

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

M.C.H.L.

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PETITIONER,

v.

DAVE OBERSON, ET. AL.,

RESPONDENTS.

Civil Action No.

4:25-cv-00329-WMR

**FEDERAL RESPONDENTS' RESPONSE IN OPPOSITION
TO PETITION FOR HABEAS CORUPUS**

Petitioner seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of her detention by ICE and seeking either a bond hearing or immediate release from custody pending removal proceedings. Petitioner is currently detained under 8 U.S.C. § 1225(b) and is ineligible for release under 8 U.S.C. § 1226(a). Moreover, any reliance on Petitioner's prior 1226(a) status is misplaced, as ICE had the discretion to revoke that status (and has done so). Petitioner seeks to circumvent § 1225(b), seeking a bond hearing or release – neither of which she is entitled to.

The Petition fails and should be denied and dismissed in its entirety. First, this Court lacks jurisdiction over the Petition because the INA precludes judicial

¹ Upon information and belief, the A Number listed on the Petition is incorrect.

review of Petitioner's claims. The INA forbids courts from reviewing any cause or claim arising from a decision or action to commence proceedings or adjudicate cases. Such review of Petitioner's claims may only be reviewable in a final order of removal with the court of appeals. Second, the Petition fails on the merits. The INA clearly defines an "alien present in the U.S. who has not been admitted" as an "applicant for admission." And because Petitioner is present in the U.S., has not been admitted, is seeking admission, and is not clearly and beyond a doubt entitled to be admitted, she is subject to mandatory detention pursuant to § 1225(b)(2)(A). Third, as for Petitioner's constitutional claims, the due process afforded to applicants for admission is that which is provided in the INA. And since no additional process is due to Petitioner, the Department of Homeland Security's ("DHS's") detention of Petitioner does not violate her due process rights, even if Petitioner has resided in the U.S. for two years. Therefore, the Federal Respondents respectfully request this Court deny the instant Petition.

Statutory and Regulatory Background

In order to analyze the factual issues and relief sought by Petitioner in her Habeas Petition, it is necessary to understand the statutory and regulatory provisions governing Petitioner's civil immigration detention. Such provisions have been the subject of extensive judicial discussion. *See generally DHS v. Thuraissigiam*, 591 U.S. 103 (2020); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). One

critical concept is that of “admission.” An “admission” (or being “admitted”) is “the *lawful* entry of [an] alien into the [U.S.] after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(13)(A) (emphasis added). The INA authorizes the removal of certain aliens who have not been admitted to the U.S. through different procedures, and, as the Supreme Court has unequivocally held, *requires* federal immigration officials to detain these aliens pending the conclusion of any necessary proceedings. 8 U.S.C. § 1225(b).

1. Mandatory Detention – 8 U.S.C. § 1225

Any “alien present in the [U.S.] who has not been admitted or who arrives in the U.S.” whether or not at a port of entry is treated as “an applicant for admission.” 8 U.S.C. § 1225(a)(1); *see* 8 C.F.R. § 235.1(f)(2). Applicants for admission may be placed in removal proceedings one of two ways – either through expedited removal under § 1225(b)(1) or through non-expedited removal proceedings under § 1225(b)(2).² 8 U.S.C. §§ 1225(b)(1) (arriving aliens), (b)(2) (other applicants for admission).

Section 1225(b)(2) “serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]” *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added); *Matter of Yajure Hurtado*,

² While there are other options for removal related to criminal activity, national security and other similar grounds, they are not relevant here.

29 I. & N. Dec. 216, 220 (BIA 2025) (“[A]liens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”) (citing *Jennings*, 583 U.S. at 300). These applicants for admission “shall be detained for a [removal] proceeding” if the “immigration 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).

Although detention pursuant to section 1225(b) is mandatory, it is *not* indefinite. On the contrary, “§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time.” *Jennings*, 583 U.S. at 299. Specifically, “detention must continue . . . until removal proceedings have concluded.” *Id.* (internal citation omitted). But “[o]nce those proceedings end, detention under § 1225(b) must end as well.” *Id.* at 297. Further, while section 1225(b)(2) does not provide for bond hearings (*see id.* at 297–303; *Hurtado*, 29 I. & N. Dec. at 218–19; § 1225(b)(2)), the statute does contain “a specific provision authorizing release from . . . detention.” The DHS may temporarily parole aliens detained under §§ 1225(b)(1) and (2) 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); *Jennings*, 583 U.S. at 300; 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). “[P]arole of

such alien[s] *shall not* be regarded as an admission.” 8 U.S.C. § 1182; *see id.* § 1101(a)(13)(B). Instead, even aliens *lawfully paroled* into the U.S. are *not* considered to have affected a lawful “admission.” 28 U.S.C. § 1101(a)(13)(B); *Thuraissigiam*, 591 U.S. at 139 (“[A]liens who arrive at ports of entry – even those paroled elsewhere in the country for years pending removal – are treated for due process purposes as if stopped at the border.”) (internal quotation marks omitted).

2. Discretionary Detention - 8 U.S.C. § 1226(a)

Even once inside the U.S., “aliens do not have an absolute right to remain here.” *Jennings*, 583 U.S. at 288. Aliens present in the U.S. may still be removed if they were inadmissible at the time of entry or have been convicted of certain criminal offenses. *Id.* “Section 1226 *generally* governs the process of arresting and detaining [the foregoing] group of aliens pending their removal.” *Id.* (emphasis added); *see* 8 U.S.C. § 1226(a); *Rodriguez*, 747 F. Supp. 3d at 916. Under § 1226(a), the U.S. may detain an alien during his removal proceedings, release her on bond, *or* release her on conditional parole. *See* 8 U.S.C. § 1226(a).

By regulation, immigration officers can release aliens if the alien demonstrates that she “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). Under 8 U.S.C. § 1226(b), the U.S. “*at any time may revoke* a bond or parole authorized under [§

1226(a)], rearrest the alien under the original warrant, and detain the alien.” *Id.* (emphasis added); *see* 8 C.F.R. §§ 236.1(c)(9), (d)(1).

Petitioner’s Immigration History

Petitioner is a 30-year-old native and citizen of Mexico, who entered the United States on August 3, 2023, *without being admitted or paroled* by an immigration officer. Docket No. 1, ¶ 21; Declaration of David Bush (“Bush Dec.”), attached as Exhibit 1, at ¶ 4, Exh. A. On August 4, 2024, Petitioner admitted to Customs and Border Patrol (“CBP”) that she entered the U.S. illegally. *Id.*, Exh. A. CBP then served Petitioner with a Notice to Appear (“NTA”), placing her in removal proceedings under § 212(a)(6)(A(i) of the INA and setting her initial hearing date for September 2, 2026. *Id.* at ¶¶ 4, 5, Exh. B.

The same day, Petitioner was released under an Order of Release on Recognizance (“OREC”) under 8 U.S.C. 1226(a)(2)(B) — a form of *conditional* parole. *Id.*, Exh. C; Docket No. 1-3. The OREC prohibited Petitioner from “violat[ing] any local, State, or Federal laws or ordinances.” Bush Dec., Exh. C; Docket No. 1-3. 6.

According to the Petition, Petitioner “has a pending asylum application and approved employment Authorization Document (EAD).” Docket No. 1, ¶ 1. Also, on July 19, 2024, Petitioner filed an application for relief from removal with the Immigration Court. *Id.*, ¶ 6.

Two years after illegally entering the U.S., Petitioner violated the specific terms of her OREC and was arrested in Floyd County, Georgia for illegally driving without a license. Bush Dec., at ¶ 7. Consequently, she was transferred to ICE custody on November 10, 2025. *Id.* On November 13, 2025, before the instant Petition was filed, Petitioner left Floyd County and was transferred to Stewart Detention Center (“SDC”) where she is being detained in accordance with 8 U.S.C. § 1225, pending removal proceedings. *Id.*, ¶ 8. On November 20, 2025, Petitioner’s OREC was cancelled because she “failed to comply with the conditions of release.” *Id.*, ¶ 11, Exh. D.

Because Petition is inadmissible to the U.S. and, thus, is removable from the U.S. under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the U.S. without being admitted or paroled, she has been scheduled for a hearing before the Immigration Court in Lumpkin, Georgia on December 3, 2025. *Id.*, ¶ 10.

Argument and Citation to Authority

- I. **Because Petitioner and her counsel have attempted to manufacture jurisdiction in Northern District and because the Petition properly should have been filed in the District Court for Middle District of Georgia, the Petition should be denied and dismissed for lack of jurisdiction.**

Based on the timing of events related to Petitioner’s detention and the filing of the instant Petition, this Court lacks jurisdiction over the Petition. “The federal habeas statute straightforwardly provides that the proper respondent to a

habeas petition is ‘the person who has custody over the petitioner.’” *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (quoting 28 U.S.C. § 2242) (cleaned up). The Padilla Court reaffirmed that in challenges to present physical confinement, the immediate custodian (i.e., the warden of the facility where the prisoner is being held), “not a supervisory official who exercises legal control, is the proper respondent.” 542 U.S. at 439. This “immediate custodian rule” together with § 2241(a)’s “proviso that district courts may issue the writ only ‘within their respective jurisdictions’” gives rise to the “simple rule” that “[w]henver a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement.” *Id.* at 446–47. And the courts in this District “consistently appl[y]” the immediate custodian rule to habeas petitions challenging detention in advance of removal from United States. *Singh v. Wolf*, No. 20-CV-02212, 2020 WL 13544296, at *1 (N.D. Ga. July 30, 2020).

Here, Petitioner left Floyd County Jail on November 13, 2025, at 12:29 p.m. See Declaration of Anthony Mockabee, previously filed as Docket No. 11-1, at ¶ 6. That same day, at approximately 4:53 p.m., Petitioner departed the Atlanta ICE Field Office. *Id.* Upon information and belief and based on communications with the Clerk’s Office, the Petition was filed at 4:54 p.m. — several hours after Petitioner left Floyd County Jail and one minute after Petitioner left the ICE

Atlanta Field Office. Accordingly, when the Petition was filed, the Director of the ICE Atlanta Field Office was no longer Petitioner's immediate custodian.

Accordingly, Respondents submit that the Northern District never acquired jurisdiction over the instant Petition.

Respondents acknowledge that Petitioner was in transit and was not booked into SDC until 7:30 p.m. (Docket No. 11, ¶ 7), leaving the question of habeas jurisdiction in something of a limbo. That said, there is no argument that Petitioner was subject to "abnormal and rapid movement across state lines," thereby requiring "more flexible jurisdictional rules. *Compare Suri v. Trump*, 785 F. Supp. 3d 128, 148 (E.D. Va. 2025).

Further, Petitioner's counsel knew exactly where Petitioner was located. *See Docket No. 1*, ¶ 1. Petitioner has been moved one time – to SDC. This should come as no surprise to Petitioner's counsel, Karen Weinstock, who has filed a number of similar habeas petitions in the Northern District of Georgia in which ICE has moved (or sought to move) the petitioners to SDC, a location that, unlike Floyd County Jail, is specifically designed for longer-term detentions pending removal proceedings, including the detention of female detainees. *See De Leon v. Pierce*, 4:25-cv-00315-WMR, Docket No. 10-1 at ¶¶ 4-5, filed November 7, 2025, attached as Exhibit 2; *Hernandez v. Udsinski*, 2:25-cv-00373-RWS, Docket No. 8-1 at ¶ 5, attached as Exhibit 3; *Gonzalez v. Sterling*, 1:25-cv-06080-MHC, Docket No.

11-1 at ¶¶ 4-5 (“ Currently, in the state of Georgia there are *only two facilities*, Stewart Detention Center (SDC) and Irwin County Detention Center (ICDC), with the capacity to detain *female* immigration detainees for over seventy-two hours. SDC is in Lumpkin, Georgia. ICDC is in Ocilla, Georgia.” (emphasis added)), attached as Exhibit 4; *Trinh v. Sterling*, 1:25-cv-06037-ELR-JEM, Docket No. 10-1 at ¶ 5 (“Petitioner was transferred to Stewart Detention Center where he remains detained, because there are no long-term immigration detention facilities in the Northern District of Georgia.”), attached as Exhibit 5.

Here, the fact that the Petition was filed just *one minute* after Petitioner left the Atlanta Field Office suggests that Petitioner’s counsel knew *exactly* where the Petitioner was (and that she was being transferred to SDC) and rushed to file the Petition in order to manufacture jurisdiction the Northern District Georgia. Just as *Padilla* prevents the government from forum shopping by transferring detainees after habeas petitions have been filed, this Court should not permit Petitioner, or her counsel, to forum shop here. *Suri*, 785 F. Supp. 3d at 148. This matter should therefore be dismissed for lack of jurisdiction or, alternatively, transferred to the District Court for the Middle District of Georgia.

II. The Court lacks jurisdiction over the Petition because Petitioner’s claims are barred by the INA’s jurisdiction-stripping provisions.

Petitioner currently is detained under § 1225(b)(2)(A), which provides that when an “immigration officer determines that an alien seeking admission is not

clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title [a removal proceeding].” 8 U.S.C. § 1225(b)(2)(A). Two statutes block the Court from exercising jurisdiction over this Petition. First, § 1252(b)(9) prohibits judicial review of issues “arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter” except by judicial review of a final order.

Second, § 1252(g) strips courts of 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.” “[M]ost claims that even relate to removal” are improper if brought before the district court. *See Reno v. Am.-Arab Anti-Discrimination Comm*, 525 U.S. 471, 483 (1999) (labeling section 1252(b)(9) an “unmistakable zipper clause,” and defining a zipper clause as “[a] clause that says ‘no judicial review in deportation cases unless this section provides judicial review.’”). “Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion. It does not tax the imagination to understand why it focuses upon the stages of administration where those attempts have occurred.” *Id.* at 485 n 9. This includes deciding how an alien is detained.

Here, Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A), which requires detention so that a removal proceeding may be brought. Petitioner’s detention is

an issue “arising from” an action taken to remove an alien under § 1252(b)(9). Petitioner’s detention also “aris[es] from” the decision to commence proceedings under § 1252(g), as interpreted by the Eleventh Circuit in *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) and *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016), which are binding. The Petition cannot withstand the jurisdiction-stripping provision of the INA. Accordingly, the Court should conclude that Petitioner must bring claims challenging her detention in immigration court, not in district court, and should, accordingly, deny and dismiss the Petition.

III. Even if the Court has jurisdiction, Petitioner’s detention is lawful, and the Petition should be denied and dismissed.

A. Notwithstanding her length of stay in the U.S., Petitioner is an applicant for admission seeking admission and is not clearly and beyond a doubt entitled to be admitted. Therefore, she is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

As a *legal* matter, Petitioner is properly detained under § 1225(b)(2)(A) because she is an applicant for admission seeking admission and is not clearly and beyond a doubt entitled to be admitted. *See Jennings*, 583 U.S. at 287; *Thuraissigiam*, 591 U.S. at 140; *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025); *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass July 28, 2025). Petitioner undisputedly is an “applicant for admission” who, according to her Petition, has a pending asylum application. Docket No. 1., ¶ 1. She does not allege – and cannot allege – that she was lawfully admitted into the U.S. Instead,

after illegally entering the U.S. and being issued a NTA in removal proceedings, she was conditionally paroled by ICE—the terms of which she violated when she recently was arrested for illegally driving without a license. Docket No. 1, ¶ 1; *id.* 1-3; Bush Dec., ¶ 7. Petitioner also does not dispute that she failed to “clearly and beyond a doubt” show her entitlement to be admitted, particularly given that she was conditionally paroled and then violated the terms of her OREC. Thus, notwithstanding her presence in this country for two years, she has never been admitted and remains an “applicant for admission” subject to § 1225(b)(2)(A).

Section 1225(b)(2)(A) commands that an alien “shall be detained” for removal proceedings if she is “an applicant for admission” and an immigration officer has determined that she is not “clearly and beyond a doubt entitled to be admitted.” § 1225(b)(2)(A). Read plainly, § 1225(b)(2)(A) governs Petitioner’s detention. *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (“analysis begins with the plain language of the statute.”).

i. Petitioner is statutorily defined as an applicant for admission.

Petitioner disputes the straightforward language of § 1225(b)(2)(A) by pointing to the phrase “seeking admission” and arguing the statute cannot apply to her because she was “apprehended within the interior of the United States long after arrival rather than at the border.” Docket No. 1, ¶ 3. She points to various non-binding cases that, generally, have found that aliens who entered

the U.S. unlawfully and reside in the U.S. at the time of their apprehension are no longer “seeking admission.” But these arguments fall short.

In analyzing whether an alien is an applicant for admission under the INA, the text is important. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012) (“best evidence of Congress's intent is the statutory text.”). An applicant for admission is defined as “an alien *present* in the [U.S.] who has *not been admitted*.” 8 U.S.C. § 1225(a)(1). The only requirements to be an applicant for admission are to be (1) present in the U.S., and (2) have not been admitted. *See id.* And the INA defines “admission” as “the *lawful entry* of the alien into the [U.S.] *after inspection and authorization by an immigration officer*.” 8 U.S.C. § 1101(a)(13) (emphasis added); *see Aremu v. DHS*, 450 F.3d 578, 585 (4th Cir. 2006).

Section 1225 is not limited to apprehensions at the border. Instead, § 1225(b)(1) applies to aliens “arriving” in the U.S. and “certain other aliens who have not been admitted or paroled[.]” Section 1225(b)(2), in turn, applies to “other aliens,” including those who have been present for more than two years. *See* 8 C.F.R. § 235.3(b)(ii) (“an alien not inspected and admitted or paroled, but who establishes continuous physical presence over the last two years, *shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.*”) (emphasis added).

There is no dispute – Petitioner has not been admitted to the U.S. and, instead, was conditionally paroled. Docket No. 1-3. According to the Petition, Petitioner “has a pending asylum application” and was conditionally released on her own recognizance. Docket No. 1, ¶ 1. Even aliens *lawfully paroled* into the U.S. are not considered to have affected a lawful “admission.” § 1101(a)(13)(B); *see Thuraissigiam*, 591 U.S. at 139 (“[A]liens who arrive at ports of entry – even those paroled elsewhere in the country for years pending removal – are treated for due process purposes as if stopped at the border.”).

Petitioner *entered* the U.S. *without being inspected or paroled* by an immigration official and does not satisfy the definition of “admission.” *See* § U.S.C. § 1101(a)(13) (requiring a lawful entry and inspection by an immigration officer to be admitted). Because Petitioner is “an alien *present* in the [U.S.] who has *not been admitted*[,]” by law, she is an “applicant for admission.” 8 U.S.C. § 1225(a)(1) (emphasis added). Nothing in the INA permits an alien who has not been lawfully admitted into the U.S. no longer to be an “applicant for admission” simply because they have been in the country for two years or because, subjectively, they are no longer “seeking admission.”³

³ As the BIA pointed out in *Hurtado*, Petitioner’s interpretation of the statute creates an untenable legal conundrum: “If [an alien] is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Matter of Hurtado*, 29 I. & N. Dec. at 221.

Petitioner currently is detained pursuant to § 1225(b)(2)(A) because she violated the terms of her OREC (which was revoked) and is an applicant for admission who is seeking admission into the country. *Id.* As the Supreme Court reiterated in *Thuraissigiam*, for “foreigners who have never been naturalized . . . nor even been admitted into the country,” “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” 591 U.S. at 138; *see id.* at 139 (noting the executive has plenary power to decide whether an alien should be admitted). Because Petitioner is an alien who is present in the U.S. and who has not been admitted, she is an applicant for admission.” 8 U.S.C. § 1225(b)(1).

ii. Petitioner is not clearly and beyond a doubt entitled to be admitted.

Section 1225(b)(2)(A) commands that an alien “shall be detained” for removal proceedings if the alien is “an applicant for admission” and an immigration officer has determined that he is not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Here, Petitioner was never paroled or admitted into the U.S.; instead, she was *conditionally paroled*—which was revoked based on a violation of the terms of her OREC. By violating the terms of her OREC, because she was never admitted or paroled, and because she is subject to a NTA in removal proceedings, it is evident that Petitioner clearly

and beyond a doubt is not entitled to be admitted, and, therefore, she *shall* be detained pursuant to § 1225(b)(2)(A).

Accordingly, ICE arrested and detained Petitioner pursuant to its statutory obligations mandating her detention, and she may not be released on bond. *See* § U.S.C. § 1225(b)(2)(A); 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”) (emphasis added).

B. Legislative history supports Respondents’ interpretation of § 1225(b)(2)(A) and shows that it applies to aliens like Petitioner.

Petitioner is correct that *Hurtado* presents a shift in how the Government is choosing to enforce §§ 1225 and 1226; Respondents, thus, concede that § 1225 has not historically been applied to aliens in Petitioner’s situation. But this resulted from of a policy choice made by prior administrations, not a shortfall in the statute. This view is supported by the history of the statute, particularly by contemporaneous statements and regulations issued by the executive branch.

The statute at issue was substantially revised as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (commonly “IIRIRA”), Pub. L. 104-208.⁴ The legislative history has many statements that are

⁴ The legislative history in this section comes from H.R. 2202, which was reported out of conference before being tucked inside H.R. 3610 and passed as

consistent with Respondents' reading of the statute. In particular, existing law at that time gave additional protections to anyone who made "entry" to the U.S., whether or not that entry was legal. One of the significant changes enacted in IIRIRA was replacing the entry doctrine with the new concept of admission, where an alien who entered illegally is not considered "admitted." *Hurtado*, 29 I. & N. Dec. at 222-25. Respondents admit, however, that the legislative history contains no *definitive* statement as to the precise question raised here.

Soon after IIRIRA was passed, the executive branch began issuing implementing regulations. These regulations were proposed by the Immigration and Naturalization Service (INS, the precursor to ICE) in the Federal Register and then enacted via interim rulemaking. These publications contain three statements that are relevant here.⁵

Division C of the Omnibus Consolidated Appropriations Act of 1997. When debating that omnibus bill, Congressman Smith (TX), the architect of IIRIRA, confirmed that the two bills were the same and that the legislative history of one applied to the other. Conf. Rep. on H.R. 3610, at H12099 ("Every illegal immigration measure that we passed in the stand-alone bill last week, every phrase, every word, every comma remains in this omnibus bill."); *and* H12104 (stating that the legislative history of IIRIRA "shall be considered to include" the prior history from H.R. 2202).

⁵ See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 444 (Jan. 3, 1997) (proposed rule); Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum

First, in the preamble to the proposed rule, INS discussed the significance of the new term “applicants for admission,” noting that the term now covers “both aliens who are arriving in the United States ... and aliens present in the United States who have not been admitted.” 62 Fed. Reg. at 444. The INS noted that this was a change from the prior law.⁶ While the language does not specify the nature of the “significant[] change,” it supports Respondents’ reading of the statute because, under Petitioner’s reading, no change *ever* occurred. According to Petitioner, aliens here without inspection were subject to detention-via-warrant-and-bond both before *and* after IIRIRA – which is no change at all.

Next, the same preamble also discusses the provisions of IIRIRA that prevent aliens from receiving a bond under § 1226 when the alien has been convicted of an aggravated felony. At the end, of that discussion, the preamble makes the cryptic statement that § 1226 “will be” applied to aliens like Petitioner: “Despite being applicants for admission, aliens who are present without having

Procedures,” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (interim rule). It appears that no final rule was ever enacted, so the interim rule remains in effect.

⁶ “Prior to the enactment of the IIRIRA, aliens apprehended after entering the United States without inspection were subject to deportation proceedings under section 242 of the Act. By considering such aliens to be applicants for admission, this amendment significantly changes the manner in which aliens who have entered the United States without inspection are considered under the Act.” *Id.* at 444–45.

been admitted ... will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 450; 62 Fed. Reg. 10323. The word “despite” suggests that INS knew that it was deviating from the statutory text. In other words, INS said it would continue to give aliens like Petitioner bond hearings *even though* the statute said not to. While INS offered no further explanation for why it was doing this, irrespective of its reasoning, the logical reading of this language is that IIRIRA does not permit bond hearings for aliens like Petitioner.

Finally, in the substantive regulations, the INS addressed the Attorney General’s power (under § 1225(b)(1)(A)(iii)) to designate aliens for expedited removal under (b)(1). Regulations were enacted delegating that power to INS. *See* 8 C.F.R. § 235.3(b). The language regarding aliens in the U.S. for more than two years (8 U.S.C. § 1225(b)(1)(A)(iii)(II)) was notable, mentioning what would occur if alien had been present for over two years: those aliens “shall be detained in accordance with section 235(b)(2).” 8 C.F.R. § 235.3(b)(2). In other words, if an alien is present in the U.S. without admission, then in some circumstances the A.G. can designate that alien for expedited removal; but, either way, the regulation directs that such aliens still be detained under § 1225(b)(2). That is Respondents’ position here.

Despite the Government’s prior practices, IIRIRA’s implementing regulations have always made clear that similarly situated applicants for

admission are subject to mandatory detention. See 62 Fed. Reg. 10312, 10355; 8 C.F.R. § 235.3(b)(ii); *Hurtado*, 29 I. & N. Dec. at 226. Further, “no amount of policy-talk can overcome a plain statutory command.” *Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021). And the Supreme Court has never held “that the long-standing practice of the government can somehow change, or even eviscerate, explicit statutory text that is contrary to that practice.” *Id.* (citing *Loper Bright Enters.*, 603 U.S. at 385-86). At most, ICE’s changing policy reflects an alignment with the plain text of § 1225(b)(2)(A) and Congressional intent.

C. Petitioner’s due process claims fail because the due process owed to a petitioner subject to mandatory detention under 8 U.S.C. § 1225(b)(2) is only that process afforded by the INA.

i. Substantive Due Process (Count 4)

Petitioner argues her detention under § 1225 without a bond hearing violates the right to due process recognized by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Jennings v. Rodriguez*, 584 U.S. 281, 289 (2018). But neither of these cases recognized such a right.

Zadvydas concerned resident aliens ordered removed from the U.S. By statute, the U.S. has 90 days to remove such aliens and detain them during this time. The issue in *Zadvydas* was that the government had nowhere to send the aliens — no other country would take them — and the proscribed 90-day limit had expired. While aliens in this situation are eligible for supervised release, the

statute allows the A.G. “may” order continued detention for certain aliens, such as those who pose a risk to the community. See 8 U.S.C. § 1231(a)(6). There is no limit on how long such aliens can be detained. *Zadvydas* held that there was an implicit statutory time limit that could continue “no longer than reasonably necessary” to bring about that alien’s removal. *Zadvydas*, 533 U.S. at 689.⁷

Turning to *Jennings*, that case concerned a class of aliens detained without bond who argued that neither § 1225 or § 1226 allowed their indefinite detention without bond, and that doing was unconstitutional. But *Jennings* found that nothing in 8 U.S.C. § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297.

The Petition overstates both *Zadvydas* and *Jennings* related to whether detention without bond is unconstitutional. *Zadvydas* did not recognize such a right because it involved a statute that (at least implicitly) already provided for bond hearings. *Jennings* did not recognize such a right because the Court never addressed the constitutional question. In truth, an open question exists as to whether detention without bond under § 1225 constitutionally is permitted; the

⁷ Notably, the aliens in *Zadvydas* entered the U.S. legally, which the Court relied on fact to distinguish *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), where the Court allowed unlimited detention. The Court emphasized that different rights are accorded aliens who affected legal entry into the U.S. compared to those who never legally entered. *Zadvydas*, 533 U.S. at 693.

issue is still percolating through the courts. *See e.g., Perez v. Decker*, No. 18-CV-5279, 2018 WL 399149Z, at *3 (S.D.N.Y. Aug. 20, 2018) (“Courts disagree over whether individuals detained pursuant to § 1225(b) have Due Process rights and the extent of any such rights.”). But, here, Petitioner offers no contentions beyond citing to *Zadvydas* and *Jennings*, which do not apply for the reasons stated. Because Petitioner has the burden of proof and because she has not met this burden, her claims fail. *See N.L.R.B. v. McClain of Georgia, Inc.*, 138 F.3d 1418, 1422 (11th Cir. 1998) (“Issues raised in a perfunctory manner, without supporting arguments and citation to authorities, are generally deemed to be waived.”).

If this Court opts to address the merits, the Court should find Petitioner’s rights are not being violated. First, Petitioner’s detention is constitutional because she was never properly admitted and has limited constitutional rights. *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 647–49 (S.D.N.Y. 2018). Even if Petitioner has such rights, § 1225(b)(2) is constitutional as applied to her because she is being held no longer than necessary to complete her removal proceeding – presently less than two weeks. Until her detention becomes prolonged, meaning longer than reasonably necessary to accomplish the goal of removal, any claim should be denied. *See, e.g., Diouf v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011) (arguing that only prolonged detention is subject to constitutional limits).

ii. Procedural Due Process (Count 5)

While the Petition says her procedural due process claim arises out of *Mathews v. Eldridge*, 424 U.S. 319 (1976), Count 5 seems simply to argue that § 1225 cannot be applied to Petitioner. To the extent the Petition intends to allege a *procedural* failure, her argument fails. Petitioner was interviewed by an immigration officer who determined that she was never lawfully admitted to the U.S. and who issued the NTA. Procedural due process was received. Moreover, Petitioner already is scheduled for a hearing on Dec. 3, 2025. Bush Dec., ¶ 10.

- iii. Even if the Court finds Petitioner is owed more due process, her detention still does not violate the Due Process Clause.

Petitioner's due process rights extend no further than what the INA provides. If the Court finds more process is due, such due process analysis favors Petitioner's continued detention. Thus, her claim that due process entitles her to something more must fail.

As a threshold matter, "Congress has repeatedly shown that it considers immigration enforcement— even against otherwise non-criminal aliens — to be a vital public interest[.]" *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). In exercising its broad power over immigration, Congress is permitted to make rules that permit the detention of an alien without any procedure to determine on an "individual[ized] basis whether that alien was "dangerous" or a flight risk — during "his removal proceedings." *Demore*, 538 U.S. at 521-23 (quoting *Mathews v. Diaz*, 423 U.S. 67, 79-80 (1976)). To the extent Petitioner suggests that her

placement in mandatory detention under § 1225(b)(2)(A) runs afoul of due process because of her removal proceedings, speculation regarding what may or may not occur in future does not entitle Petitioner to habeas relief now.

D. If the Court is inclined to grant the Petition, it should be in the limited form of a bond hearing.

If the Court grants injunctive relief, Respondents request the Court order an Immigration Judge to hold a bond hearing within 7 days, rather than order Petitioner's immediate release.⁸ IJs are well suited to address such requests, and this approach is consistent with how other courts have entered injunctive relief against the Government. *See, e.g., Lima v. Warden*, No. 1:25-CV-06304-ELR-LRS (N.D. Ga. Nov. 18, 2025).

CONCLUSION

In detaining Petitioner without bond, Respondents have acted in a manner consistent with the plain text of 8 U.S.C. § 1225(b)(2)(A), Congressional intent in enacting IIRIRA, and canons of statutory construction. Petitioner's interpretations to the contrary lead to the inequitable result that an alien who has never been lawfully admitted, but resides in the country, is afforded more rights than an alien who lawfully presents for admission at a port-of-entry but is

⁸ Despite verbiage requesting immediate release, at no point does the Petition provide any basis – let alone argument – to justify outright release from immigration detention.

indefinitely detained. For these reasons and those stated above, Petitioner's habeas, declaratory, constitutional, and APA claims fail, and the Petition should be denied and dismissed.

Respectfully submitted,

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Certificate of Compliance

I hereby certify, pursuant to Local Rules 5.1 and 7.1D, that the foregoing brief has been prepared using Book Antiqua, 13 point font.

/S/DARCY F. COTY
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

M.C.H.L.

A# 

PETITIONER,

v.

DAVE OBERSON, ET. AL.,

RESPONDENTS.

Civil Action No.

4:25-cv-00329-WMR

Certificate of Service

The United States Attorney's Office served this document today by filing it using the Court's CM/ECF system, which automatically counsel of record.

Karen Weinstock

November 21, 2025

/s/ DARCY F. COTY

DARCY F. COTY

Assistant United States Attorney

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

M.C.H.L.)	
)	
Petitioner,)	Case No. 4:25-cv-00329-WMR
)	
v.)	
)	
DAVE ROBERTSON, <i>et al.</i> ,)	
)	
Respondents.)	

DECLARATION OF David Bush

I, David Bush, declare as follows:

1. I have been employed with the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) since 2024. I am currently a Deportation Officer working at Stewart Detention Center in Lumpkin, Georgia.

2. I provide this declaration based on my personal knowledge, belief, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, employees of DHS contract facilities, and information portals maintained and relied upon by DHS in the regular course of business.

3. In my capacity as Deportation Officer, I am familiar with the case M.C.H.L. (“Petitioner”), whose alien registration number is A ~~XXXXXXXXXX~~. I have reviewed documents and official government records pertaining to the Petitioner and, unless otherwise stated, this declaration is based on that review.

4. Petitioner is a native and citizen of Mexico. On August 4, 2023, Petitioner was encountered by Customs and Border Patrol (CBP) after having entered

the United States without being admitted or paroled by an immigration officer. Exhibit A. CBP served her with a Notice to Appear (NTA) placing her in removal proceedings, per section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA). Exhibit B. That same day CBP released Petitioner on her own recognizance (OREC). Exhibit C.

5. Petitioner's NTA was filed with the Immigration Court in Omaha, Nebraska based on the address Petitioner provided to CBP in August 2023. Petitioner's initial hearing date was scheduled for September 2, 2026. Exhibit B.
6. On July 19, 2024, Petitioner filed an application for relief from removal with the Immigration Court.
7. On November 8, 2025, Petitioner was arrested in Floyd County, Georgia for driving without a license. That same day ICE issued a detainer and on November 10, 2025, ICE assumed custody of the Petitioner at the Floyd County Jail.
8. On November 13, 2025, Petitioner was transferred to the Atlanta ICE office for transport to Stewart Detention Center (SDC). Petitioner's departure from Floyd County Jail was recorded in an ICE database as November 13, 2025, at 1229/12:29 PM. That same day, at approximately 1653/4:53 PM, Petitioner departed the Atlanta ICE office.
9. Petitioner arrived at SDC on November 13, 2025, her arrival at SDC was recorded in an ICE database which reflects a "Book In Date/Time" of November 13, 2025 at 1930/7:30 PM.
10. On November 14, 2025, ICE/ERO filed a notice to the Immigration Court that Petitioner is now detained at Stewart Detention Center. Subsequently, her case was transferred from Omaha to the Immigration Court in Lumpkin, Georgia where she is scheduled for a hearing on on December 3, 2025.

11. On November 20, 2025, Acting Supervisory Detention and Deportation Officer Courtney Jackson executed the cancellation of Petitioner's OREC paperwork. Exhibit D.

Pursuant to Title 28, U.S. Code Section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, this November 20, 2025.

David Bush

David Bush
Department of Homeland Security
Immigration & Customs Enforcement