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

JOSUE CANTU-CORTES,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 25-6338
	:	
DAVID O'NEIL, *et al.*,	:	
	:	
Respondents.	:	

RESPONSE IN OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS

On November 5, 2025, Immigration and Customs Enforcement (ICE) placed Josue Cantu-Cortes in removal proceedings and detained him pursuant to 8 U.S.C. § 1225(b)(2). Rather than proceed through the Congressionally mandated process before an immigration judge, Cantu-Cortes petitioned this Court for a writ of habeas corpus, challenging the authority of the U.S. Secretary of the Department of Homeland Security, among others, to detain him under § 1225(b)(2), rather than 8 U.S.C. § 1226(a).

Not only has Cantu-Cortes failed to establish that this Court has jurisdiction to consider his petition, but he also failed to establish the merit of his central contention that his detention is unlawful. As Cantu-Cortes appears to acknowledge, he was never inspected and admitted to the United States, and he lacks any authorization to be physically present. As an applicant for admission, he is subject to mandatory detention under § 1225(b)(2).

The specific legal question raised by Cantu-Cortes' petition has been considered by numerous courts in the wake of the Board of Immigration Appeals' (BIA's) decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and the majority of those courts have rejected the government's position. Nevertheless, neither the Third Circuit nor any court in this district has yet weighed in. This Court, therefore, is not bound by precedent.

For the reasons set forth herein, the Court should dismiss Cantu-Cortes' petition for lack of jurisdiction and failure to exhaust administrative remedies. In the alternative, should the Court reach the petition's merits, it should adopt the government's interpretation of the scope of § 1225(b)(2), consistent with the plain language of the statute.

FACTUAL AND PROCEDURAL BACKGROUND

Cantu-Cortes, a citizen of Mexico, "entered the United States [in 2000 or 2001], as a teenager, without inspection across the southern U.S. border and had no contact with immigration authorities." ECF No. 1, at ¶¶ 2, 16. There appears to be no dispute that he is present in the United States without authorization, although he purportedly was recently "in the process of obtaining lawful status . . . through a process known as an I-601A, Provisional Unlawful Presence Waiver." *Id.* at ¶ 43.

On November 5, 2025, Cantu-Cortes was detained by ICE and placed in removal proceedings pursuant to 8 U.S.C. § 1229a. *Id.* at ¶ 45. Following his detention, he was transferred to the Federal Detention Center in Philadelphia,

where he remains and cannot be transferred absent this Court's authorization. *Id.* at ¶¶ 20, 46; ECF No. 2.

LEGAL STANDARD

It is well established that a writ of habeas corpus is an "extraordinary remedy." *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022). The petitioner bears the burden of showing his confinement is unlawful. *Hawk v. Olson*, 326 U.S. 271, 279 (1945); *accord Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (habeas petition "carries the burden of proof"); *see* 18 U.S.C. § 2241.

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

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is

elemental to the authority to deport and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process"); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made").

Cantu-Cortes is detained pursuant to 8 U.S.C. § 1225(b)(2) and must therefore make a strong showing to demonstrate that his continued detention violates the Constitution or laws of the United States. *See United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953) ("This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of

the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power"); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 402 F. Supp. 251, 254 (E.D. Pa. 1975) ("[D]efendants here carry a heavy burden, for a strong presumption of validity attaches to an Act of Congress").

ARGUMENT

Cantu-Cortes is entitled to no relief in this matter—preliminary, emergency, or otherwise. More specifically, he is unlikely to succeed on the merits of his petition because: (1) this Court lacks jurisdiction to intervene in his removal proceedings, (2) he has failed to exhaust administrative remedies, (3) he is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2), and (4) his detention does not offend due process.

I. The District Court Lacks Jurisdiction to Intervene in Removal Proceedings

Cantu-Cortes bears the burden of establishing that this Court has subject matter jurisdiction to address his claims. *See Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 818 (3d Cir. 2023), *cert. denied*, 144 S. Ct. 1007 (2024); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). He cannot meet this burden because his claims are jurisdictionally barred under 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a).

A. 8 U.S.C. § 1252(g) bars Cantu-Cortes' claim because he challenges the government's action to commence removal proceedings.

Cantu-Cortes challenges the determination by the Secretary of Homeland Security to detain him pursuant to § 1225(b)(2), as opposed to § 1226(a). ECF No. 1, at ¶ 6. But Congress has provided that "no court shall have jurisdiction to hear any

cause or claim" that arises from "the decision or action" to "commence" removal proceedings or "adjudicate [those] cases." 8 U.S.C. § 1252(g); *AADC*, 525 U.S. at 483; *Tazu v. Att'y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020). The Court lacks jurisdiction to adjudicate Cantu-Cortes' claims insofar as they arise "from the decision or action by the Attorney General [or Secretary of Homeland Security] to commence proceedings [and] adjudicate cases." § 1252(g); *Tazu*, 975 F.3d at 296; *Valencia-Mejia v. United States*, Civ. No. 08-2943, 2008 WL 4286979, at *3 (C.D. Cal. Sept. 15, 2008).

The Secretary's decision to detain is a "specification of the decision to 'commence proceedings' which . . . § 1252 covers." *AADC*, 525 U.S. at 474, 485 n. 9; *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning [the government's] discretionary decisions to commence removal" of a foreign national, including the "decision to take him into custody *and to detain him during his removal proceedings*" (emphasis added)); *Sissoko v. Mukasey*, 509 F.3d 947, 949 (9th Cir. 2007); *S.Q.D.C. v. Bondi*, Civ. No. 25-3348, 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025); *see also Linarez v. Garland*, Civ. No. 24-0488, 2024 WL 4656265, at *4 (M.D. Pa. Sept. 24, 2024), report and recommendation adopted sub nom. *Cordon-Linarez v. Garland*, 2024 WL 4652824 (M.D. Pa. Nov. 1, 2024) ("in our view, the Attorney General's discretionary decision to place Linarez in expedited removal proceedings is precisely the action this statute refers to"); *Saadulloev v. Garland*, Civ. No. 23-0106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence

proceedings"); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067-68 (N.D. Ill. 2007) (claim challenging arrest and detention during removal proceedings was barred under § 1252(g)).

This Court lacks jurisdiction to adjudicate Cantu-Cortes' claim challenging the Secretary's decision to commence proceedings and hold him under § 1225(b)(2).

B. 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction because Cantu-Cortes challenges the government's interpretation of a statutory provision arising from actions taken to remove him from the United States.

Even if this claim did not fall within the ambit of § 1252(g), the district court still lacks jurisdiction as Congress has chosen to channel review of immigration proceedings to the courts of appeal. "[N]o court shall have jurisdiction, by habeas corpus . . . or by any other provision of law," to review any questions of law or fact "arising from any action taken or proceeding brought to remove an alien from the United States"—including interpretation and application of constitutional and statutory provisions—except on a petition for review of a final order of removal to the Court of Appeals. 8 U.S.C. § 1252(b)(9); *see also id.* § 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal").

Congress intended to insulate threshold detention decisions from district court review. The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all . . . decisions action actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *AADC*, 525 U.S. at 483, 485; *see also J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (observing

§ 1252(b)(9) is "breathtaking in its scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings").

While § 1225(b)(9) may not bar claims challenging the conditions or scope of detention of aliens in removal proceedings, it does bar claims "challenging the decision to detain them in the first place." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion); *S.Q.D.C.*, 2025 WL 2617973, at *3.[1] By making such a challenge, the habeas claim here requires a court to answer "legal questions" that arise from "an action taken to remove an alien." *Jennings*, 583 U.S. at 295 n. 3 (plurality opinion). Cantu-Cortes' claims "fall within the scope of § 1252(b)(9)." *Id.*

"Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—which legal or factual—arising from *any* removal-related activity can be reviewed *only* through the PFR [*i.e.*, petition for review] process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal") (emphasis in

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

original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007).

Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ailani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals"). The petition-for-review process before courts of appeals ensures that noncitizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031-32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("the REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law"). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294-95 (plurality in *dicta* presuming § 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

C. 8 U.S.C. § 1252(a)(2)(B)(ii) shields from judicial review discretionary decisions, such as charge determinations regarding inadmissibility.

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

Thus, even if there were any remaining ambiguity as to whether a foreign national could challenge the decision to detain him during removal proceedings, Congress added this additional jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA.

II. Cantu-Cortes Failed to Exhaust Administrative Remedies

While the government does not dispute that the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), controls as to the applicability of § 1225(b)(2)—and by extension the availability of a bond hearing—the existence of this decision should not nullify the entire administrative process, nor should it allow an alien in Cantu-Cortes' position the ability to skip this process entirely and proceed directly to the district court for immediate review.

The regulatory process Congress created affords Cantu-Cortes the opportunity to redress his concerns administratively. Following it would provide the court of appeals a complete record should he ultimately seek review. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) ("exhaustion promotes efficiency,

including by encouraging parties to resolve their disputes without litigation"); *Laguna Espinoza v. Director of Detroit Field Office*, Civ. No. 25-2107, 2025 WL 2878173, at *3 (N.D. Cal. Oct. 9, 2025) (dismissing habeas petition challenging detention under § 1225(b) for failure to exhaust). Cantu-Cortes' failure to exhaust should cause this Court to dismiss the habeas petition in favor of the administrative process.

Exhaustion is particularly appropriate because agency expertise is required as to the applicability of § 1225(b) as opposed to § 1226(a). "[T]he BIA is the subject-matter expert in immigration bond decisions." *Aden v. Nielsen*, Civ. No. 18-1441, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, Civ. No. 17-1031, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise"); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

Waiving exhaustion would also "encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district court." *Aden*, 2019 WL 5802013, at *2. Individuals, like Cantu-Cortes, would have little incentive to seek relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on district courts. Indeed, exhaustion promotes judicial efficiency by reserving the courts' resources for matters that cannot be resolved

administratively. *MacKay v. U.S. Veterans Admin.*, Civ. No. 03-6089, 2004 WL 1774620, at *4, n. 8 (E.D. Pa. Aug. 5, 2004), *aff'd*, 115 F. App'x 601 (3d Cir. 2004); *Biear v. Att'y Gen. United States,* 905 F.3d 151, 156 (3d Cir. 2018) ("Generally, the law requires exhaustion of administrative remedies before a plaintiff may seek relief in district court."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency").

Because Cantu-Cortes has not exhausted his administrative remedies, this matter should be dismissed or stayed.

III. Cantu-Cortes Is Lawfully in Detention Pursuant to 8 U.S.C. § 1225(b)(2)

Should the Court determine that it has jurisdiction to consider the habeas petition, it should nevertheless find that Cantu-Cortes' argument that his detention is pursuant to the wrong statutory authority fails on the merits.

There is a statutory distinction between aliens who are detained after lawful admission into the United States and those who are present without lawful admission. An alien who "arrives in the [U.S.]," or is "present" in this country but "has not been admitted," is considered an "applicant for admission" under 8 U.S.C. § 1225(a)(1). *Jennings*, 583 U.S. at 287; *Garibay-Robledo v. Noem, et al.*, Civ. No. 25-0177, slip op. at *1-2 (N.D. Tx. Oct. 24, 2025) (ECF No. 9). Applicants for admission are either covered by § 1225(b)(1) or § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (§ 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)") (emphasis added).

Pursuant to 8 U.S.C. § 1225(b)(2)(A), "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 [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that § 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens").

Cantu-Cortes falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. He is an "applicant for admission" to the United States. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ."). To be certain, the Notice to Appear issued by the Department of Homeland Security to Cantu-Cortes on June 13, 2023, classifies him as an "alien present in the United States who has not been admitted or paroled." ECF No. 1-1, at 2. Consequently, his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A) (stating applicant for admission "shall be" detained).

The Supreme Court has confirmed an alien present in the country but never admitted is deemed "an applicant for admission" and that "detention must continue" "until removal proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings*, 583 U.S. at 289, 299. At issue in *Jennings* was the statutory interpretation of and interplay between § 1225(b) and § 1226. The Supreme Court reversed the Ninth Circuit Court of Appeals' imposition of a six-month time limit to § 1225(b) and § 1226(c). *Id.* at 297. In reaching that holding, the Court declared that "an alien who 'arrives in the United States,' *or* 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Id.* at 287 (emphasis added). As the Court explained, both aliens detained at the border and those without legal status residing within the United States fall under § 1225. *Id.* at 287-88. This includes Cantu-Cortes, who is an alien present in the country but not yet admitted. *See Garibay-Robledo*, slip op. at *6-7 (explaining the statutory history of the INA which supports reading the term "applicants for admission" to include aliens detained within the United States who have not been admitted).

The Board of Immigration Appeals confirmed the application of § 1225 to applicants for admission, present within the United States, in a published formal decision earlier this year. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Hurtado*, the BIA affirmed the decision of the immigration judge finding the Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was present in the United States for almost three years but was never

admitted shall be detained under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an alien who unlawfully entered the United States in 2022 and was granted temporary protected status in 2024. *Id.* at 216-17. That status was revoked in 2025, and the alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. When the alien sought a redetermination of his custody status, the immigration judge held the Court did not have jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

In affirming the decision of the immigration judge who determined he lacked jurisdiction, the BIA found § 1225 clear and unambiguous: "Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." *Hurtado*, 29 I&N Dec. 216 at 226. Indeed, §1225 applies to aliens who are present in the country—even for years—who have not been admitted. *See id.* ("the statutory text of the INA . . . is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status." (citing 8 U.S.C. §1225)). 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 a number of years. *Id.* at 228.

Next, the BIA rejected the alien's argument that the mandatory detention scheme under § 1225 rendered the recent amendment to § 1226 under the Laken

Riley Act superfluous. *Id.*; *c.f.* ECF No. 1, at ¶ 35. The BIA explained, "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute 'shall be detained for [removal proceedings].'" *Id.* at 222. According to the BIA, any redundancy between the two statutes does not give license to "rewrite or eviscerate" one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).[2]

Thus, because Hurtado was present in the United States (regardless of how long) and because he was never admitted, under § 1225(b) he was subject to mandatory detention during his removal proceedings and not entitled to a bond hearing. *See id.* at 228. The BIA mandate is clear: "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Id.* at 225. Indeed, this ruling

[2] The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted by a three-appellate judge panel. *See id. generally*. It is binding on all immigration judges in the United States. 8 C.F.R. § 1003.1(g)(1) ("[D]ecisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States."). In the Board's own words, *Hurtado* is a "precedential opinion." *Id.* at 216; *see* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law of the land in immigration court today. *See also* 8 C.F.R. § 1003.1(d)(1) (explaining "the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations.").

emphasizes that § 1225(b)(2) applies to aliens, like Cantu-Cortes, who are present in the United States but have not been admitted.

Following *Hurtado*, several district courts around the country held that § 1225(b) permits the mandatory detention of aliens who had not been previously admitted when entering at the border but were subsequently found within the country. *See Vargas Lopez v. Trump*, Civ. No. 25-0526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, Civ. No. 25-2325, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, Civ. No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *see also C.B. v. Oddo*, Civ. No. 25-0263, 2025 WL 2977870, at *2 (W.D. Pa. Oct. 22, 2025). In *Vargas Lopez*, the district court expressly addressed the interplay of § 1225(b)(2) and § 1226(a). The court explained that these two statutory provisions overlap and are not mutually exclusive. *Vargas Lopez*, 2025 WL 2780351, at *7 (citing *Jennings*, 583 U.S. at 289). While § 1225(b) provides for detention of alien applicants for admission, § 1226(a) is broader in scope and permits the Secretary to issue warrants for arrest and detention of aliens present in the country pending removal proceedings. Given that these sections are not mutually exclusive, an alien may be subject to both § 1225(b)(2) and § 1226(a) if he is an applicant for admission who is detained within the country. *Id.*; *see Barton v. Barr*, 590 U.S. 222, 239 (2020) (recognizing that "redundancies are common in statutory drafting"). An alien remains an applicant for admission, and subject to § 1225(b)(2), so long as he is "not clearly and beyond doubt entitled to be admitted" to the United States. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Pena v. Hyde*, Civ. No. 25-

11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025). Nothing in either § 1225(b)(2) nor § 1226(a) provides that the government must default to detaining an alien pursuant to §1226(a) if he is subject to detention under § 1225(b)(2) as well.

Neither the Third Circuit Court of Appeals nor any court in the Eastern District of Pennsylvania has yet ruled on whether an alien like Cantu-Cortes may be detained under § 1225(b)(2). While district courts in the District of New Jersey and the Western District of Pennsylvania have declined to adopt the BIA's interpretation of § 1225(b)(2), the Court here should not adopt the reasoning articulated in those cases. *See Zumba v. Bondi*, Civ. No. 25-14626, 2025 WL 2753496 (D. N.J. Sept. 26, 2025); *Bethancourt Soto v. Louis Soto, et al.*, Civ. No. 25-16200, 2025 WL 2976572 (D. N.J. Oct. 22, 2025); *Lomeu v. Soto, et al.*, Civ. No. 25-16589, 2025 WL 2981296, at *8 (D. N.J. Oct. 23, 2025); *Del Cid v. Bondi*, Civ. No. 25-0304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *see also Mugliza Castillo v. Lyons*, Civ. No. 25-16219, 2025 WL 2940990 (D. N.J. Oct. 10, 2025) (holding § 1226(a), rather than § 1225(b), applied to petitioner, without detailed factual analysis); *Buestan v. Chu*, Civ. No. 25-16034, 2025 WL 2972252, at *1 (D. N.J. Oct. 21, 2025) (same); *but see C.B.*, 2025 WL 2977870, at *5 (holding that § 1225(b) applies to alien re-detained within the country, after parole revoked).

In *Zumba*, and subsequent opinions citing to it, the District of New Jersey rejected the government's interpretation of the interplay between § 1225(b)(2) and § 1226(a). *Id.* at *6; *see supra*. The court's analysis, however, reads into the statute a limitation that is simply not there—namely that § 1225(b)(2) only applies to

applicants for admission at or near the border. *See Zumba*, 2025 WL 2753496, at *8; *see also Soto*, 2025 WL 2976572, at *6. The statute itself does not contain any such limitation. *See* § 1225(a) (defining applicant for admission as either "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . .") (emphasis added).

Cantu-Cortes' argument that § 1225(b)(2) applies only to those actively "seeking admission" by taking a present-tense action to enter the country is similarly unavailing. *See* ECF No. 1, at ¶ 39. This argument inserts concepts into the plain text of the statute that simply are not there. Congress defined *all* aliens who are present in the United States without being admitted as "applicant[s] for admission," regardless of when they entered. *See* 8 U.S.C. § 1225(a)(1). When an immigration officer encounters and examines an applicant for admission who seeks to remain in the United States, and that alien (like Cantu-Cortes) desires to remain in the United States, he is necessarily "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). Otherwise, the alien must "withdraw the application for admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4). An alien continues to be "seeking admission" while in immigration removal proceedings to determine whether he can "be admitted to the United States." *See* 8 U.S.C. § 1229a(3); *In Re Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (recognizing 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"). In other words, an "applicant for admission" is necessarily "seeking admission." *See Rojas v. Olson*, Civ. No. 25-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025); *but see Bethancourt Soto v. Soto*, Civ. No. 25-16200, 2025 WL 2976572, at *6 (D. N.J. Oct. 22, 2025).

Cantu-Cortes remains an applicant for admission as he has not clearly and beyond doubt established that he is entitled to be admitted to the United States. Consequently, he is subject to mandatory detention under § 1225(b)(2) and ineligible for a bond redetermination hearing before an immigration judge.

IV. Cantu-Cortes' Detention Does Not Offend Due Process

Congress broadly crafted "applicants for admission" to include undocumented aliens, like Cantu-Cortes, who are present within the United States. *See* 8 U.S.C. § 1225(a)(1). In so doing, Congress made a legislative judgment to detain undocumented aliens during 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").

The Supreme Court has repeatedly recognized this profound interest. Cantu-Cortes' mandatory detention pursuant to §1225(b) will only last the duration of his removal proceedings. *Demore,* 538 U.S. at 512 ("[B]ecause the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings"); *see also Jennings,* 583 U.S.

at 304. In light of Congress's interest in regulating immigration, including by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns without engaging in the *Mathews v. Eldridge* test. *See generally Demore*, 538 U.S. at 531.

Cantu-Cortes' detention pending his removal proceedings does not violate the Due Process Clause. He has been detained since November 5, 2025. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (detention less than six months presumed constitutional). In short, his immigration proceedings are just beginning and 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); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal, which is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531.

The Third Circuit has recognized that there may come a time when mandatory civil detention without a bond hearing becomes unreasonable. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) (analyzing detention under § 1226(c)); *but see C.B.*, 2025 WL 2977870, at *5 ("Neither the United States Supreme Court nor the Court of Appeals for the Third Circuit has directly addressed whether arriving aliens detained under § 1225(b) have the same due process right to a bond hearing upon unreasonable detention as

that afforded to noncitizens being held under § 1226(c)"). Cantu-Cortes, however, does not allege, nor could he show, that his detention has become unreasonable under the analysis set forth in *German Santos*.

CONCLUSION

For the foregoing reasons, respondents respectfully request that Cantu-Cortes' petition for writ of habeas corpus be denied.

Respectfully submitted,

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Dated: November 12, 2025

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I filed the foregoing Response in Opposition to Petition for Writ of Habeas Corpus via the Court's Case Management/Electronic Case Filing System, thereby making it available for viewing and download by all parties to the case.

/s/ Bryan C. Hughes
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Dated: November 12, 2025