he was not admitted, and he was present in the United States when he was apprehended by ICE. *See* ECF 1. ¶¶46, 47.

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)[4]. Therefore, the inquiry is whether an immigration officer determined that Petitioner was seeking a "lawful entry." *See id.* A foreign national's past unlawful physical entry has no bearing on this analysis. *See id.* This element of "lawful entry" is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021)(recognizing that "admission" means "lawful entry"). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he or she did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A)). Indeed, the charges of removal against Petitioner are based on his unlawful

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[4] Section 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".

entry. App. p. i6. So, unless Petitioner obtains a lawful admission in the future, he 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 he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the United States for more than two years who have not been lawfully admitted and who do not agree to immediately depart are seeking admission and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is *not* the same as an expedited removal under § 1225(b)(1). Instead, under the clear provisions of §1225(b)(2), removal proceedings must proceed as outlined under § 1229a. Accordingly, Petitioner is still "seeking admission" under § 1225(b)(2) because he has not agreed to depart, and he has not yet conceded his removability or allowed his removal proceedings to play out – he 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 he must be seeking to remain in this country, which requires an "admission" (i.e. a "lawful entry" as discussed above). Petitioner's interpretation that he 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 he is no longer "seeking admission" would reward him for violating the law, provide him, with better treatment than a foreign national who lawfully presented themselves for inspection at a port of entry, and encourage others to enter unlawfully - defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a "perverse incentive to enter at an unlawful rather than a lawful location"). Accordingly, Petitioner's interpretation of "seeking admission" under § 1225 and the perverse result its application would achieve is patently unreasonable.

The final textual requirement here is that Petitioner "*shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). As explained above, Petitioner is not in expedited removal at all. He has instead been placed in full removal proceedings where he will receive the benefits of the procedures in immigration court (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. App. pp. 6-7, 10. Therefore, he also meets this textual element within §

1225(b)(2)(A) because he is in 1229a removal proceedings and is thus subject to mandatory detention during the pendency of these proceedings.

In sum, the plain text of § 1225(b)(2) unambiguously applies to Petitioner. "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies even where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g., Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts "must adopt the plain meaning of a statute, however severe the consequences"). Therefore, no further exercise in statutory interpretation is necessary or permissible in this case and the court should conclude that Petitioner's detention under § 1225(b)(2) is lawful.

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

1. § 1225 applied 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. 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 ("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 Circuit, have recognized that mandatory detention of inadmissible aliens for the duration of their removal proceedings is

required by 1225(b)(2). *Oliveira*, 2025 WL 3095972 (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Barrios Sandoval*, 2025 WL 3048926 (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Lopez*, 2025 WL 2780351 (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez*, 2025 WL 2730228) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena*, 2025 WL 2108913 (denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)); *Kum*, 25-cv-451, [ECF 14], report and recommendation to deny and dismiss habeas petition (W.D. La. 10/22/25), adopted (W.D. La. Nov. 6, 2025).

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 district courts throughout the country 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).

Conversely, a recent decision from a sister Court is instructive and supports the Respondents application of § 1225(b)(2) mandatory detention to this Petitioner. The Court in Robledo recently denied an injunction and request for a bond hearing under § 1226, noting the very real distinction between an "arriving alien" and an "applicant for admission" with respect to the application of § 1225(b) and its mandatory detention requirement. *See Garibay-Robledo,* 2025 WL 2638672. The *Robledo* opinion states:

> To be sure, an arriving alien is an applicant for admission: Subsection 1225(a)(1) defines applicant for admission, in part, as "[a]n alien . . . who arrives in the United States." But the same provision *also* defines an applicant for admission as "[a]n alien present in the United States who has not been admitted." *Id.* This is not the most intuitive definition of the term, but it is the one that Congress enacted into law.

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

Accordingly, this Court should find that Petitioner is properly detained under § 1225(b)(2) and subject to mandatory detention as an applicant for admission during the pendency of h is removal proceedings under § 1229a.

C. Petitioner's mandatory detention does not violate due process.

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.").

Here, Petitioner is being detained for the limited purpose of removal proceedings and determining his removability. Such detention is not punitive or done for other reasons than to address removability, which will occur in the removal proceedings. Whether framed as a substantive or procedural due process claim, the principles set forth in *Demore* govern this case. 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) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). Indeed, Congress in exercising this "broad power over naturalization and immigration . . . regularly makes rules that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 522 (internal quotation marks and citation omitted). Consistent with these principles, the Supreme Court has long recognized that "the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Id.* at 526.

Similarly, Petitioner cannot succeed on a procedural due process claim. Such a claim fails because where Congress has substantively mandated detention pending removal proceedings, an alien cannot displace that substantive choice with a procedural

due process claim. As discussed, aliens are not entitled to bond hearings as a matter of substantive due process. *See Demore*, 538 U.S. at 523–29. Under *Demore*, Congress may reasonably determine—as it did here—to subject aliens who were never inspected or admitted to this country to detention without bond while the government determines their removability. Congress has not created any procedural rights to a bond hearing for applicants for admission. *See Jennings*, 583 U.S. at 297. "Read most naturally," § 1225 "mandate[s] detention of applicants for admission until certain proceedings have concluded." *Id.* And the statute says nothing "whatsoever about bond hearings." *Id.* No procedural due process claim is stated.

In determining what process is due in immigration proceedings, "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). "[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Mathews*, 426 U.S. at 81 n.17 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal [noncitizen]s—to be a vital public interest." *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). It is thus clear that, in the case of aliens seeking admission, "the government interest includes detention." *Id.* And the Supreme Court has stated removal proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Wong Wing v. United States*, 163 U.S. 228, 235 (1896).

Further, "[t]he continued presence of an alien lawfully . . . undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty.").

D. 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 him 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.

IV. Conclusion

For the reasons explained above, Petitioner's petition for writ of habeas corpus a should be denied and Petitioner's detention should remain undisturbed for the duration of his removal proceedings. As an inadmissible alien seeking admission, he is subject to mandatory detention for the duration of his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2) and is therefore not entitled to a bond hearing under § 1226.

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CERTIFICATE OF SERVICE

On November 17, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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