

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JUAN MANUEL BARBOSA GOMEZ

PETITIONER

v.

Civil Action No. 5:25-cv-00122-DCB-RPM

**WARDEN RAFAEL VERGARA,
Adams County Correctional Center**

RESPONDENT

RESPONSE IN OPPOSITION TO PETITION FOR HABEAS CORPUS

Juan Manuel Barbosa Gomez (“Petitioner”) is a native and citizen of Mexico, who illegally entered the United States at an unknown place on an unknown date. *See Exhibit A, Record of Deportable or Inadmissible Alien.* On October 10, 2024, Petitioner filed a Violence Against Women’s Act (“VAWA”)¹ I-360 self-petition, alleging abuse by his daughter, who is a U.S. citizen. The next day, he filed a U.S. Citizenship and Immigration Services (“USCIS”) Form I-485, seeking adjustment of status. The USCIS determined Petitioner satisfied prima facie eligibility under the VAWA and set a final hearing on January 9, 2026.² *See Exhibit B, Notice of Internet-Based Hearing.*

Then, on October 15, 2025, Petitioner was detained by immigration officials in Portland, Oregon pursuant to Section 1225(b)(2) of Title 8 of the United States Code and Section 235(b)(2) of the Immigration and Nationality Act (“INA”). *See Exhibit A, Record of Deportable or Inadmissible Alien.* He currently is being housed at the Adams County Correctional Center in Natchez, Mississippi. The Petitioner was served a “Notice to Appear” (“NTA”) for removal

¹ Individuals, regardless of sex, can file for relief and may be eligible under the VAWA to become a lawful permanent resident if they are the victim of battery or extreme cruelty committed by a U.S. citizen spouse, former spouse, parent, son or daughter; or by a lawful permanent resident (“LPR”) spouse, former spouse, or parent.

² A prima facie determination does equate to automatic approval.

proceedings based on violations of Sections 212(a)(6)(A)(i)³ and (a)(7)(A)(i)(I)⁴ of the INA. *See* Exhibit C, *Notice to Appear*. On December 9, 2025, he appeared before an Immigration Judge (“IJ”) for a custody redetermination (bond) hearing. The IJ denied the Petitioner’s request for custody redetermination pursuant to 8 C.F.R. § 1236, concluding it lacked authority to order release. *See* Exhibit D, *Order of the Immigration Judge*.

Although the Petitioner is in removal proceedings pursuant to Section 240 of the Immigration and Nationality Act (“INA”) and Section 1229a of Title 8 of the United States Code, he filed the instant petition, alleging that his detention is unlawful and that the mandatory detention provision in Section 1225(b)(2) is inapplicable to noncitizens who “previously entered the county and have been residing in the United States”. *See* ECF No. 1, *Petition*, p. 17. These arguments have no merit and are contrary to law. Accordingly, the Petition should be dismissed.

Legal Framework

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal. Before 1996, the INA required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings.⁵ In 1996, Congress passed the Illegal Immigration Reform and Immigration

³ An alien 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

⁴ Any alien who at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, or who is not in possession of a valid unexpired passport, or other suitable document, or identity and nationality document if such document is required by regulations issued by the Attorney General pursuant to Section 211(a) of the Act.

⁵ At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999). An alien who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025); *see* 8 U.S.C. § 1225(a)-(b) (1995); 8 U.S.C. § 1226(a) (1995). In contrast, an alien who physically entered

Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Among other things, the law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020).

To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “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) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been lawfully admitted.” House Rep., *supra*, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223. IIRIRA effected these changes through several provisions codified in Section 1225 and 1226 of Title 8:

I. Section 1225(a)

Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. It provides:

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in

the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). Aliens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 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. Nevertheless, “[a]ll aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States” are required to “be inspected by [an] immigration officer[.]” § 1225(a)(3).

II. Section 1225(b) – Inspection Procedures

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. The immigration officer’s inspection is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, referred to removal proceedings. The IIRIRA divided removal proceedings into two tracks – expedited removal and non-expedited “Section 240” proceedings, and it mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for “expedited removal proceedings,” *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “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.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to applicants for admission falling under the specifications of subsection (b)(1), the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed.”

8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is still detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is broader than (b)(1), serving as a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The key distinction between sections (b)(1) and (b)(2) is that (b)(1) provides for expedited removal, while section (b)(2) provides for standard removal proceedings under Section 1229a. Both sections, however, require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the conclusion of Section 1229a removal proceedings. In particular, Section 1225(b)(2) requires detention for those aliens with pending Section 240 removal proceedings:

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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added)⁶; *see also* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

While an applicant is subject to the mandatory detention provisions of Section 1225(b), the Department of Homeland Security (“DHS”) retains sole discretionary authority to temporarily release on parole “any alien applying for admission” on a “case-by-case basis for urgent

⁶ Exceptions to Subsection (b)(2) are: (1) aliens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) aliens who “arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-(C).

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 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.*

III. Section 1226 – Apprehension, Detention and Release

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.”⁷ *Id.* The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority. The Attorney General “may” either “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.*, *see* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested” alien during the pendency of removal proceedings).

⁷ IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226.

Argument

I. The Plain Language of Section 1225(b)(2) Mandates Detention.

Section 1225 expressly provides “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). 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.” *Id.* 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. While this may seem counterintuitive, “[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). Under the plain text of the statute, the Petitioner is unambiguously an “applicant for admission” because he is a foreign national who was not properly admitted, and he was present in the United States when he was apprehended by DHS.

The next relevant portion of the statute addresses 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). 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). The charges of removal against Petitioner are based on his unlawful entry. 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), & 1227(a)(1)(A).

In contrast, 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 Section 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 Section 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is not the same as an expedited removal under Section 1225(b)(1). Instead, under Section 1225(b)(2), removal proceedings must proceed as outlined under Section 1229a.

Therefore, the Court should find that Petitioner falls squarely within the statutory definition and is “seeking admission” to the United States. He has not agreed to immediately depart, and he is seeking to remain in this country, which requires an “admission” (*i.e.* a “lawful entry” as discussed above). And since he meets the textual element of § 1225(b)(2)(A) and is in 1229a

removal proceedings, the Petitioner is subject to mandatory detention during the pendency of these 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”).

II. Petitioner’s argument that § 1226, rather than § 1225, should apply to his detention is flawed.

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).

The crux of this dispute is one of statutory interpretation. The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant for admission” in Section 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 Section 1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743. History supports the result required by the plain language of the statute itself. Indeed, other district courts, have recognized that mandatory detention of inadmissible aliens for the duration of their removal proceedings is required by 1225(b)(2). *See, e.g., Oliveira v. Patterson*, 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)); *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)); *Alves de Andrade v. Patterson*, Case No. 6:25-cv-1695, ECF No. 9 at pp. 13-14 (W.D. La. Nov. 21, 2025) (the legislative history makes clear that lawfully admitted aliens should not be worse off than those who crossed the border unlawfully).

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 could give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531. 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).

Notably, a district court in this Circuit recently denied an injunction and request for a bond hearing under Section 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 v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264478, at *2 (N.D. Tex. Oct. 24, 2025). As that Court stated:

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. 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, the plain language of Section 1225(b)(2), requires DHS to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal

proceedings—regardless of how long the alien has been in the United States. This Court should follow the reasoning in the *Oliveira*, *Sandoval*, *Kum*, and the reasoning in other 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 his removal proceedings under § 1229a.

III. Petitioner’s 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 alien, 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 have crossed borders and traveled in violation of United States law (by definition). That is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has also 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.”).

In another immigration context involving 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 the *Jennings* court, stating “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 explained why the *Zadvydas* opinion does not provide authority to graft a time limit into 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.

In *Demore*, as is the case here, the alien 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. 538 U.S. at 513. The Supreme Court rejected the argument and explained that Congress was justified in detaining aliens during the entire course of their removal proceedings. 538 U.S. at 513. It emphasized the constitutionality of the “definite termination point” of the detention, which was the length of the removal proceedings. *Id.* at 512. The *Demore* Court held “[d]etention during removal proceedings is a constitutionally permissible part of that

process.” *See Demore*, 538 U.S. at 531. Considering 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. *Id.* at 512., *generally*.

Likewise, Petitioner’s detention does not violate due process, as his 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). The Petitioner is detained for the limited purpose of removal proceedings. His detention is not punitive or for other reasons than to address his removability from the United States. Petitioner’s detention under Section 1225(b)(2) is also not indefinite, as it will end upon the conclusion of his removal or removal proceedings. 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, even lengthy detention is mandatory and lawful under Section 1225(b). *Kum v. Ross, et al.*, 2025 WL 3113636 *2 (W.D. La. Oct. 22, 2025) (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional), *report and recommendation adopted*, No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025).

IV. This Court lacks jurisdiction to grant declaratory relief.

In his prayer for relief, Plaintiff asks this Court to make the following declarations: (1) that Petitioner’s detention violates the INA, and (2) that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment. ECF No. 1, *Petition*, pgs. 16-17. The Petition makes no mention of the authority under which the Court can grant such relief. However, the INA specifically precludes judicial review of a claim by an alien arising from the decision or action of the Attorney General to commence proceedings (in this case under § 1225(b)(2)(A), which requires mandatory

detention) or to adjudicate cases (in this case, to hold removal proceedings in accordance with § 1229a). Therefore, to the extent Petitioner seeks declaratory relief under this statute, this Court lacks subject matter jurisdiction to grant it.

Moreover, Petitioner’s challenge to his detention is squarely barred by 8 U.S.C. § 1252(g). Section 1252(g) categorically bars jurisdiction over “any cause or claim by or on behalf of any alien arising from the decision or action by the Secretary of Homeland Security to commence proceedings, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to commence removal proceedings, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. Detention unquestionably “aris[es] from” the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g) . . . strips us of jurisdiction to review . . . [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]”) (emphasis added); *Wang v. United States*, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) (“[Plaintiff’s] detention necessarily arises from the decision to initiate removal proceedings against him.”) (emphasis added)). Put in the Supreme Court’s words, detention pending removal is a “specification” of the

decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm. (“AADAC”)*, 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”). In short, the decision as to the method by which removal proceedings are commenced, which is the genesis of Petitioner’s detention, and the adjudication of his immigration proceedings is a discretionary one that is not reviewable by a district court under Section 1252(g). *See id.* at 487.

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, as he is subject to mandatory detention for the duration of his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2).

Date: December 15, 2025

Respectfully submitted,

J.E. BAXTER KRUGER
United States Attorney

By: /s/Keesha D. Middleton
KEESHA D. MIDDLETON (MSB No. 104549)
Assistant United States Attorney
501 East Court Street, Suite 4.430
Jackson, Mississippi 39201
Telephone: 601-965-4480
Facsimile: 601-965-4409
E-mail: Keesha.Middleton@usdoj.gov