UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

FILIBERTO LAGUNAS ALTAMIRANO, PETITIONER

v. CIVIL ACTION NO. 3:25-cv-712-DJH

JEFF TINDALL, Oldham County Jailer
KRISTI NOEM, Secretary of the
United States Department of Homeland Security,
SAMUEL OLSON, Field Office Director,
Chicago Filed Office, Immigration and
Customs Enforcement,
PAMELA BONDI, U.S. Attorney General RESPONDENTS

RESPONDENT'S MOTION TO DISMISS AND RESPONSE TO ORDER TO SHOW CAUSE

The United States, on behalf of Federal Respondent Pamela Bondi, acting in her official capacity as Attorney General, Kristi Noem, acting in her official capacity as Secretary of the U.S. Department of Homeland Security, and Samuel Olson, [1] acting in his official capacity as Interim Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement ("ICE"), respectfully request the Court dismiss Petitioner Filberto Altamirano's habeas petition for lack of jurisdiction. As explained more fully below, the Court lacks subject matter jurisdiction to review the Agency's action to detain Petitioner as it arises from the Agency's decision to commence his

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1 This response is filed on behalf of Federal Respondents Pamela Bondi, Kristi Noem, and Samuel Olson. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition also names Jeff Tindall, the Oldham County Jailer, as a respondent.

removal proceedings. *See* 8 U.S.C. §§ 1252(b)(9), (g). If the Court retains jurisdiction over the petition, the Court should deny the petition, because Altamirano is lawfully detained as an alien present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1225(b).

BACKGROUND

Altamirano is Removable as an Inadmissible Alien Present in the United States Without Being Admitted or Paroled and as an Alien Present Without Valid Entry Documents.

On August 12, 2025, Homeland Security Investigations ("HSI") conducted surveillance on a residence in Elgin, Illinois, concerning two Nicaraguans who had previously been ordered removed from the United States. Ex. A at p. 2 (copy of I-213 "Record of Deportable/Inadmissible Alien"). During surveillance, agents discovered Petitioner, a Mexican national who had no recorded encounters with United States Customs and Border Protection or with United States Immigration and Customs Enforcement ("ICE"), was also linked to the surveillance location. *Id.* at p. 2. Altamirano was identified leaving the area in a vehicle and was followed to a commercial parking lot where he initially refused to exit his vehicle when confronted by clearly marked immigration agents. *Id.* at p. 2-3. Speaking fluent English, Altamirano claimed to have an Employment Authorization Document ("EAD") when asked if he had any documentation permitting him to enter or remain in the United States. *Id.* at p. 3. Because an EAD does not confer an immigration status, the agents believed there to be probable cause to arrest Petitioner for unlawful presence in the United. *Id.*

When questioned at the Broadview Service and Staging Area ("BSSA") area in Illinois, Petitioner did not claim to be a citizen or national of the United States and informed that he would not voluntarily depart or stipulate to a removal, but rather stated that he wanted to be heard by an immigration judge. Ex. A at p. 3. At BSSA, it was confirmed that Altamirano had no active immigration status, but he had been previously granted Deferred Action for Childhood Arrivals ("DACA")[2] status but that his most recent application for DACA in December 2021 was denied for cause, because he had been convicted of driving under the influence in September 2020.[3] *Id.* Additionally, the EAD claimed by Petitioner expired in October 2020. *Id.*

Petitioner was determined subject to removal proceedings pursuant to 8 U.S.C. §§ 1182(a)(6)(A)(i) ("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") and 1182(a)(7)(A)(i)(I) ("not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under [the INA]"). Petitioner was accordingly issued an arrest warrant and

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2 Under DACA, certain unauthorized aliens who entered the United States as children illegally could "apply for a two-year forbearance of removal." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 9, (2020).

3 The record indicated also that in March 2011, Altamirano was arrested by the Carpentersville police for "DRIVING/NO LIC/CANC/SEX OFFEN," but there was no record of the disposition of those charges on the FBI rap sheet. Ex. A at p. 4.

placed directly into removal proceedings pursuant to 8 U.S.C. § 1229a. *Id.* at p. 4; *see also* Pet. at PageID.11 (copy of Warrant of Arrest).

On September 22, 2025, Petitioner filed a Motion to Withdraw Form EOIR-42B and for Voluntary Departure or in the Alternative, Motion for Immediate Removal Order. Ex. B (copy of motion sans exhibits); *see also* Pet. at PageID.4. As a result of the motion, orders of the immigration court were entered on October 2, 2025, disregarding Altamirano's application for asylum and finding he was removable as inadmissible under the INA. Pet. at PageID.4. Petitioner then apparently changed course, and he appealed those orders to the Board of Immigration Appeals. *Id.*

LEGAL FRAMEWORK

I. 8 U.S.C. § 1252 Limits the Court's Jurisdiction to Review Certain Immigration Decisions and Actions.

"[T]he party invoking federal jurisdiction has the burden to prove that jurisdiction." *Glob. Tech., Inc. v. Yubei (XinXiang) Power Steering Sys. Co.*, 807 F.3d 806, 810 (6th Cir. 2015). Relevant here, Congress utilized two separate provisions of the INA, 8 U.S.C. §§ 1252(b)(9), (g), to direct district courts from entertaining certain habeas challenges. 8 U.S.C. § 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." This bars review of an alien's claim that the government is "selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights," because such claims represent a "challenge to

the Attorney General's decision to 'commence proceedings' against them." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 474, 487 (1999) (quoting 8 U.S.C. § 1252(g)). The decision to detain is a "specification of the decision to 'commence proceedings' which . . . § 1252(g) covers." *Reno*, 525 U.S. at 485 n.9.

8 U.S.C. § 1252(b)(9) provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9) also specifies that "no court shall have jurisdiction, by habeas corpus under [28 U.S.C. § 2241] or any other habeas corpus provision . . . or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact." *Id.*; *see also* 8 U.S.C. § 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal"). While § 1252(b)(9) may not bar claims challenging the conditions or scope of detention of aliens in removal proceedings,[4] 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); *see also id.* at 293 (discussing claims not barred by § 1252(b)(9)).[5] Habeas petitions challenging the

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4 This is not relevant here, as Altamirano does not challenge the conditions of his detention or scope of that detention during his removal proceedings. [*See generally* Pet. at DN 1.]

5 *See also Jennings*, 583 U.S. at 317 (Thomas, J., concurring in part and concurring 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—indeed, this Court has described detention during removal proceedings as an 'aspect of the deportation process.' . . . The phrase 'any action taken to remove an alien from the United States' must at least cover

decision to detain in the first place require a court to answer "legal questions" that arise from "an action taken to remove an alien," so such a claim would "fall within the scope of § 1252(b)(9)." *Id.* at 295 n.3 (plurality opinion).

II. Alternatively, Altamirano Bears the Burden of Proving his Detention is Unlawful Under 8 U.S.C. § 1225(b), Because He is an Applicant for Admission.

Should the Court exercise jurisdiction over this case, the Court may only grant a writ of habeas corpus if the Petitioner shows he is in custody "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see also Dickerson v. United States*, 530 U.S. 428, 439, n. 3 (2000) ("Habeas corpus proceedings are available only for claims that a person 'is in custody in violation of the Constitution or laws or treaties of the United States,'") (quoting 28 U.S.C. § 2254(a)); *see also Caver v. Straub*, 349 F.3d 340, 351 (6th Cir. 2003) ("[I]n a habeas proceeding the petitioner 'has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.'") (quoting *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001)).

As an applicant for admission, Altamirano's detention is governed by 8 U.S.C. § 1225(b). The Supreme Court's decision in *Jennings* controls this determination. Therein, the Court explained, "the Government must determine whether an alien seeking to enter the country is admissible." 583 U.S. at 287. An alien—such as Petitioner— "who arrives in the United States, or is present in this country but has not been admitted, is

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congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien's removal.") (alterations and citation omitted) (quoting *Reno*, 525 U.S. at 482-83; *Demore v. Kim*, 538 U.S. 510, 523 (2003); and 8 U.S.C. § 1252(b)(9)).

treated as an applicant for admission." *Id.* (cleaned up). This is further defined in 8 U.S.C. § 1225(a)(1) ("[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission") and 8 U.S.C. § 1101(a)(13)(A) ("[a]dmission" is "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer").

As an "applicant for admission," Petitioner must "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 The first of the two categories is found at 8 U.S.C. § 1225(b)(1), establishing the expedited removal process, including both the detention and removal of "aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* Such aliens "are normally ordered removed 'without further hearing or review'" absent "either an intention to apply for asylum . . . or a fear of persecution" resulting in "an asylum interview." *Id.* (quoting 8 U.S.C. § 1225(b)(1)).

Section 1225(b)(2), however, "is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. Such aliens are subject to the 8 U.S.C. § 1229a removal statute and referred "for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country." *Id.* at 288 (cleaned up). Further, they "'shall be detained for a [removal] proceeding' if an immigration officer 'determines that [they are] not clearly and beyond a doubt entitled to be admitted' into the country." *Id.* at 288

(quoting 8 U.S.C. § 1225(b)(2)(A)). Section 1225(b)(1) and (b)(2) "unequivocally mandate that aliens falling within their scope 'shall' be detained." *Jennings*, 583 U.S. at 300.

ARGUMENT

I. The Court Should Dismiss This Habeas Petition under Fed. R. Civ. P. 12(b)(1) Because the Court Lacks Jurisdiction.

Altamirano's petition asks this Court to review ICE's decision to detain him pursuant to § 1225(b)(2). The Court lacks jurisdiction to consider Altamirano's petition under two provisions of the INA. First, 8 U.S.C. § 1252(g) strips the Court of subject matter jurisdiction over Petitioner's claims as they are "arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien . . . ." 8 U.S.C. § 1252(g); *see also Karki v. Jones*, 2025 U.S. App. LEXIS 20660 at *8-9, 2025 WL 1638070 at *4-8 (6th Cir. Aug. 13, 2025) (explaining that § 1252(g) applies to habeas claims and does not violate the Suspension Clause). Altamirano's challenges ICE's decision to detain him, under 8 U.S.C. § 1225(b)(2), as part of the commencement and adjudication of his removal proceedings, under 8 U.S.C. § 1229a. The detention is "connected directly and immediately" with the commencement and adjudication of Altamirano's removal proceedings. *See Tsering v. ICE*, 403 F. App'x 339, 343 (10th Cir. 2010) (cleaned up); *see also Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 943 (5th Cir. 1999). Thus, the Court cannot review the Agency's decision to detain him.

"Other circuits have recognized this straightforward point." *Öztürk v. Hyde*, 2025 WL 2679904, at *2 (2d Cir. Sept. 19, 2025) (Menashi, J., concurring). "By its plain terms,"

Section 1252(g) "bars [the courts] from questioning [the government's] discretionary decisions to commence removal" of the Petitioner, which include the "decision to take him into custody and to detain him during his removal proceedings." *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016); *see also Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) ("Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings."); *Suri v. Trump*, 2025 WL 1806692, at 11 (4th Cir. July 1, 2025) (Wilkinson, J., dissenting) (When the government detains an alien "pending a decision on whether the alien is to be removed—the detention arises from the commencement of proceedings or adjudication of cases."). Accordingly, "claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction." *Limpin v. United States*, 828 F. App'x 429, 429 (9th Cir. 2020); *see also Sissoko v. Rocha*, 509 F.3d 947, 949-50 (9th Cir. 2007) (petitioners' "detention arose from [the Agency]'s decision to commence expedited removal proceedings. As a result, 8 U.S.C. § 1252(g) applies to the [petitioners'] claim . . . . [W]e hold that 8 U.S.C. § 1252(g)'s jurisdiction-stripping language covers [their] false arrest claim . . . [which] directly challenges [the Agency's] decision to commence expedited removal proceedings."); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) ("We construe § 1252(g), which removes our jurisdiction over 'decisions to commence proceedings' to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.") (alterations omitted).

It is true that 8 U.S.C. § 1252(g) does not cover "all claims" arising from decisions to commence proceedings, adjudicate cases, or execute removal orders. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999) (explaining the scope of § 1252(g) and holding that it deprived the court of jurisdiction because the claims arose from the commencement of proceedings); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020). But it continues to bar review of narrow matters "arising from" those decisions—such as the Agency's decision to detain Altamirano. *See id.* Holding otherwise ignores the term "arising from" in the statute and flouts the maxim of statutory construction against superfluities. That maxim "instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous." *Hibbs v. Winn*, 542 U.S. 88, 89 (2004). Deciding that § 1252(g) only revokes the Court's jurisdiction over the Agency's ultimate decision to commence proceedings, adjudicate cases, or executive removal orders renders the provision "arising from" superfluous. Accordingly, the Court should interpret § 1252(g) to revoke the Court's jurisdiction to review the Agency's decision to detain Altamirano, as it was "arising from" the Agency's decision to commence his removal proceedings.

Secondly, 8 U.S.C. § 1252(b)(9) strips the Court of jurisdiction to review his habeas claims as the petition requires the Court to answer legal and factual questions "arising from any action taken or proceeding brought to remove . . . " him. *See* 8 U.S.C. § 1252(b)(9). Legally, Altamirano asks the Court to interpret the INA to determine which legal authority authorizes his detention during his removal proceedings. Pet. at PageID.7 ("Respondents now erroneously detain Petitioner under the mandatory

provision in § 1225(b)(2), rather than the discretionary provision of Section 1226(a) which providers for release on bond."). By making such a challenge, the adjudication of this habeas petition would require the Court to answer the "legal question" that arises from the Agency's "action taken to remove an alien." *See* 8 U.S.C. § 1252(b)(9). Further, Petitioner seeks a declaration that the government's "custody is in violation of the Constitution, laws and/or treaties of the United States." Pet. at PageID2. Such a holding would require the Court to make the factual determination that Altamirano is not removable as inadmissible, because he was: (1) admitted or paroled into the United States, or (2) has documentation authorizing his presence in the United States.[6] It cannot do so.

If the Court exercised jurisdiction, in contravention of Section 1252(b)(9), to make the factual determination as to his admissibility and the legal holding identifying the statute governing his detention, it could create the absurd holding that "it is unconstitutional for the government to detain aliens pending removal for a reason that allows the government to remove them." *Öztürk*, 2025 WL 2679904 at *2 (Menashi, J., concurring). This is exactly what Congress sought to preclude in Section 1252(b)(9). "Congress channeled judicial review of removal proceedings into a single proceeding to

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[6] Altamirano does not contest he lacks documentation authorizing his lawful presence in the United States. He admitted he was deportable when he filed a motion before the immigration court seeking voluntary deportation. Ex. B. In any event, the record basis to justify Petitioner's detention cannot be separated from the factual support for the initiation of his removal proceedings. The factual support for his arrest is an assessment by an ICE Agent that he was in the United States illegally and for not having any documentation allowing him to remain in the United States. Ex. A. Because he is subject to removal proceedings pursuant of the INA - 212(a)(6)(A)(i) and INA - 212(a)(7)(A)(i)(I), he was issued a Notice to Appear, and removal proceedings were commenced. Ex. A at p. 3.

avoid such an incoherent result." *Id.* By enacting Section 1252(b)(9), "Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process that previously had held sway in regard to removal proceedings." *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007) (citing H.R. Rep. No. 109-72, at 174). It designed the statutes "to consolidate and channel review of *all* legal and factual questions that arise from the removal of an alien into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals." *Id.* (emphasis in original). It is reasonable to conclude, therefore, that the jurisdictional bars do not prevent the adjudication of a claim that is "unrelated to any removal action or proceeding," *Delgado v. Qurantillo*, 643 F.3d 52, 55 n.3 (2d Cir. 2011) (cleaned up), or "independent of challenges to removal orders," H.R. Rep. No. 109-72, at 176 (2005). But when petitioners, such as Altamirano, are "challenging the decision to detain them in the first place" arguing there is no factual support for initiating removal proceedings or legal support for detaining them throughout the duration of those proceedings, that is a challenge to the removal proceedings that Congress has barred. *Jennings*, 583 U.S. at 294 (plurality opinion); *see also id.* at 314 (Thomas, J., concurring in part and concurring in the judgment) ("§ 1252(b)(9) removes jurisdiction over [aliens'] challenge to their detention.").

The Supreme Court in *Jennings* and in *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) found that § 1252(b)(9) did not limit the jurisdiction of the Court for the claims made in those cases. *See Jennings* at 294-95. In doing so, the Court gave district courts guidance as to the claims that *would* be limited by § 1252(b)(9).

> The parties in this case have not addressed the scope of § 1252(b)(9), and it is not necessary for us to attempt to provide a comprehensive interpretation. For present purposes, it is enough to note that respondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.

Id.; *see also Preap*, 586 U.S. at 402 (quoting *Jennings*).

Altamirano is "challenging the decision to detain [him]" as part of his formal removal proceedings. He specifically challenges ICE's removal proceedings decision to detain him under § 1225(b)(2). *See, e.g., Li v. United States Citizenship & Immigr. Servs.*, 2021 WL 6882637, at *2 (C.D. Cal. Dec. 2, 2021) (distinguishing *Jennings* and finding lack of jurisdiction under § 1252(b)(9)); *and Conteh v. Wolf*, 2020 WL 6363910 at *5 (D. Mass. Oct. 29, 2020) ("Justice Alito's framework is particularly instructive. In concluding that the claims in Jennings were *not* subject to § 1252(b)(9)'s jurisdictional bar, he seems to have set forth three categories of claims that *are*: (1) cases where an alien is seeking review of an order of removal; (2) cases where an alien is seeking review of the government's decision to detain him or seek removal; and (3) cases where an alien is seeking to challenge 'any part of the process by which [the alien's] removability will be determined.'").

Accordingly, the Court should dismiss Altamirano's habeas petition for lack of jurisdiction, as it challenges decisions arising from the Agency's action to adjudicate his removal proceedings, requires the Court to answer legal and factual questions, and in any event, may be presented before the immigration judge, the Board of Immigration

Appeals (BIA), and then to the Sixth Circuit Court of Appeals—but not to this Court.

II. Alternatively, the Court Should Deny the Habeas Petition, Because Altamirano is Lawfully Detained Under 8 U.S.C. § 1225(b)(2).

The Court should hold that Altamirano is being detained under 8 U.S.C. § 1225(b)(2). Even if the Supreme Court's decision in *Jennings* did not control this determination,[7] the Court should accord *Skidmore* deference to the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025) and hold that § 1225(b)(2) properly applies to Petitioner.

As the BIA determined, "aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A)[] and must be detained for the duration of their removal proceedings." *Hurtado*, 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300 (holding that these provisions of the INA "unequivocally mandate that aliens falling within their scope [of section 1225(b)(1) and (2)] shall be detained")). The Court should defer to this persuasive interpretation of the statute, even if it is not bound by it. *See Pemberton v. Bell's Brewery, Inc.*, 150 F.4th 751, 763, n. 4 (6th Cir. 2025) (explaining that *Skidmore* deference survived the Supreme Court's decision in *Loper Bright Enters v. Raimondo*, 603 U.S. 369, 402 (2024); *see also Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (explaining that agency has always been one of the factors that may give an Agency's interpretation "power to persuade, if lacking power to control"))). Likewise, under *Loper Bright*, the Court should not defer to

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[7] *See Jennings*, 583 U.S. at 287 (An "applicant for admission," must "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).").

DHS's prior practices because those did not accord with the statutory text of §§ 1225 and 1226. *Cf.* Pet. at PageID.4, 13.[8]

Contrary to other holdings, *see e.g. Beltran Barrera v. Tindall*, 2025 WL 2690565, at *3 (W.D. Ky. Sep. 19, 2025), the BIA's decision is persuasive and accurately construes the statutory text. As the BIA explained, an "applicant for admission" under 8 U.S.C. § 1225(a)(1), by virtue of his entry without inspection, must necessarily be considered as "seeking admission," as the term of art is used in 8 U.S.C. § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220 *see also Rojas v. Olson*, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (explaining that "seeking admission" "is best read as simply another way of referring to aliens who are applicants for admission"). This interpretation is supported by agency precedent, *see Matter of Lemus*, 25 I. & N. Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws"), and the Supreme Court's decision in *Jennings* which ignored the "seeking admission" portion of § 1225(b)(2)(A), instead interpreting the relevant portion of this provision to be whether an official determined they were "not clearly and beyond a doubt entitled to be admitted," *Jennings*, 583 U.S. at 281.

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8 "Prior administration's generous interpretations of these laws, while relevant to understanding the text, do not and cannot rewrite it." *Rojas v. Olson*, 2025 WL 3033967 at *9 ("[T]here is no estoppel against the federal government.").

This interpretation also makes sense. The BIA explained how a contrary reading creates a "legal conundrum," because there "is 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 . . . 8 U.S.C. § 1226(a)." *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221.[9]

Moreover, the Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025), does nothing to contradict this interpretation.[10] Section 1226(c) was amended to require the Attorney General to take into custody certain "criminal aliens" who are deemed inadmissible, under specific grounds, whom *also* "[are] charged with, . . . arrested for . . . convicted of . . . admits having committed or admits committing acts which constitute . . . burglary, theft, larceny, shoplifting, . . . assault of a law enforcement officer . . . or any crime that results in death or serious bodily injury to

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9 The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Hurtado* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

10 "[L]egislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996. Indeed, nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case. This recent legislation was aimed at making sure that certain aliens, whom Congress deemed dangerous, were necessarily detained pending their removal, lest they commit further crimes while released. These newly added provisions do not indicate anything with respect to either party's proposed interpretation of Sections 1225 or 1226." *Rojas*, 2025 WL 3033967 at *9.

another" once that "alien is released." 8 U.S.C. § 1226(c)(1)(E). This detention statute, by its plain terms, applies only to certain criminal aliens being released from custody for that crime. And nothing in this provision of the INA "alter[s] or undermine[s] the provisions of . . . 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute shall be detained for a proceeding under [8 U.S.C. 1229a]." *Hurtado,* 29 I. & N. Dec. at 222. If it did, the terms of 8 U.S.C. § 1225(b)(2)(A) would be rendered superfluous and thus, such interpretation "would be in contravention of the 'cardinal principle of statutory construction,' which is that courts are to 'give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.'"[11] *Id.* (quoting *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)).

Altamirano does not contest his removability for being present in the United States without being admitted or paroled.[12] *See generally* Pet. at DN 1. He effectively concedes he is an applicant for admission: an "[a]pplicant for admission" is "[a]n alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). 8 U.S.C.

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11 Importantly here, § 1226(c)(1) does not *solely* apply to those who have not been admitted to the United States. *See* 8 U.S.C. § 1226(c). To this end, lawful permanent residents who have been admitted to the United States may be subject to mandatory detention under the Laken Riley Act. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Azumah v. USCIS*, 107 F.4th 272, 273 (4th Cir. 2024). It also reaches those who were admitted erroneously and are deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i). The Laken Riley Act is not redundant with § 1225(b)(2).

12 Altamirano, as a noncitizen, is "present in the United States" and "has not been admitted." This cannot be disputed. Under the plain language of 8 U.S.C. § 1225(a)(1), he patently meets the definition of "applicant for admission." There exists no statutory foundation to conclude otherwise. Furthermore, the facts in this case demonstrate that Altamirano *is* seeking admission in that he submitted an application for asylum. *See Rojas*, 2025 WL 3033967 at *8; *see also* Pet. at PageID#4.

§ 1101(a)(13)(A) defines "[a]dmission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." Read in tandem with the statute's plain terms, as the Court must do,[13] the INA makes clear that all unadmitted aliens 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. Indeed, the INA makes clear that "applicants for admission" may be required to testify as to their "purposes and intentions . . . in seeking admission." 8 U.S.C. § 1225(a)(5). It therefore follows that an "applicant for admission" and a person "seeking admission" are one and the same. To interpret those as distinct terms and not synonyms renders § 1225(b)(2) internally contradictory.

Petitioner is an applicant for admission. Section § 1225(b)(2) states that an "applicant for admission" must be detained unless he—i.e., the "alien seeking admission"—can prove beyond a doubt that he is entitled to be admitted. Petitioner's

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13 When interpreting a statute, "the inquiry 'begins with the statutory text, and ends there as well if the text is unambiguous.'" *In re Vill. Apothecary, Inc.*, 45 F.4th 940, 947 (6th Cir. 2022) (quoting *Binno v. Am. Bar Ass'n*, 826 F.3d 338, 346 (6th Cir. 2016)); *see also King v. Burwell*, 576 U.S. 473, 486 (2015). Each word in the statute should be read in line with "its ordinary, contemporary, common meaning." *Kentucky v. Biden*, 23 F.4th 585, 603 (2022) (quoting *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997)). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Beecham v. United States*, 511 U.S. 368, 372 (1994) ("The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences."). Often, "the 'meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.'" *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)); *see also Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.").

interpretation of § 1225(b)(2) makes the statute incomprehensible. The Court should avoid this "patently absurd" interpretation which draws a distinction between the terms. *See United States v. Brown*, 333 U.S. 18, 27 (1948) (a court can reject the plain language interpretation of a statute if such an interpretation would lead to "patently absurd consequences"). While this may seem counterintuitive, "[w]hen a statute includes an explicit definition, [courts] must follow that definition." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up).

Here, we know that Altamirano is presently seeking admission by his application for asylum. Even if this Court believes the argument that "seeking admission" under § 1225(b)(2) requires some present tense meaning and denies that the language is simply another way of referring to aliens who are applicants for admission, the evidence before the Court is that Altamirano is currently actively seeking lawful admission. Pet. at PageID#4; *see also Rojas*, 2025 WL 3033967 at *8 ("In the Court's view, this language is best read as simply another way of referring to aliens who are applicants for admission. [The petitioner] would pack a lot of meaning into what appears to be an alternate phrasing").

Although some district courts have taken issue with ICE's interpretation of 8 U.S.C. § 1225 [Pet. at FN 1 at PageID.12], other courts have supported ICE's interpretation. In *Chavez v. Noem*, the Southern District of California explained that "[s]uch a reading of the statute comports with Congress' addition of § 1225(a)(1) by [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)]. Prior to IIRIRA, an 'anomaly' existed 'whereby immigrants who were attempting to lawfully

enter the United States were in a worse position than persons who had crossed the border unlawfully.'" *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228, at 4–5 (S.D. Cal. Sept. 24, 2025) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). The addition of § 1225(a)(1), thus, "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.'" *Torres*, 976 F.3d at 928; *see also Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Pipa-Aquise v. Bondi*, 2025 WL 2490657, at *2 (E.D. Va. Aug. 5, 2025); *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). *But see, e.g., Barrera*, 2025 WL 2690565.

Within the past couple of weeks, more district courts agreed that applicants for admission, like Petitioner, are detained under 8 U.S.C. § 1225. *See Sandoval v. Acuna*, 2025 WL 3048926 (W.D.La. October 31, 2025) (rejecting Petitioner's recent arrival interpretation of § 1225(b)(2)); *Rojas v. Olson*, 2025 WL 3033967 (E.D.Wis. October 30, 2025) (accepting Respondent's arguments made herein); *and Kum v. Ross*, 2025 WL 3113646 (W.D.La. October 22, 2025). The Eastern District of Wisconsin offered a detailed critique of Altamirano's arguments in *Rojas*, 2025 WL 3033967, a case in which the parties' arguments and circumstances are like those present here. Addressing the text of 8 U.S.C. §§ 1225 and 1226, the court held that the Petitioner "meets the definition of 'applicant for admission' in Section 1225(a)(1)," because he was "an alien 'present' in the United States and he has not been 'admitted.'" *Id.* at *8. "Under the plain terms of Section 1225(a)(1), he is 'deemed' an applicant for admission for purposes of Chapter 12

of Title 8, which governs Immigration and Nationality. Of all the statutory terms at issue, this is perhaps the most straightforward." *Id.* The *Rojas* court "attempted to review the statute as a whole, including all parts of the INA to which the parties refer," and concluded it could not "find a statutory basis to exclude [the petitioner] from the definition of 'applicant for admission' in Section 1225(a)(1)." *Id.* The *Rojas* court similarly rejected the claim that "additional language in Section 1225(b)(2) that refers to aliens who are 'seeking admission' . . . was intended to apply only to those aliens who arrive and are being detained at the border." *Id.* The *Rojas* Court noted that while "Section 1225(b)(2) . . . refers to aliens 'seeking admission,' . . . this language is best read as simply another way of referring to aliens who are applicants for admission." *Id.*

The *Rojas* court likewise dismissed the Petitioner's invocation of past agency practice, noting that "the Court concludes that it must follow the most natural reading of the statutory text" and "there is no estoppel against the federal government." *Id.* The *Rojas* court also rejected the notion "that language in his arrest warrant citing Section 1226 entitles him to discretionary detention under Section 1226," noting "[t]his language is best read not as an invocation of Section 1226 or an admission that that provision applies to [the petitioner]. Rather, it describes the agents to whom the warrant is directed and identifies two sources for their arrest authority." *Id.* Addressing "the number of other district courts that have adopted [the petitioner's] position," the *Rojas* court noted that "[b]eyond numbers, neither party directs the Court to compelling analyses from any of these decisions." *Id.*

As Petitioner is properly detained under 8 U.S.C. § 1225(b)(2), Altamirano cannot show that his detention violates his due process rights. "[D]ue process is flexible," and "calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also Landon v. Plasencia*, 459 U.S. 21, 34 (1982). As an applicant for admission detained under 8 U.S.C. § 1225(b)(2), he does not have due process rights beyond those provided in 8 U.S.C. § 1225. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). This "rests on fundamental propositions: the power to admit or exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Id.* at 139 (citations omitted). The *Rojas* court also provided useful analysis on this point, noting that aliens like Petitioner have limited liberty interests, and the United States has "a powerful interest in maintaining the detention in order to ensure that removal actually occurs." *Rojas*, 2025 WL 3033967 at *13-14. Further, there was little chance of erroneous deprivation of any rights because the petitioner was admittedly subject to removal, like Petitioner is here. *Id.* at *13.

Altamirano does not allege – nor can he – that the Agency failed to follow the procedures set forth in 8 U.S.C. § 1225. The record makes clear that he was given notice of the charges against him, he has access to counsel, he applied for asylum, he admitted to his deportability, he has a pending appeal before the BIA, and he has had an

opportunity to be heard by an immigration judge. Accordingly, he cannot show that his detention violates any procedural due process rights.

III. This Court Cannot Release Petitioner Prior to the Immigration Judge Entertaining a Bond Hearing

Petitioner incorrectly asserts that he is detained pursuant to § 1226, even though he is an applicant for admission under the INA. Nevertheless, Petitioner requests that this Court find he should be detained under § 1226 but then requests as relief that the Court immediately release him. Pet. at PageID.15. That is a legal oxymoron. His request denies the very process statutorily mandated by the detention statute he claims as applicable.[14]

Section 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings*, 583 U.S. at 288. Section 1226(a) provides that "an alien may be . . . detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). "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*, 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the noncitizen, it may set a bond and/or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal

[14] If the Court concludes there is a procedural due process violation, it arises from Petitioner's detention without a bond hearing, rather than the detention itself, which is discretionary under § 1226(a).

proceedings, the noncitizen 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 to release the noncitizen on bond. *See Guerra*, 24 I.&N. Dec. 37, 40 (BIA 2006);[15] *see also* 8 C.F.R. § 1003.19(d). 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).

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Section 1226 release under bond occurs only when the detained noncitizen moves for bond, and circumstances forming bond and release, are determined by an immigration judge, not by a district court. The idea that § 1226 simply permits release is antithetical to its language and its statutory purpose of detention. A finding that a detained noncitizen should be detained under § 1226, rather than § 1225(b)(2), is not a finding for release, but rather a finding that the noncitizen should be detained, unless he moves the immigration court for a bond and is so granted. If a district court finds it has the authority to direct which detention statute is appropriate for Petitioner and concludes DHS is incorrect in its application of the statutes, ordering an immediate release and a

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15 The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: "(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States." *Guerra*, 24 I. & N. Dec. at 40.

future bond hearing violates the very detention statute that the court purports to enforce and usurps the discretion of the immigration judge.

CONCLUSION

For the reasons stated herein, the Court should deny the petition for a writ of habeas corpus. A proposed order is hereto attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Petitioner.

/s/ Michael D. Ekman
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