IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NARESH KUMAN, *Petitioner,* v. BRIAN MCSHANE, et al., *Respondents.*	:	CIVIL ACTION NO. 25-cv-6238

RESPONSE OPPOSING PETITION FOR HABEAS CORPUS WRIT

A citizen of India, Petitioner Naresh Kumar has been in the United States without the required United States Department of Homeland Security (DHS) authorization since walking across the Canadian border into New York on May 31, 2024. *See* Petition, ECF 1, ¶ 15. On that date, immigration officials caught him, placed him in removal proceedings, and released him on his own recognizance, subject to conditions including periodic check-ins with U.S. Immigration and Customs Enforcement (ICE). *Id.* ¶ 45. Last month, when Kumar attended a check-in, ICE detained him under 8 U.S.C. § 1225(b)(2) of the Immigration and Nationality Act (INA), pending a removal determination early next year.

In filing this habeas suit, Kumar chose the wrong forum to challenge that recent decision of the DHS Secretary to detain him. He instead should have sought and exhausted relief administratively from an immigration court. A petition for review of an immigration-court decision would then have to be filed directly in the Third Circuit, not in this court. This action thus should be dismissed for lack of subject-matter jurisdiction.

If this Court nevertheless reaches the merits of Kumar's case, his legal position should be rejected. He primarily contends that his detention without a bond hearing is unlawful because ICE based it on Section 1225(b)(2)(A) (which *does not allow* release from detention if bond is posted) rather than on 8 U.S.C. § 1226(a) (which *allows* release if bond is posted). *See* Petition, ¶¶ 3, 5, 27-29, 37-42 (arguing that the government's historic practice—for persons like Kumar who are not recent entrants and who do not have known criminal histories—is to base detention following a "re-arrest" on Section 1226(a)).

But because Kumar was never lawfully admitted to the United States, he is subject to mandatory detention under Section 1225(b)(2) based on that statute's plain text.

Which of the two INA provisions applies is a question that has been raised in many other habeas cases filed this year in the wake of a decision of the Board of Immigration Appeals ("BIA")—which is the highest administrative body for interpreting and applying immigration laws—in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). *See* Petition, ¶¶ 4, 32 (stating that *Hurtado* held "that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission"); *see also id.*, ¶¶ 50-51 (averring that *Hurtado* forecloses adequate immigration-court relief).

Though most judges in those cases have rejected the government's position that Section 1225(b)(2) applies, the Third Circuit has not yet considered the issue. *See* Petition, ¶¶ 34-35 (citing decisions). The two judges from this District who have ruled on the question disagreed with the government last week. *See Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399, at *4-7 (E.D. Pa. Nov. 14, 2025) (Wolson, J.); *Cantu-*

Cortes v. O'Neill, et al., No. 25-cv-6338, 2025 WL 3171639, at *1-2 (E.D. Pa. Nov. 13, 2025) (Kenney, J.).

The government Respondents (the DHS Secretary, the U.S. Attorney General, the Director of ICE's Philadelphia Field Office, and the Warden of the Federal Detention Center-Philadelphia, where Kumar is being detained) respectfully ask the Court, if it reaches the merits, to adopt the government's interpretation of Section 1225(b)(2)'s scope.

FACTUAL AND PROCEDURAL BACKGROUND

On May 31, 2024, Kumar entered the United States on the Canadian-New York border, at a location not designated as a place of entry, where he was charged with doing so without inspection, without authorization and, in violation of 8 U.S.C. § 1182(a)(6)(A)(i). *See* ECF 1-6 (Notice to Appear), at p. 1; *see also* Petition, at ¶¶ 2, 45. United States Customs and Border Protection (CBP) detained, processed, and then released him on his own recognizance, with instructions: (1) to report for any hearing or interview; (2) if ordered to surrender for removal from the United States, to so surrender; and (3) to comply with various conditions of release. *See* ECF 1-5 (Order of Release on Recognizance); *see also* ECF 1-3 (Warrant for Arrest of Alien).

On the same day, Kumar received a Notice to Appear, which provided in part that he was: (1) "an alien present in the United States who has not been admitted or paroled"; and (2) ordered to appear before an immigration judge in Philadelphia on February 24, 2026 to show why he should not be removed from the United States. ECF 1-6 (Notice to Appear); *see also* ECF 1-4 (CBP Notice of Custody Determination).

Five months later, on October 31, 2024, Kumar applied for relief from removal, a request that will also be heard on February 24, 2026. *See* Petition, ¶¶ 45, 47, 48. For

purposes of the Court's current review, it is undisputed that Kumar has an approved work authorization and Social Security card and that DHS is not currently aware of him having any criminal record or outstanding warrant. Kumar alleges that he has "extended family" in the United States and was living with his brother-in-law and gainfully employed while awaiting the February 24, 2026 hearing. *Id.*, ¶ 48.

Kumar avers that: (1) when he attended his first routine check-in with ICE late last month, on October 28, 2025, at the Philadelphia Enforcement and Removal Operations (ERO) Field Office, ICE detained him and placed him at the Federal Detention Center-Philadelphia (FDC-Philadelphia), Petition, ¶¶ 15, 44; and (2) ICE then "issued a custody determination to continue [his] detention without an opportunity to post bond or to be released on other conditions." *Id.*, ¶¶ 15, 44-49.

On November 6, 2025, an immigration court located in Elizabeth, New Jersey scheduled an internet-based (remote) initial removal hearing for Kumar for tomorrow, November 18, 2025, at 1:30 p.m. *See* Exhibit A hereto (Notice of Internet-Based Hearing). But FDC-Philadelphia is a holdover facility and does not have the ability to connect through the internet to the immigration court. Kumar's remote hearing thus cannot move forward while he is detained at FDC-Philadelphia.

Focused on the November 18 hearing date, ICE therefore began the process of moving Kumar to the Moshannon Valley Processing Center (an ICE detention facility in the Western District of Pennsylvania) so that he could attend the hearing. But when ICE learned about this Court's November 7, 2025 Order directing Respondents not to move or remove Kumar outside of FDC-Philadelphia during the pendency of this case, they returned him to FDC-Philadelphia on November 10, 2025. *See* ECF 2 (Court's Order).

LEGAL STANDARD

A writ of habeas corpus is an "extraordinary remedy." *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022). The petitioner bears the burden of showing that confinement is unlawful. *Hawk v. Olson*, 326 U.S. 271, 279 (1945); *accord Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (habeas petitioner carries burden of proof); *see* 28 U.S.C. § 2241.

Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation" and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport and because public safety is at stake. *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."); *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.").

Kumar must make a strong showing to demonstrate that his continued detention under 8 U.S.C. § 1225(b)(2) violates the Constitution or the laws of the United States. *See United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953) ("This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power."); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 402 F. Supp. 251, 254 (E.D. Pa. 1975) ("[D]efendants here carry a heavy burden, for a strong presumption of validity attaches to an Act of Congress.").

ARGUMENT

I. This Court lacks jurisdiction to intervene in the removal proceedings.

Kumar bears the burden of establishing that this Court has subject-matter jurisdiction over his claims. *See Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 818 (3d Cir. 2023), *cert. denied*, 144 S. Ct. 1007, 218 L. Ed. 2d 173 (2024); *Finley v. United States*, 490 U.S. 545, 547-48 (1989).

He cannot carry that burden, because 8 U.S.C. § 1252(g), 8 U.S.C. § 1252(b)(9) and 8 U.S.C. § 1252(a) jurisdictionally bar his claims.

A. Section 1252(g) bars Kumar's claims because he challenges the commencing of removal proceedings.

Kumar contends that ICE incorrectly grounded his detention late last month on Section 1225(b)(2) rather than on Section 1226(a). *See* Pet. ¶ 51.

Congress has pronounced that "no court shall have jurisdiction to hear any [such] cause or claim" that arises from "the decision or action" to "commence" removal proceedings or "adjudicate [those] cases." 8 U.S.C. § 1252(g) (interpolation added); *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 483 (1999); *Tazu v. Att'y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020).

This Court lacks subject-matter jurisdiction to adjudicate Kumar's claims because they arise from precisely such an Attorney General/DHS Secretary decision to commence his removal proceedings and adjudicate his removal case. *See, e.g., Valencia-Mejia v. United States*, No. 08-cv-2943, 2008 WL 4286979, at *3 (C.D. Cal. Sept. 15, 2008).

The DHS Secretary's decision to detain is a "specification of the decision" to commence the very proceedings that Section 1252(g) covers. *See also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms," Section 1252(g) "bars us from questioning [the government's] discretionary decisions to commence removal" of a foreign national, which include the "decision to take him into custody *and to detain him during his removal proceedings.*") (emphasis added); *Sissoko v. Mukasey*, 509 F.3d 947 (9th Cir. 2007); *S.Q.D.C. v. Bondi*, No. CV 25-3348 (PAM/DLM), 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025); *see also Linarez v. Garland*, No. 3:24-CV-488,

2024 WL 4656265, at *4 (M.D. Pa. Sept. 24, 2024), report and recommendation adopted sub nom. *Cordon-Linarez v. Garland*, No. 3:24-CV-00488, 2024 WL 4652824 (M.D. Pa. Nov. 1, 2024) ("in our view, the Attorney General's discretionary decision to place Linarez in expedited removal proceedings is precisely the action this statute refers to."); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067–68 (N.D. Ill. 2007) (claim challenging arrest and detention during removal proceedings was barred under § 1252(g)).

But see, e.g., *Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399, at *3 (E.D. Pa. Nov. 14, 2025) (Wolson, J.) (reasoning that Section 1252(g) did not apply because it refers only to the commencing or adjudicating of removal cases and to the executing of removal orders, and the petitioner alien was merely contesting the government's authority to detain him); *Cantu-Cortes v. O'Neill, et al.*, No. 25-cv-6338, 2025 WL 3171639, at *1 (E.D. Pa. Nov. 13, 2025) (Kenney, J.) (reasoning that Section 1252(g) does not bar jurisdiction because the issue whether a bond hearing is required before detention is collateral to the removal process).

B. Under Section 1252(b)(9), the Court lacks jurisdiction over the agency's statutory interpretation arising from removal actions.

Even if Kumar's claim did not fall within the jurisdiction-defeating ambit of Section 1252(g), the Court still lacks subject-matter jurisdiction because Congress chose to limit review of immigration proceedings (including of threshold detention decisions) to United States circuit courts of appeal.

Congress expressly provided that: "[N]o court shall have jurisdiction, by habeas corpus . . . or by any other provision of law," to review any questions of law or fact (including those involving the interpretation or application of constitutional or statutory provisions) "arising from any action taken or proceeding brought to remove an alien from the United States," except on a petition for review of a final order of removal to the Court of Appeals. 8 U.S.C. § 1252(b)(9); *see also id.* § 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal").

The Supreme Court has emphasized that Section 1252(b)(9) is "the unmistakable 'zipper' clause" that channels—into proceedings before a federal court of appeals—"judicial review of all" "decisions and actions **leading up to or consequent upon** final orders of deportation," including "non-final order[s]." *Reno v. AADC*, 525 U.S. 471, 483, 485 (1999) (bold added); *see also J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting that Section 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings.") (cleaned up).

Although Section 1252(b)(9) may not bar claims challenging the *conditions or scope* of detention of aliens in removal proceedings, it does bar claims "challenging the decision to detain them in the first place." *Jennings v. Rodriguez,* 583 U.S. 281, 294 (2018) (plurality opinion); *S.Q.D.C.*, 2025 WL 2617973, at *3.[1]

[1] *See also Jennings*, 583 U.S. at 317 (Thomas, J., concurring in part and in the judgment) ("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 [.] . . . 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.") (cleaned up), quoting *AADC*, 525 U.S. at 482–83; *Demore*, 538 U.S. at 523; and 8 U.S.C. § 1252(b)(9).

To adjudicate Kumar's habeas claims, the Court would have to answer "legal questions" arising from "an action taken to remove an alien." *Jennings*, 583 U.S. at 295 n.3. Kumar's claims thus squarely "fall within the scope of § 1252(b)(9)" and are not reviewable in this Court. *Id.*

"Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the PFR [petition for review to a court of appeals] process." *J.E.F.M.*, 837 F.3d at 1031 (italics in original, and interpolation added) (also stating: "[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeals."); *see also id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007); *see also* 8 U.S.C. § 1252(a)(2)(D) (providing that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.").

But see Kashranov, 2025 WL 3188399, at *3-4 (Judge Wolson disagreeing with government and concluding that Section 1252(b)(9) was inapplicable because the petitioner was "not asking the Court to review a question . . . arising from any removal proceedings" but was challenging "interpretation of the statutory detention framework"); *Cantu-Cortes*, 2025 WL 3171639, at *1 (Judge Kenney reasoning that

Section 1252(b)(9) "does not bar this Court from reviewing whether a bond hearing is required prior to detention because that issue is collateral to the removal process.").

In sum, these provisions divest district courts of jurisdiction to review direct and indirect challenges to removal orders, including decisions to detain for purposes of removal proceedings. *See Jennings*, 583 U.S. at 294–95 (plurality in *dicta* presuming that Section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

C. Section 1252(a)(2)(B)(ii) shields from judicial review discretionary, inadmissibility-charging decisions.

Additionally, Section 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B).

Even if there were any remaining ambiguity over whether a foreign national could challenge the discretionary decision to detain him during removal proceedings, Congress added this additional jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA. *But see Kashranov*, 2025 WL 3188399, at *4 (Judge Wolson opining last week that the habeas petitioner there did not challenge a discretionary choice to detain but, rather "a pure legal question": "If it's 1225(b) then detention is mandatory. No discretion. . . . If it's 1226, then due process protections apply, and a bond hearing is mandatory. No discretion."); *Cantu-Cortes*, 2025 WL 3171639, at *1 (Judge Kenney reasoning that Section 1252(a)(2)(B)(ii) "does not bar jurisdiction because Petitioner is not challenging a discretionary decision to

deny him bond, but is instead challenging the Government's position, as a matter of statutory interpretation, that no bond hearing is required.").

II. Kumar Failed to Exhaust Administrative Remedies

Consistent with Federal Rule of Civil Procedure 1, administrative exhaustion promotes judicial efficiency by reserving courts' resources for matters that cannot be resolved administratively. *MacKay v. U.S. Veterans Admin.*, No. CIV. A. 03-6089, 2004 WL 1774620, at *4, n.8 (E.D. Pa. Aug. 5, 2004); *Biear v. Att'y Gen. United States*, 905 F.3d 151, 156 (3d Cir. 2018) ("Generally, the law requires exhaustion of administrative remedies before a plaintiff may seek relief in district court."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) ("[E]xhaustion promotes efficiency, including by encouraging parties to resolve their disputes without litigation.")

Kumar appears to argue that he should be excused from the available immigration-court administrative process because it would be futile to pursue it following the BIA's decision earlier this year in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). *See* Petition, ¶¶ 4, 32 (averring that the BIA there ruled "that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission"); *see also id.*, ¶¶ 50-51 (contending that the BIA's decision forecloses adequate immigration-court relief). *Accord Kashranov*, 2025 WL 3188399, at *4 (Judge Wolson reasoning that "no statute requires exhaustion in habeas proceedings under § 2241" and that requiring "further administrative review would serve no practical purpose considering" the *Hurtado* decision); *Cantu-Cortes*, 2025 WL 3171639, at *1 (Judge Kenney stating: "Petitioner is not required to exhaust his administrative remedies, as exhaustion would be futile" because "the Board of

Immigration Appeals would be bound by its own precedent to determine that Petitioner's detention is mandatory.").

The BIA's *Hurtado* decision controls on the applicability of Section 1225(b)(2) (and, by extension, on the unavailability of a bond hearing). Indeed, "the BIA is the subject-matter expert in immigration bond decisions." *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is thus well-positioned to assess how agency practice affects the interplay between the relevant statutory provisions. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting that a denial of bond to an immigration detainee was "a question well suited for agency expertise"); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of Sections 1225(b)(1) and 1226). *Cf. Kashranov*, 2025 WL 3188399, at *4 n.1 ("The BIA has no authority to bind this Court, which must undertake its own review of the statutory issues presented here."), citing *Loper Bright Enters. V. Raimondo*, 603 U.S. 369, 412 (2024).

The reality that *Hurtado* will control an immigration court's determinations about the applicability of Section 1225(b)(2) (and will control, by extension, the immigration court's determinations that a bond hearing is unavailable) does not nullify the immigration-court administrative process that Congress created or allow Kumar to circumvent it and proceed directly in this Court. If the BIA has erred in *Hurtado*, as Kumar alleges, this Court should allow: (1) the administrative process to correct itself; and (2) Kumar then to challenge the administrative process, on a proper record, through a direct petition for review to the Third Circuit.

In sum, Kumar's failure to exhaust his administrative remedies should cause this Court to dismiss his habeas petition in favor of the administrative process. *See Laguna*

Espinoza v. Director of Detroit Field Office, No. 25-cv-02107, 2025 WL 2878173, *3 (N.D. Cal. Oct. 9, 2025) (dismissing habeas petition challenging detention under Section 1225(b), for failure to exhaust). Even if this Court could jurisdictionally waive the exhaustion requirement, it should not do so. Waiving the exhaustion requirement would burden the district courts by encouraging " other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district court." *Aden*, 2019 WL 5802013, at *2.

III. Kumar is being lawfully detained under Section 1225(b)(2).

Even if the Court determines that it has jurisdiction to hear Kumar's Petition, his argument that he is being held under the wrong statutory provision fails on the merits.

There is a material statutory distinction between aliens who are detained after a lawful admission into the United States and those like Kumar who are present without a lawful admission.

Kumar is an "applicant for admission" subject to mandatory detention without bond.

An alien who "arrives in the [U.S.]," or is "present" in this county, but "has not been admitted," is considered an "applicant for admission" under 8 U.S.C. § 1225(a)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see also Garibay-Robledo v. Noem, et al.*, No. 1:25-cv-177-H, slip op. at *1-2, 6-7 (N.D. Tx. Oct. 24, 2025) (Dkt. No. 9) (explaining the relevant statutory history of INA). *See generally Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'"), citing 8 U.S.C. § 1225(a)(1); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not

just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission[.]").

Applicants for admission are covered by either Section 1225(b)(1) or Section 1225(b)(2). *See Jennings*, 583 U.S. at 287 (section 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)") (emphasis added). Under Section 225(b)(2)(A), "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien **shall be detained** for a [removal] proceeding under section 1229a." 8 U.S.C. § 1225(b)(2)(A) (bold and interpolation added). The Supreme Court has held that Section 1225(b)(2)(A) is a mandatory detention statute and that aliens detained under it are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.").

At issue in *Jennings* was the statutory interpretation of (and interplay between) Sections 1225(b) and 1226. The Supreme Court reversed the Ninth Circuit's shoehorning into these provisions of a six-month detention limit. *Id.* at 297. In doing so, the Supreme Court reasoned that "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 (bold added). The Court explained that falling under Section 1225 are both (1) aliens detained at the border and (2) those residing in the United States without legal status. *Id.* at 287-88.

Under the reasoning and holding of *Jennings*, Kumar is an alien "applicant for admission" who falls squarely within Section 1225(b)(2)(A)'s mandatory-detention-requirement ambit. He acknowledges that he has been present in the United States since his May 2024 illegal entry at the Canadian border. He does not aver (and cannot

genuinely aver) that he has yet been admitted to the country. *See, e.g.*, Petition, ¶ 43. And he has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted." *See* 8 U.S.C. § 1225(b)(2)(A) (stating applicant for admission "shall be" detained); *see also Jennings*, 583 U.S. at 289, 299 ("detention must continue" "until removal proceedings have concluded).

The BIA's unanimous Hurtado decision is the law of the land in immigration courts nationwide.

The BIA issued its published, formal *Hurtado* decision earlier this year as a "precedential," unanimous decision of a three-judge appellate panel. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The decision thus binds all immigration judges in the United States today. 8 C.F.R. § 1003.1(g)(1)-(3) ("[D]ecisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States."); *see also* 8 C.F.R. § 1003.1(d)(1) (explaining: "the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations.").

In *Hurtado*, the BIA confirmed that Section 1225 applies to applicants for admission who are present in the United States. Specifically, the BIA affirmed an immigration judge's conclusions that: (1) under Section 1225, the immigration court lacked jurisdiction to conduct a bond hearing for an alien who had entered the United States unlawfully in 2022, been granted temporary protected status in 2024, had that status revoked in 2025 (at which point he had been present in the United States for almost three years without admission), and then been apprehended and placed in

removal proceedings; and (2) the alien was to continue to be detained under Section 1225 for the duration of his removal proceedings. *Id.* at 216-17, 226.

The BIA relied on the statute's "plain," "clear," and "explicit" language, including in its "requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status." *Id.* To hold otherwise, the BIA concluded, would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension. *Id.* at 228.

The BIA rejected the alien's argument that Section 1225's mandatory detention scheme rendered superfluous the recent Laken Riley Act amendment to Section 1226. *Id.* As the BIA explained, "nothing in the statutory text of [INA] section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of [INA] section 235(b)(2)(A) . . .requiring that aliens who fall within the definition of the statute 'shall be detained for [removal proceedings].'" *Id.* at 222.[2] The BIA explained that any redundancy between the two statutes does not give license to "rewrite or eviscerate" one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).

The BIA's *Hurtado* mandate is clear: "under a plain language reading" of Section 1225(b), Immigration Judges lack authority to hear bond requests or to grant bond to aliens", like Kumar, "who are present in the United States without admission." *Id.* at 225.

[2] INA Section 235 is 8 U.S.C. § 1225. INA Section 236 is 8 U.S.C. § 1226.

Post-Hurtado habeas decisions

Following *Hurtado*, several district courts around the United States have held that Section 1225(b) permits the mandatory detention of aliens not previously admitted when entering at the border but later found within the country. *See Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *see also C.B. v. Oddo*, No. 3:25-CV-00263, 2025 WL 2977870, at *2 (W.D. Pa. Oct. 22, 2025).

In *Vargas Lopez*, the district court addressed the interplay of Section 1225(b)(2) and Section 1226(a), explaining that the provisions overlap and are not mutually exclusive. *Vargas Lopez*, 2025 WL 2780351, at *7 (citing *Jennings*, 583 U.S. at 289). Whereas Section 1225(b) provides for detention of alien applicants for admission, Section 1226(a) is broader in scope and permits the DHS Secretary to issue warrants for arrest and detention pending removal proceedings of aliens present in the country. Because these sections are not mutually exclusive, an alien may be subject to both if he is an applicant for admission who is detained within the country. *Id.*; *see also Barton v. Barr*, 590 U.S. 222, 239 (2020) (recognizing that 'redundancies are common in statutory drafting"). An alien remains an applicant for admission, and subject to Section 1225(b)(2), so long as he is "not clearly and beyond doubt entitled to be admitted" to the United States. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025). Nothing in either Section 1225(b)(2) or Section 1226(a) provides that the government must default to detaining an alien pursuant to Section 1226(a) if he is subject to detention under Section 1225(b)(2) as well.

The U.S. Court of Appeals for the Third Circuit has not yet ruled on whether an alien like Kumar may be detained under Section 1225(b)(2). In one of the only two decisions to date from this District on the question, the Honorable Joshua D. Wolson late last week concluded that detention was under Section 1226(a) and that Section 1225(b)(2) was inapplicable to an alien who had already entered and resided in the United States for two years. *Kashranov*, 2025 WL 3188399, at *5-7. Judge Wolson construed the Section 1225(b)(2) phrase "seeking admission" as limited to what occurs in the course of border entry. *Id.* at *6-7 (noting that, at oral argument, the government contended that "seeking admission" is a grammatical extension of "applicant for admission" and imposes no independent requirement).

In the other recent decision from this District, the Honorable Chad F. Kenney last week ruled that detention was under Section 1226(a)—and that the petitioner alien was therefore entitled to a bond hearing—where the alien had been residing in the United States for a quarter of a century (between 24 and 25 years) and "was not seeking to be admitted to the Country when ICE detained him" earlier this month. *See Cantu-Cortes*, 2025 WL 3171639, at *2 (citing a District of Nevada decision for the proposition that such an alien cannot be characterized as "seeking entry"). District courts in the District of New Jersey and the Western District of Pennsylvania so far have similarly declined to adopt the BIA's interpretation of § 1225(b)(2).[3]

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[3] *See Zumba v. Bondi*, Civ. No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Bethancourt Soto v. Louis Soto, et al.*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Lomeu v. Soto, et al.*, No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025); *Del Cid v. Bondi*, 3:25-cv-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *see also Mugliza Castillo v. Lyons*, 25-cv-16219, 2025 WL 2940990 (D. N.J. October 10, 2025) (holding § 1226(a), rather than § 1225(b), applies to Petitioner, without detailed factual analysis); *Buestan v. Chu*, No. CV 25-16034 (MEF), 2025 WL 2972252, at *1 (D.N.J. Oct. 21, 2025) (same). *But see C.B. v. Oddo*, No. 3:25-

This Court should not adopt the reasoning articulated in those cases. In *Zumba, v. Bondi*, Civ. No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025), and several later opinions citing to *Zumba*, for example, District of New Jersey judges so far have rejected the government's positions and have instead read into Section 1225(b)(6) a limitation that is not there—namely, that the provision applies only to applicants for admission at or near the border. *See Zumba*, 2025 WL 2753496, at *6, 8; *Bethancourt Soto v. Louis Soto, et al.*, No. 25-CV-16200, 2025 WL 2976572, at *6 (D.N.J. Oct. 22, 2025). *But see* Section 1225(a) (defining applicant for admission as either "[a]n alien present in the United States who has not been admitted or who arrives in the United States[.]")(emphasis added). Similarly to the *Cantu-Cortes* case that Judge Kenney ruled in last week (in which the alien had been in the United States for over two decades), the facts of these New Jersey cases are distinguishable. In *Zumba*, the alien had been present in the country for 23 years. *Zumba*, 2025 WL 2753496, at *1, 10; *see also id.* at * 6 (citing cases addressing detention of noncitizens present in the country for decades); *Soto*, 2025 WL 2976572, at *1 (petitioner entered the country as a minor); *Lomeu v. Soto, et al.*, No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025) (petitioner was married to a U.S. citizen).

Conversely, here, Kumar has been present in the United States only since 2024.

The decision in *Del Cid v. Bondi*, 3:25-cv-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025) is likewise distinguishable. There, the court explained that "[t]his case is primarily about the legal protections due to individuals who have been granted [Special

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CV-00263, 2025 WL 2977870, at *2, 5 (W.D. Pa. Oct. 22, 2025) (holding that Section 1225(b) applies to alien re-detained within the country, after parole revoked).

Immigrant Juvenile] Status[.]" *Id.* at 2. Although the *Del Cid* court held that the two juvenile petitioners should have been detained under § 1226(a), not § 1225(b), the court recognized the potential overlap of these statutes and "declined to adopt a bright line rule" that § 1225 "only applies to those at or immediately near the border." *Id.* at 15. The court noted that the distinction between Section 1226(a) and Section 1225(b)(2) can "blur" and that this issue is an "open legal question." *Id.*

Petitioner Kumar remains an applicant for admission who has not clearly and beyond doubt established that he is entitled to be admitted to the United States. Consequently, he is subject to mandatory detention under Section 1225(b)(2) and is ineligible for a bond redetermination hearing before the only tribunal (an immigration court) that jurisdictionally can hold such hearings when consistent with the immigration laws.

IV. Kumar's detention does not offend due process.

Congress made the legislative decision to detain aliens like Kumar pending removal. Such detention is a "constitutionally permissible part of [the removal] process." *See Demore*, 538 U.S. at 531.

Congress intended the phrase "applicants for admission" broadly to include undocumented aliens, like Kumar, who are present within the United States. *See* 8 U.S.C. § 1225(a)(1). Congress thus made a legislative judgment that such persons should be detained during removal proceedings—a profound interest, in the Congressional domain of regulating immigration, that the Supreme Court has repeatedly recognized. 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.").

Kumar's mandatory detention under Section 1225(b) will last only for the duration of his removal proceedings. *Demore,* 538 U.S. at 512 ("[B]ecause the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings."); *see also Jennings,* 583 U.S. at 304.

That detention does not violate due process. Kumar has been detained only since October 28, 2025. *See Zadvydas v. Davis,* 533 U.S. 678, 701 (2001) (detention less than six months presumed constitutional). He is currently scheduled for an internet-based (remote) initial removal hearing tomorrow (November 18), which he will not be able to attend because this Court has ordered him to remain held for now at FDC-Philadelphia. A Notice to Appear has scheduled him for a February 24, 2026 removal show-cause hearing in Philadelphia.

In short, his removal proceedings are just beginning, and Kumar's ample, available process in those proceedings demonstrates no lack of procedural due process or any deprivation of liberty that is "sufficiently outrageous" to establish a substantive-due-process claim. *See generally Reed v. Goertz,* 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.,* 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). *But see Kashranov,* 2025 WL 3188399, at *5 (Judge Wolson ruling that Section 1226(a) applied to the alien's detention, who therefore had due-process rights to an individualized detention determination and a bond hearing).

The Third Circuit has recognized that there may come a time in an immigration proceeding when mandatory civil detention without a bond hearing can (because of the length of detention) become unreasonable. *See German Santos v. Warden Pike Cnty.*

Corr. Facility, 965 F.3d 203, 211 (3d Cir. 2020) (analyzing detention under Section 1226(c)). *But see C.B. v. Oddo*, No. 3:25-CV-00263, 2025 WL 2977870, at *5 (W.D. Pa. Oct. 22, 2025) ("Neither the United States Supreme Court nor the Court of Appeals for the Third Circuit has directly addressed whether arriving aliens detained under § 1225(b) have the same due process right to a bond hearing upon unreasonable detention as that afforded to noncitizens being held under § 1226(c).").

Kumar, however, does not allege, nor could he show, that his short detention here has become unreasonable under the factor analysis set out in *German Santos*.

CONCLUSION

For the foregoing reasons, the Court should deny Kumar's habeas Petition.

Dated: November 17, 2025

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CERTIFICATE OF SERVICE

I certify that on this date I served the above Response Opposing Naresh Kumar's Petition for a Habeas Corpus Writ by electronic mail on Mr. Kumar's attorney of record as follows:

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