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

DAGOBERTO PINEDA CRUZ **PETITIONER**

VERSUS **CIVIL ACTION NO: 5:25-cv-121-DCB-RPM**

RAPHAEL VEGARA, WARDEN OF THE ADAMS COUNTY CORRECTIONAL CENTER **RESPONDENT**

RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § BY A PERSON SUBJECT TO INDEFINITE IMMIGRATION DETENTION, AND PETITION FOR AN INJUNCTION PURSUANT TO 28 U.S.C. § 1331

INTRODUCTION

The Petitioner is an El Salvadoran national who illegally entered the United States at an unknown location and without inspection. Petitioner is currently detained at the Adams County Correctional Center in Natchez, MS and has been ordered for removal. Petitioner claims that (1) his detention violates the Immigration and Nationality Act (INA) and related bond regulations, and (2) his detention violates the Due Process Clause of the Fifth Amendment and seeks a writ of habeas and a court order for Respondent to provide him with an individualized bond hearing. These arguments have no merit and this court lacks jurisdiction to provide him the relief requested. Accordingly, the Petition should be dismissed.

STATEMENT OF FACTS

The Petitioner crossed into the United States on or about October 9, 2018, as a minor child without inspection and was detained by the Office of Refugee Resettlement ("ORR") soon after entering. He was released to the care of Alex Armerico Pineda Cruz (his uncle) in Richmond, VA in 2018. Pet. ¶ ¶ 1, 29. Petition Exhibit B. Petitioner is married to his wife,

Teresa Llanos-Reyes, who is a United States citizen and he has a pending I-130 petition. Pet. ¶ ¶ 1, 30 Petition Exhibit A. Respondent encountered the immigration authorities on October 9, 2018. On or about October 15, 2025, an immigration judge (IJ) with the Executive Office for Immigration Review ("EOIR") denied a request for a bond redetermination, claiming no jurisdiction. Pet. ¶¶1, 34, Petition Exhibit C. Petitioner has filed an I-589 Application for Asylum and Withholding of Removal. This remains pending with the Court. On December 3, 2025, he had an Internet-Based Hearing. Pet. ¶35. Petition Exhibit D. On December 3, 2025, the immigration judge issued a final order of removal. Exhibit A, Order of Removal.

LEGAL FRAMEWORK

In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for execution of removal orders. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The interplay between these statutes is at issue here.

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

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

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281,286 (2018). Section 1225 of Title 8 of the United States Code governs inspection, the initial step in this process, *id.*, stating that all alien "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled "ALIENS TREATED AS APPLICANTS FOR ADMISSION"—dictates who "shall be deemed for purposes of this chapter an applicant for admission," defining that term to encompass *both* an alien "present in the United States who has not been admitted *or* [one] who arrives in the United States . . .". *Id.*

§ 1225(a)(1) (emphasis added). The "or" in this statute is disjunctive and indicates that these are two different types of aliens both of which are considered an applicant for admission: (1) present and not admitted, or (2) arriving in the United States.

Likewise, INA 212(a)(6)(A)(i), 8 USC § 1182(a)(6)(A)(i), entitled "Illegal entrants and immigration violators" declares that an "alien present in the United States without being admitted or paroled, *or* who arrives in the United States at any time or place other than as designated by the Attorney General" is inadmissible. (emphasis added). Accordingly, under the INA, there are two types of applicants for admission, 8 U.S.C. § 1225(a)(1), and two types of "illegal entrants" who are inadmissible, 8 U.S.C. § 1182(a)(6)(A)(i). These defining statutes are terms of art and are not mutually exclusive. An alien can be an applicant for admission who is not an inadmissible illegal entrant by arriving at a designated port of entry and presenting for inspection. Conversely, an alien can be an applicant for admission who is also an inadmissible illegal entrant in one of two ways: (1) by arriving in the United States at a time and place other than a designated port of entry, ***or*** (2) by being present in the United States without being admitted or paroled. *See* 8 U.S.C. §§ 1225(a)(1) and 1182(a)(6)(A)(i).

2. Section 1225(b) – Inspection Procedures

Paragraph (b) of § 1225 governs the inspection procedures applicable to *all* applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those "arriving in the United States" and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i), (iii). The "certain other aliens" referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply § 1225(b)(1)'s expedited removal to an alien who "has not been admitted or

paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of multiple years.

Applicants for admission falling under the specifications of subsection (b)(1) are generally subject to expedited removal "without further hearing or review." See *id.* § 1225(b)(1)(A)(i). That includes those applicants for admission who cannot show that they have been present in the United States for at least two years prior to the determination of inadmissibility. Importantly, the two-year physical presence requirement does not excuse an applicant from mandatory detention under § 1225, as will be explained below, but only determines whether the applicant will be subject to expedited removal under § 1225(b)(1) if they have not been present in the United States for more than two years, or subject to standard removal proceedings under § 1229a if they have been present (albeit not admitted or paroled) for more than two years. Additionally, where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the applicant does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he or she is subject to mandatory detention until removal from the United States. Id. §§ 1225(b)(1)(A)(i) and (B)(iii)(IV) (stating that the alien "shall be detained"). An applicant for admission is further subject to mandatory detention while undergoing the § 1225(b)(1)(B) asylum procedures until a final determination is made. *Id.*

Section 1225(b)(2) is "broader" than (b)(1), serving as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1). *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a [removal] proceeding under § 1229a." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens. . .seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). The key distinction between sections (b)(1) and (b)(2) of 1225 is that only section (b)(1) provides for expedited removal, while section (b)(2) provides for standard removal proceedings under § 1229a. However, both sections require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the conclusion of § 1229a removal proceedings.

While an applicant is subject to the mandatory detention provisions of § 1225(b), DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). However, the INA remains very clear that even "such parole of such alien shall not be regarded as an admission of the alien" and when the purpose of parole, in the discretion of DHS, has been served, the alien should be returned to custody and treated as any other applicant for admission. *Id.*

B. Apprehension and Detention under 8 U.S.C. § 1226

Section 1226 of Title 8 of the United States Code applies to "aliens", which means *any* person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). "Even once

inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more... classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If, following apprehension under § 1226(a), DHS determines that an alien should remain detained during the pendency of his or her removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for ties to the United States and risks of flight or danger to the

community. *See In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest pursuant to § 1226(a), whether to detain or release an alien during his or her removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). Moreover, § 1226(c) specifies a class of aliens who cannot be released and shall be detained in custody during the pendency of removal proceedings (i.e. the determination of whether the alien is to be removed from the United States), encompassing aliens who have committed certain criminal acts or acts of terror.

C. Detention under 8 U.S.C. § 1231

Because Petitioner has now been ordered to be removed from the country, another provision comes into play here: 8 U.S.C. §1231. As one court has recently summarized:

> ...the INA generally gives the government 90 days to remove or deport aliens found to be removable and, while this was usually sufficient, the government was not always able to achieve removal within this "removal period." *Id.* at 683. In those circumstances, 8 U.S.C. § 1231(a)(6) authorizes the government to continue detention but it contains no time limitation or other constraint. *Id.* Invoking the constitutional avoidance canon, a majority of the Supreme Court held that Section 1231(a)(6) should be interpreted to include an implied time limitation, allowing detention only for the period "reasonably necessary to bring about the alien's removal." *Id.* at 689.

Rojas v. Olson, Case No. 25-cv-1437-bhl, 2025 WL 3033967 at *12 (E.D. Wis. Oct. 30, 2025) (quoting *Zadvydas v. Davis,* 533 U.S. 678 (2001)).

Under *Zadvydas*, therefore, Respondent may detain an alien ordered for removal for "a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas,* 533 U.S. at 689.

III. Argument

A. Petitioner's detention is proper under 8 U.S.C. § 1231.

Petitioner has now been ordered to be removed by an Immigration Judge. *See* Exhibit A, Order of Removal. Consequently, the statute applicable to Petitioner is 8 U.S.C. § 1231, which provides for the detention of aliens under final orders of deportation. Under § 1231(a)(1)(A), the Attorney General generally has 90 days after an order of removal becomes final in which to effect an alien's removal. After the initial 90-day period, the U.S. Supreme Court has held that detainment is presumed to be reasonable for six months. *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001).

However, *Zadvydas* does not mandate immediate release upon expiration of the six-month period. Rather, if the alien has not been removed within six months, he or she can show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future", and, upon such a showing, the United States must come forward and either rebut this showing or release the alien. *Jennings v. Rodriquez*, 138 S. Ct. 830, 843 (2018). "[A]n alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas,* 533 U.S. at 701. Consequently, an inadmissible alien "may be detained beyond the removal period" to accomplish removal where there is a significant likelihood of removal in the reasonably foreseeable future, though he cannot

be detained indefinitely. *Id.; c.f.,* 8 C.F.R. § 241.4(f), (k)(1)(ii); *but c.f., Tran v. Mukasey,* 515 F.3d 478, 484 (5th Cir. 2008) (indefinite detention and continued detention where removal is not reasonably foreseeable are not permitted).

Here, Petitioner is being detained pending removal, has waived his right to any appeal and Petitioner has not shown that "there is no significant likelihood of removal in the reasonably foreseeable future." *Jennings*, 138 S. Ct. at 843. As a result, his petition should be dismissed.

B. Petitioner is not entitled to release or to a custody redetermination under 8 U.S.C. § 1226(a).

Moving now to the Petitioner's main arguments, under the plain language of Section 1225(b)(2), DHS is required 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 or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

1. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants for Admission.

Section 1225(a) defines "applicant for admission" to encompass an alien who either "arrives in the United States" or who is "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

In turn, Section 1225(b)(2) provides that "an alien who is an applicant for admission" *"shall* be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A) (emphasis added). The statute's use of the term "shall" makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception for the duration of the alien's presence in the country or where in the country he is located. Therefore, the statute's plain text mandates that DHS detain all "applicants for admission" who do not fall within one of its exceptions.

Petitioner falls squarely within the statutory definition. He was "present in the United States," and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a). Moreover, Petitioner cannot—and did not—establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). In fact, he has been ordered for removal. *See* Exhibit A, Order of Removal. Therefore, Petitioner "shall be detained for a proceeding under [8 U.S.C. § 1229a]."

2. Section 1225(b)(2)'s Reference to Aliens "Seeking Admission" Does Not Narrow Its Scope.

Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission"—no additional affirmative step is necessary. In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to pursue voluntary withdrawal or voluntary departure.

Section 1225(a) provides that "[a]ll aliens … who are applicants for admission or otherwise seeking admission or readmission … shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project,* Inc., 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" is "seeking admission" for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) ("[M]any 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").

This reading is consistent with the everyday meaning of the statutory terms. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one applying for something is necessarily seeking it. *Compare* Webster's New World College Dictionary 69 (4th ed.) ("apply" means "To make a formal request (to someone for something)"), *with id.* at 1299 ("seek" means "to request, ask for"). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or seek employment, acceptance, or admission") (emphasis added). Likewise, an alien who is "applying" for admission to the United States (i.e.,

an "applicant for admission") is "seeking admission" to the United States. And that's true even when the alien has been physically present in the country for many years, as that alien can "still be an applicant for lawful entry, seeking legal 'admission.'" *Mejia Olalde*, 2025 WL 3131942, at *3. As the geographic and temporal limits in the neighboring provision, Section 1225(b)(1), demonstrate, "[i]f Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Id.* at *4.

None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As Section 1225(a)(3) shows, being an "applicant for admission" is only one "way or manner" of "seeking admission," *supra at *3*--not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be "seeking admission." See 8 U.S.C. § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

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

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 who entered the U.S. illegally and clandestinely, which Congress sought to end. Through mandatory detention of applicants for admission, Congress further ensured that the Executive Branch can give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531.

The legislative history is instructive. As explained by the BIA in *Yajure Hurtado*, 29 I&N 216 (BIA Sep. 5, 2025), before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IRRIRA"), the INA provided for inspection of only immigrants arriving at a port of entry. *Id.* at 222. Aliens in the United States were put into removal proceedings but were bond eligible. *Id.* at 223.

> Congress acted, in part, to remedy the "unintended and undesirable consequence" of having created a statutory scheme where aliens who entered without inspection "could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," including the right to request release on bond, while aliens who had "actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings,'" and were subject to mandatory custody (citing *Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). . . Thus, after the 1996 enactment of the IIRIRA, aliens who enter the United States without inspection or admission are "applicants for admission" under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), and subject to the inspection, detention, and removal procedures of section 235(b) of the INA.

Id. at 223.

This history supports the result required by the plain language of the statute itself. Indeed, other district courts, 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). Moreover, as another court in this Circuit has noted, even lengthy detention is mandatory and lawful under § 1225(b). *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113644, 3113646, at *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).

Accordingly, 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.

D. Petitioner's mandatory detention does not violate due process under the Fifth Amendment.

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And Congress directed that aliens like Petitioner shall be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they 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 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 (aliens already ordered removed and awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as unnecessarily restrictive in other contexts, such as during the pendency of removal proceedings under § 1225(b) and § 1226(c). This was an express holding of *Jennings,* stating "In Parts III-A and III-B [of the opinion], we hold that, subject only to express exceptions, §§ 1225(b) and 1226(c) authorize detention until the end of applicable proceedings." *Jennings,* at 296-97. The Supreme Court in *Jennings* explained in detail why the *Zadvydas* opinion does not provide authority to graft a time limit onto the text of § 1225(b) (as opposed to § 1231(a)(6), which authorizes the detention of aliens who have already been removed from the country), noting that § 1225(b) uses the word "shall" instead of "may", specifies a clear time frame for detention during the pendency of proceedings, and provides an express exception to detention, which signals that there are no other circumstances under which a § 1225 detainee may be released. *Id.* at 298-300.

Further, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings. 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the

removal proceedings. *Id.* at 512. 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. *See id.* generally.

Likewise, Petitioner's detention does not violate due process. Petitioner's available process in 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). Here, Petitioner is detained for the purpose of removal. Petitioner's detention is not punitive or for other reasons than to address his removability from the United States. His detention under § 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, as the court noted in its report and recommendation in *Kum,* even lengthy detention is mandatory and lawful under § 1225(b). *Kum,* No. 25-cv-00451 (ECF 14 at *4, n. 2) (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional).

In the habeas corpus challenge in *Demore*, the alien did not contest Congress' general authority to remove criminal aliens from the United States. Nor did he argue that he was not "deportable" within the meaning of § 1226(c). Rather, the alien in that case argued that the Government may not, consistent with the Due Process Clause of the Fifth Amendment, detain him for the period necessary for his removal proceedings. Like the alien in *Demore*, Petitioner is alleging that he should not be detained—though he is currently in removal proceeding and subject

to removal. However, Congress made the decision to detain him during the removal proceedings which is a "constitutionally permissible part of that process." *See Demore,* 538 U.S. at 531.

E. The Petitioner is not entitled to EAJA fees.

Petitioner asks this Court to provide "access to counsel." To the extent this is a request for EAJA fees, Petitioner is not entitled to such relief in this matter. "EAJA is a limited waiver of sovereign immunity allowing for the imposition of attorney's fees and costs against the United States in specific civil actions." *Barco v. Witte*, 65 F.4th at 784 (citing *Ardestani v. I.N.S.*, 529 U.S. 129, 137 (1991)). The "threshold issue" in *Barco* was whether "EAJA expressly and unequivocally waives the United States' sovereign immunity regarding attorney's fees in immigration habeas corpus actions." *Barco*, 65 F.4th at 785. Finding that habeas corpus proceedings are not purely civil proceedings, but are hybrid" cases, the Court concluded that EAJA's limited waiver of sovereign immunity does not extend to immigration habeas corpus actions. *Id.* Therefore, regardless of the resolution of Petitioner's substantive claims, the Court should reject his request for EAJA fees.

IV. Conclusion

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

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Respectfully submitted,

J.E. BAXTER KRUGER
United States Attorney

By: *s/ Mitzi Dease Paige*
MITZI DEASE PAIGE (MSB 6014)
Assistant United States Attorney
U.S. Attorney's Office
501 East Court Street, Suite 4.430
Jackson, Mississippi 39201
Phone: (601) 973-2840
Fax: (601) 965-4409
mitzi.paige@usdoj.gov

Counsel for Respondent