UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

MICAELA DE CORRAL — PETITIONER

v. — CIVIL ACTION NO. 4:25-cv-00145-BJB

JASON WOOSELEY, Grayson County Jailer
KRISTI NOEM, Secretary of the
United States Department of Homeland Security,
and SAMUEL OLSON, Field Office Director,
Chicago Field Office, Immigration and
Customs Enforcement, PAMELA BONDI, U.S.
Attorney General — RESPONDENTS

RESPONDENTS' MOTION TO DISMISS
AND RESPONSE TO ORDER TO SHOW CAUSE

Federal Respondents, Kristi Noem, Samuel Olson, and Pamela Bondi,[1] respond to the Court's order to show cause and request that the Court dismiss De Corral's petition for lack of jurisdiction or, in the alternative, deny her petition because she is an "applicant for admission" properly detained under 8 U.S.C. § 1225.

INTRODUCTION

Petitioner was not lawfully admitted to the United States, and she has no lawful immigration status. She is currently detained by the U.S. Immigration and Customs Enforcement

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

("ICE") while the Agency[2] pursues administrative removal proceedings against her. Petitioner challenges the Agency's decision to detain her under a statutory provision that does not entitle her to a bond hearing. The Court lacks jurisdiction over Petitioner's claims under 8 U.S.C. § 1252(b)(9). But even if the Court possessed jurisdiction, because Petitioner has not been admitted to the United States, she is an applicant for admission and lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Congress enacted 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission," and it defined that term to encompass any "alien present in the United States who has not been admitted" following inspection by immigration authorities. 8 U.S.C. §§ 1225(a), (b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises the narrow and discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

There is no dispute that Petitioner is an "applicant for admission" under § 1225(a). That provision specifically provides that any "alien present in the United States who has not been

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[2] The Department of Homeland Security ("DHS") includes (1) Customs and Border Protection ("CBP"); (2) Immigration and Customs Enforcement ("ICE"); and (3) U.S. Citizenship and Immigration Services ("USCIS"). https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf

admitted . . . shall be deemed for purposes of this chapter an applicant for admission." § 1225(a)(1). Petitioner is present in the United States, and she has not been admitted. She is an "applicant for admission." Despite the clear statutory text, Petitioner claims she is entitled to a bond hearing and potential release—notwithstanding 8 U.S.C. § 1225's prohibition.

8 U.S.C. § 1226, which Petitioner claims she is detained under, applies to numerous aliens *not* subject to § 1225(b)(2)(A), including all *admitted* aliens who are now removable—such as aliens in the United States who were lawfully admitted but then overstayed their visas. For those aliens, § 1226 continues to govern detention. Although the Government has previously operated under a different and more forgiving application of the law, the Court must apply the language of 8 U.S.C. § 1225(b)(2)(A) as it is written. Anything else would be contrary to the plain statutory text and would reimpose the same inverted regime that IIRIRA was meant to eliminate—requiring the detention of aliens who present at a port of entry as the law requires but authorizing the release of those aliens who enter the United States in violation of law. The Court should not endorse such a backward outcome, especially when Congress has legislated to preclude that counterintuitive outcome.

De Corral directs the Court to district court opinions favoring a different interpretation and application of 8 U.S.C. § 1225(b)(2).[3] (Doc. 1, PageID.4-5, ¶ 14 and n. 3.). Respectfully, those cases "appear to defer substantially to each other"', lacked "compelling analyses", "are not precedential", are "limited", and were "decided on an expedited basis and in a short time frame", as noted in district court opinions analyzing and rejecting the district court cases De Corral offers. *Olalde v. Noem*, 2025 WL 3131942, at *1 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*,

[3] One such case (*Pizarro Reyes v. Raycraft*, 25-1982) is before the Sixth Circuit on appeal. The government has requested expedited consideration of the appeal, but the Sixth Circuit has not resolved that motion.

2025 WL 3033967, at *5, 9-10 (E.D. Wis. Oct. 30, 2025). "[N]o appellate court has yet reached the issue, and the statutory text is more consistent with Respondents' position." *Rojas*, 2025 WL 3033967 at *5. "What governs this case is the text of the statute, not what other district courts have concluded." *Olalde*, 2025 WL 3131942 at *1. Nevertheless, other district courts analyzing the text of § 1225(b)(2) have found that it applies to aliens such as De Corral. *See Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872, at *8 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025 WL 3208284, at *6 (E.D. Cal. Nov. 17, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133, at *4 (E.D. Cal. Nov. 17, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228, at 4–5 (S.D. Cal. Sept. 24, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *6, n.7 (W.D. La. Oct. 31, 2025); *Pena v. Hyde*, 2025 WL 2108913, No. 25-11983-NMG (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Garibay-Robledo v. Noem*, No. 3:25-CV-2461-L-BN, 2025 WL 2638672, at *1 (N.D. Tex. Sept. 12, 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Pipa-Aquise v. Bondi*, 2025 WL 2490657, at 2 (E.D. Va. Aug. 5, 2025). In one of those cases, "after additional research and analysis", a judge who previously held that § 1226 applied in these situations later determined that to be an erroneous conclusion, and held that § 1225(b)(2) instead applied. *Ramos*, 2025 WL 3199872 at *4. As those courts have held, analysis and application of statutory text compels the conclusion that aliens such as De Corral are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

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

De Corral, a native and citizen of Mexico, entered the United States illegally, without inspection, in or around 1994. (Doc. 1, PageID.1, 4, ¶¶ 1, 11.). De Corral was arrested on November 1, 2025 in Illinois after admitting to an officer who struck up a conversation with her that she lacked documents to be in the United States legally. (Exh. 1, I-213 at 2.). ICE then processed De Corral and transferred her to a facility in this district. (Doc. 1, PageID.1, 2, 3, ¶¶ 1, 6, 9.). De Corral was detained pursuant to a Warrant of Arrest and a Notice to Appear. (Doc. 1, PageID.3, ¶¶ 9, 10.). De Corral's Notice to Appear was issued on the basis that De Corral was present in the United States without having been admitted or paroled, violating 8 U.S.C. § 1182(a)(6)(A)(i). (Doc. 1, PageID.3, ¶ 10.).

LEGAL FRAMEWORK

I. 8 U.S.C. § 1252(b)(9) Limits the Court's Jurisdiction to Review Certain Immigration Decisions and Actions.

Section 1252(b)(9) provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). Indeed, Congress specified that "no court shall have jurisdiction, by habeas corpus under [28 U.S.C. § 2241] or any other habeas corpus provision . . . or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact." *Id.*; *see also id.* § 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal"). Habeas petitions challenging the legal basis for detaining in the first place require a court to answer "legal questions" that arise from "an action taken to remove an alien," so the

claims "fall within the scope of § 1252(b)(9)." *Jennings v. Rodriguez*, 583 U.S. 281, 295 n.3 (2018) (plurality opinion) (assuming that detention is an action taken to remove an alien).[4]

8 U.S.C. § 1252(g) ("no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter") bars review of an alien's claim that represents a "challenge to the Attorney General's decision to 'commence proceedings' against them." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 474, 487 (1999). Detention during removal proceedings is an "aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure"). The decision to detain De Corral, through processing her after her arrest, arose from the commencement of his removal proceedings, which began once De Corral's Notice to Appear was issued. Her detention, therefore, is "connected directly and immediately" with the commencement of her removal proceedings. *See Tsering v. ICE*, 403 F. App'x 339, 343 (10th Cir. 2010) (cleaned up); *see also Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 943 (5th Cir. 1999). Thus, the Court cannot review ICE's decision to detain De Corral.

II. Alternatively, De Corral Bears the Burden of Proving Her Detention is Unlawful Under 8 U.S.C. § 1225(b).

Should the Court exercise jurisdiction over this case, the Court may only grant a writ of

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[4] *See also id.* 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 … 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.") (cleaned up).

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

As an applicant for admission, De Corral's detention is governed by 8 U.S.C. § 1225(b). The Supreme Court's decision in *Jennings* controls this determination. Therein, the Court explained, "the Government must determine whether an alien seeking to enter the country is admissible." *Jennings*, 583 U.S. at 281. An alien—such as De Corral—"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.* (cleaned up). "Applicant for admission" is defined in 8 U.S.C. § 1225(a)(1): "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1101(a)(13)(A) defines "[a]dmission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer".

As an "applicant for admission," De Corral must "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S at 287. Section 1225(b)(1), also known as Expedited Removal Proceedings, addresses both the detention and removal of "aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* (cleaned up). Such aliens "are normally ordered removed without

further hearing or review . . . [unless the alien] indicates either an intention to apply for asylum . . . or a fear of persecution, then that alien is referred for an asylum interview." *Id.* Section 1225(b)(2) "is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. Such aliens are subject to the 8 U.S.C. § 1229a removal statute and referred "for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country." *See Jennings*, 583 U.S. at 288 (cleaned up). Further, they "shall be detained" for those removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

I. The Court Should Dismiss This Habeas Petition Because It Lacks Jurisdiction to Review the Petition Under 8 U.S.C. §§ 1252(b)(9).

The Court lacks jurisdiction to consider this petition under 8 U.S.C. § 1252(b)(9), which strips the Court of jurisdiction to review De Corral's habeas claims because the petition requires the Court to answer legal and factual questions "arising from any action taken or proceeding brought to remove . . . " her. *See* 8 U.S.C. § 1252(b)(9). Legally, De Corral asks the Court to interpret the INA to determine which legal authority authorizes her detention during her removal proceedings. (*See generally* Doc. 1.). As the Court has held, "the central question at issue in th[ese types of] matter[s] is which detention provision, Section 1225 or Section 1226, applies to [Petitioner]. This is a purely legal question of statutory interpretation . . . ." *Guerra v. Woosley*, 2025 WL 3046187, 2025 U.S. Dist. LEXIS 215005, at *5 (W.D. Ky. Oct. 31, 2025). Answering such a question, which arose from the Agency's "action taken to remove an alien," is precluded under 8 U.S.C. § 1252(b)(9). Further, De Corral alleges that her detention violates the Constitution and the Immigration and Nationality Act. (Doc. 1, PageID.2, 3, 4-5, 8, ¶¶ 5, 10, 12-15, 24-26.). To determine that would require the Court to make the factual determination that De

Corral is not removable as inadmissible, because she was: (1) admitted or paroled into the United States, or (2) has documentation authorizing her presence in the United States. It cannot do so.

If the Court exercised jurisdiction, in contravention of Section 1252(b)(9), to make the factual determination as to her admissibility and the legal holding identifying the statute governing her detention, it could create the absurd holding that "it is unconstitutional for the government to detain aliens pending removal for a reason that allows the government to remove them." *Ozturk*, 2025 WL 2679904 at 2 (Menashi, J., concurring). This is exactly what Congress sought to preclude in Section 1252(b)(9). "Congress channeled judicial review of removal proceedings into a single proceeding to avoid such an incoherent result." *Id.* By enacting Section 1252(b)(9), "Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process that previously had held sway in regard to removal proceedings." *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007) (citing H.R. Rep. No. 109-72, at 174). It designed the statutes "to consolidate and channel review of *all* legal and factual questions that arise from the removal of an alien into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals." *Id.* (emphasis in original). It is reasonable to conclude, therefore, that the jurisdictional bars do not prevent the adjudication of a claim that is "unrelated to any removal action or proceeding," *Delgado v. Qurantillo*, 643 F.3d 52, 55 n.3 (2d Cir. 2011) (cleaned up), or "independent of challenges to removal orders," H.R. Rep. No. 109-72, at 176 (2005). But when petitioners such as De Corral are "challenging the decision to detain them in the first place" arguing there is no factual support for initiating removal proceedings or legal support for detaining them throughout the duration of those proceedings, that is a challenge to the removal proceedings that Congress has barred. *Jennings*, 583 U.S. at 294 (plurality opinion); *see also id.* at 314 (Thomas, J., concurring in part and

concurring in the judgment) ("§ 1252(b)(9) removes jurisdiction over [aliens'] challenge to their detention.").

The Supreme Court in *Jennings* and in *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) found that § 1252(b)(9) did not limit the jurisdiction of the Court for the claims made in those cases. *See Jennings* at 583 U.S. at 294-95. In doing so, the Court gave district courts guidance as to the claims that *would* be limited by § 1252(b)(9):

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

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

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

Accordingly, the Court should dismiss De Corral's habeas petition because it requires the

Court to answer legal and factual questions, and in any event, they may be presented before the immigration judge, the Board of Immigration Appeals (BIA), and then to the Sixth Circuit Court of Appeals—but not to this Court.

II. Alternatively, the Court Should Deny the Habeas Petition because De Corral Is Lawfully Detained under 8 U.S.C. § 1225(b)(2).

De Corral is lawfully detained by operation of 8 U.S.C. § 1225(b)(2), because she is an applicant for admission subject to mandatory detention under that statute.

A. The text of 8 U.S.C. § 1225(b)(2) applies to De Corral, who is an applicant for admission and therefore subject to mandatory detention.

Petitioner's argument to the Court is that 8 U.S.C. § 1225(b) does not apply to her. (Doc. 1, PageID.3, 4-5, 8, ¶¶ 10, 12-15, 24-26.).[5] Examination of the statutory text and the Supreme Court's examination of that text in *Jennings v. Rodriguez* demonstrates that Petitioner is lawfully detained under 8 U.S.C. § 1252(b)(2).

De Corral has no grounds on which to contest her removability for being present in the United States without being admitted or paroled. She entered the United States without inspection. (Doc. 1, PageID.4, ¶ 11.). Thus, she is by statute an applicant for admission, and seeking admission. "Admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And an "[a]pplicant for admission" is "[a]n alien present in the United States who has not been admitted . . . ." 8 U.S.C. § 1225(a)(1). Read in tandem with the statute's plain terms, as the Court must do, the INA makes clear that all unadmitted and uninspected aliens are "applicants

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[5] In a footnote, De Corral challenges the circumstances of her arrest, and states that "[c]oncurrently with the filing of this petition, [she] is filing a claim for release under the *Castanon Nava* Settlement through the appropriate online portal." (Doc. 1, PageID.3, n.1.). De Corral correctly does not assert any claim under *Castanon Nava* in this action as the Northern District of Illinois has the responsibility for applying its consent decree.

for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission.

Indeed, the INA makes clear that "applicants for admission" may be required to testify as to their "purposes and intentions . . . in seeking admission." 8 U.S.C. § 1225(a)(5) (emphasis added). It therefore follows that an "applicant for admission" and a person "seeking admission" are one and the same. Section § 1225(b)(2) states that an "applicant for admission" must be detained unless she—i.e., the "alien seeking admission"—can prove beyond a doubt that she is entitled to be admitted. De Corral's interpretation of § 1225(b)(2), which argues those are distinct terms and not synonyms, renders § 1225(b)(2) internally contradictory. As such, the Court should avoid this "patently absurd" interpretation which draws a distinction between the terms. *See United States v. Brown*, 333 U.S. 18, 27 (1948) (a court can reject the plain language interpretation of a statute if such an interpretation would lead to "patently absurd consequences"). Though this might at first glance seem counterintuitive, "[w]hen a statute includes an explicit definition, [courts] must follow that definition." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, De Corral is an "applicant for admission"—i.e., an alien seeking admission—and, consequently, she is detained under § 1225(b)(2)(A).

De Corral argues against this by refusing to apply the relevant statutory definitions. (Doc. 1, PageID.3, 4-5, 8, ¶¶ 10, 12-15, 24-26.). De Corral's proffered application of §§ 1225 and 1226 would create "an 'anomaly' … 'whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.'" *Chavez,* -- F.Supp.3d ----, 2025 WL 2730228, at 4–5 (S.D. Cal. Sept. 24, 2025) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). It is implausible that Congress

would intend such an anomaly, especially given the text and purposes of those two sections; the anomaly advanced by De Corral would "undermine the intent of Congress in enacting the IIRIRA." *Sandoval*, 2025 WL 3048926 at *6, n.7.

Examination of the statutory text demonstrates that De Corral is an applicant for admission, and as such, is subject to mandatory detention under 8 U.S.C. § 1225(b). In the statute's plain terms, the INA makes clear that all unadmitted and uninspected aliens are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission.

Other courts recognize this application of § 1225(b)'s text. One example comes from the Eastern District of Missouri: "Under § 1225(a)(1), '[a]n alien present in the United States who has not been admitted or who arrives in the United States...shall be deemed for purposes of this chapter an applicant for admission.'" *Olalde*, 2025 WL 3131942 at *3 (finding that if a petitioner "is an 'alien'", "is 'present in the United States'", "'has not been admitted' ... because he did not 'lawful[ly] ent[er] the country after inspection and authorization by an immigration officer'", she "is 'an applicant for admission,'" and "is not eligible for a bond hearing."). The *Olalde* court addressed and rejected an alien petitioner's arguments "that § 1225(b)(2)(A) applies to a person who is 'seeking admission'", that "some district courts have read 'seeking admission' to imply some 'action' beyond continuous presence in the country when an individual has been in the country for several years", "that 'an immigrant submits an application for admission at a distinct point in time and stretching the phrase...to refer to a period of years would push the statutory text beyond its breaking point.'", and "that § 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or point of entry, where they are examined by an

immigration officer." *Id.*

The Eastern District of Wisconsin issued a detailed critique of the claim that § 1225(b)(2) does not apply to aliens such as De Corral. Addressing the text of 8 U.S.C. §§ 1225 and 1226, that court held that an alien such as De Corral "meets the definition of 'applicant for admission' in § 1225(a)(1)," because she is "an alien 'present' in the United States and he has not been 'admitted.'" *Rojas*, 2025 WL 3033967 at *8. "Under the plain terms of Section 1225(a)(1), he is 'deemed' an applicant for admission for purposes of Chapter 12 of Title 8, which governs Immigration and Nationality. Of all the statutory terms at issue, this is perhaps the most straightforward." *Id.* The *Rojas* court "attempted to review the statute as a whole, including all parts of the INA to which the parties refer," and concluded it could not "find a statutory basis to exclude Cirrus Rojas from the definition of 'applicant for admission' in Section 1225(a)(1)." *Id.* The *Rojas* court similarly rejected the Petitioner's claim that "additional language in Section 1225(b)(2) that refers to aliens who are 'seeking admission' . . . was intended to apply only to those aliens who arrive and are being detained at the border." *Id.* The *Rojas* court noted that while "Section 1225(b)(2) . . . refers to aliens 'seeking admission,' . . . this language is best read as simply another way of referring to aliens who are applicants for admission." *Id.*; *Sandoval*, 2025 WL 3048926 at *3-4.

"Such a reading of the statute comports with Congress' addition of § 1225(a)(1) by [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)]." *Chavez*, --- F.Supp.3d ----, 2025 WL 2730228, at *4. The *Chavez* court also explained why application of § 1225(b)(2) to aliens such as De Corral comported with the entirety of the INA: "Prior to IIRIRA, an 'anomaly' existed 'whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.'"

Id., quoting *Torres*, 976 F.3d at 928. "The addition of § 1225(a)(1) 'ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an "applicant for admission."'" *Id.*, quoting *Torres*, 976 F.3d at 928. "As the Ninth Circuit did recently in *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024), we thus also 'refuse to interpret the INA in a way that would in effect repeal that statutory fix' intended by Congress in enacting IIRIRA." *Id.*

De Corral cites other district courts that have interpreted §§ 1225 and 1226 in the manner she prefers. (Doc. 1, PageID.4, ¶ 14 and n.3.). But "the overwhelming majority of district courts sometimes get the law very wrong." *Olalde*, 2025 WL 3131942 at *1, citing *Trump v. CASA, Inc.*, 606 U.S. 831, 840 (2025) (declaring universal injunctions beyond the equitable authority of federal district courts despite widespread use of that injunction) and noting that "some of the court decisions" De Corral cites "appear to defer substantially to each other." And "many of these district court cases were decided before—or soon after—the BIA issued its opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." *Sandoval*, 2025 WL 3048926, at *6. (The BIA's opinion in *Matter of Yajure Hurtado* and the question of *Skidmore* deference to its holding are discussed later in this filing.)

B. Arguments against application of § 1225(b)(2) do not withstand scrutiny.

1. The Laken Riley Act does not disturb § 1225(b)(2)'s application to De Corral, and does not render §§ 1225 and 1226 superfluous.

The Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025), does nothing to alter § 1225(b)(2)'s application to De Corral. "The Laken Riley Act added another exception to the Attorney General's power to allow bond under § 1226. Specifically, the Act restricts the Attorney General from releasing 'any alien' who is 'inadmissible' under certain

provisions and 'is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of' certain crimes." *Id.*, quoting 8 U.S.C. § 1226(c)(1)(E). The "Laken Riley Act may apply to situations where § 1225 might not." *Id.* "For example, an individual who has been admitted through fraud might not be an 'applicant for admission' under § 1225." *Id*, citing 8 U.S.C. § 1182(a)(6)(C)(i) ("Any alien who, by fraud...has procured...a visa, other documentation, or *admission* into the United States...is inadmissible.") (emphasis in original). "But the Laken Riley Act may require that person to be detained even if § 1225 would not apply." *Id.*

A different alien who exemplifies that the Laken Riley Act does not result in superfluidity is the "alien in *Jennings*, Alejandro Rodriguez." *Sandoval*, 2025 WL 3048926, at *5. "Rodriguez was a Mexican citizen who had been a lawful permanent resident since 1987." *Id.*, citing *Jennings*, 583 U.S. at 289. "Rodriguez was convicted of a drug offense in 2004, and the Government detained him under § 1226 and sought his removal." *Id.*, citing *Jennings* at 289–90. "Rodriguez was not an inadmissible alien nor an 'applicant for admission;' rather, he was an admitted alien." *Id.* "Thus, Rodriguez's case discussed in *Jennings* is a paradigmatic example of an admitted alien who is not an 'applicant for admission' but who subsequently became subject to removal under § 1226(a)." *Id.*

The Eastern District of Wisconsin, faced with another unlawfully entered alien seeking to evade application of § 1225(b)(2), employed similar reasoning: "legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996. Indeed, nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case." *Rojas*, 2025 WL 3033967 at *9. "This recent legislation was aimed at making sure that certain aliens, whom Congress deemed dangerous, were necessarily detained pending their removal, lest they

commit further crimes while released." *Id.* "These newly added provisions do not indicate anything with respect to either party's proposed interpretation of Sections 1225 or 1226." *Id.*

Even if one accords overlap to §§ 1225 and 1226, "it is perfectly possible to interpret the provisions as merely overlapping, and Congress often takes a 'belt and suspenders approach' to legislation." *Olalde*, 2025 WL 3131942 at *4, quoting *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 14 n.5 (2020). "Section 1226(c) regulates not only what the Attorney General must do (take aliens into custody), but also when the Attorney General must do so." *Id.*, citing 8 U.S.C. § 1226(c)(1), (c)(3). "By contrast, § 1225 does not specify a timeline for when an alien is to be taken into custody." *Id.* citing 8 U.S.C. § 1225(b)(2)(A) (providing only, in the passive voice, that the alien "shall be detained"). "The Court's interpretation of § 1225 thus does not render the Laken Riley Act superfluous." *Id.*, citing *Jennings*, 583 U.S. at 305 and Scalia & Garner, Reading Law at 176 (describing the surplusage canon as "courts avoid a reading that renders some words *altogether redundant*") (emphasis in original).

The *Olalde* court also noted that "while the canon against superfluity 'applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times,' it is 'pretty weak when applied to acts of Congress enacted at widely separated times'". *Id*, quoting *Bilski v. Kappos*, 561 U.S. 593, 608 (2010) and *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 373 (3d Cir. 1999) and citing *Freytag v. C.I.R.*, 501 U.S. 868, 877 (1991). "The Laken Riley Act was passed this year— decades after the other relevant provisions—so the canon against superfluity does not apply strongly here." *Id.*

Moreover, "amendment to § 1226 by the recent Laken Riley Act doesn't imply that § 1225(b)(2)(A) should be read contrary to its clear terms." *Cabanas*, 2025 WL 3171331 at *6. "This amendment was enacted in January 2025 and requires mandatory detention for aliens who

are inadmissible and have been arrested for, charged with, or convicted of certain crimes." *Id.*, citing 8 U.S.C. § 1226(c)(1)(E)(i)–(ii). The *Cabanas* court addressed and debunked the holding of several district courts that the Laken Riley Act supported finding superfluidity between §§ 1225 and 1226: "many of the authorities cited … in part conclude that, if Congress intended for § 1225(b)(2)(A) to govern all inadmissible aliens, then this recent amendment is superfluous to the extent that it prescribes mandatory detention within § 1226 as to only certain criminal inadmissible aliens … Such conclusion isn't warranted." *Id.* "It's undisputed that prior Administrations for decades applied § 1226(a) to individuals like Petitioner, thus declining to exercise the full extent of executive authority available under the INA." *Id.* "As noted, Congress enacted the Laken Riley Act in January 2025, well prior to DHS under the present Administration issuing guidance clarifying that 'section 235 of the [INA], rather than section 236'—that is, § 1225, rather than § 1226—'is the applicable immigration detention authority for all applicants for admission.'" *Id.*, citing ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Document No 25071607, American Immigration Lawyers Association (July 8, 2025). "'When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.'" *Id.*, quoting *Peavy v. WFAA-TV, Inc*, 221 F3d 158, 169 (5th Cir 2000). "Here, at the time of enactment, the Laken Riley Act did have such effect, given that it required mandatory detention for criminal, inadmissible aliens who had not been subject to it—under either § 1225 or § 1226—by longstanding practice of prior Administrations." *Id.* "But this means only that Congress determined to narrow aspects of the discretion available to any Administration prioritizing removal proceedings toward § 1226. It doesn't follow that the Laken Riley Act undercuts the more fulsome, executive authority that Congress provided to exist independently under the text

of § 1225(b)(2)(A)." *Id.*

"Simply put, amendment by the recent Laken Riley Act to § 1226 isn't superfluous. Beyond that, and regardless, the Supreme Court holds, 'Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.'" *Cabanas*, 2025 WL 3171331 at *6, quoting *Barton v Burr*, 590 U.S. 222, 239 (2020). "'[T]he canons of statutory construction should only be used to resolve remaining ambiguity, not to inject it where it does not exist.'" *Id.*, quoting *Garibay-Robledo*, 2025 WL 2638672 at *1.

2. Prior agency practice does not impact § 1225(b)(2)'s application.

De Corral cites "prior statutory interpretation and practice" as a reason not to apply § 1225(b)(2) to her. (Doc. 1, PageID.5, ¶ 14.). The *Rojas* court addressed "immigration officials' history of treating unadmitted aliens like [Petitioner] as eligible for bond under Section 1226(a)", citing that "the Supreme Court has largely ended judicial deference to agency interpretations of acts of Congress" in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 432–33 (2024), and noting the absence of "any historical materials explaining or justifying immigration officials' prior approach or interpretation of Sections 1225 or 1226" or "a documented prior rationale". *Rojas*, 2025 WL 3033967 at *9. The *Rojas* court ultimately dismissed the notion that prior agency practice should guide its application of Sections 1225 and 1226, noting that the court "must follow the most natural reading of the statutory text", "[p]rior administrations' generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it", and "there is no estoppel against the federal government" while concluding that "[t]he Court must apply the statute as it is written." *Id.*, citing *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 420 (1990) and *Gutierrez v. Gonzales*, 458 F.3d 688, 691 (7th Cir. 2006).

Similarly, the *Olalde* court noted "the longstanding practice of the Board of Immigration Appeals", which "acknowledged 'for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection.'" *Olalde*, 2025 WL 3131942 at *5, citing *Matter of Yajure Hurtado*, 29 I&N at 225, n.6. Though "'the longstanding practice of the government...can inform a court's determination of what the law is'", "a 'long-established practice' does not justify a rule that denied statutory text its fairest reading." *Id.*, quoting *Loper Bright*, 603 U.S. at 386, and *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). The *Olalde* court noted that "the 'weight' of an administrative agency's judgment depends 'upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.'", and that the petitioner in that case "nowhere cite[d] a thorough, reasoned analysis from administrators explaining why aliens covered by § 1225(b)(2) are eligible to receive bond hearings." *Id.*, quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). "Indeed, a 1997 interim rule from the Department of Justice merely asserts: 'Despite being applicants for admission, aliens who are present without having been admitted or paroled...will be eligible for bond.'" *Id.*, citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). "The interim rulemaking offered no interpretation of the statute to justify that nontextual policy, so the Court accords it little to no weight. The plain meaning prevails." *Id.*

C. The Court should rule consistently with *Matter of Yajure Hurtado*, a specifically relevant Board of Immigration Appeals decision that merits *Skidmore* deference.

The statutory text and the Supreme Court's decision in *Jennings* control the determination of this action; in addition, the Court can and should rule consistently with the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025) in holding that 8 U.S.C. § 1225(b)(2) properly applies to De Corral, and the Court further may accord

Skidmore deference to that BIA determination.

As the BIA determined, "aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A)[] and must be detained for the duration of their removal proceedings." *Hurtado*, 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300 (holding that these provisions of the INA "unequivocally mandate that aliens falling within their scope [of section 1225(b)(1) and (2)] shall be detained," and that "[u]nlike the word may, which implies discretion, the word shall usually connotes a requirement")). The Court should defer to this persuasive interpretation of the statute, even if it is not bound by it. *See Pemberton v. Bell's Brewery, Inc.*, 150 F.4th 751, 763, n. 4 (6th Cir. 2025) (explaining that *Skidmore* deference survived the Supreme Court's decision in *Loper Bright*, 603 U.S. at 402). Contrary to other holdings, *see e.g., Beltran Barrera v. Tindall*, 2025 WL 2690565, at 3 (W.D. Ky. Sep. 19, 2025), the BIA's decision is persuasive and accurately construes the statutory text. As the BIA explained, an "applicant for admission" under 8 U.S.C. § 1225(a)(1), by virtue of his entry without inspection, must necessarily be considered as "seeking admission," as the term of art is used in 8 U.S.C. § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220; see also *Rojas*, 2025 WL 3033967 at *8 (explaining that "seeking admission" "is best read as simply another way of referring to aliens who are applicants for admission"). This interpretation is supported by agency precedent, *see Matter of Lemus*, 25 I. & N. Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not actually requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws"), and the Supreme Court's decision in *Jennings* which ignored the "seeking admission" portion of § 1225(b)(2)(A), instead interpreting the relevant portion of this provision to be

whether an official determined they were "not clearly and beyond a doubt entitled to be admitted". *Jennings*, 583 U.S. at 288.

This interpretation also makes sense. The BIA explained how a contrary reading creates a "legal conundrum," because there "is no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under . . . 8 U.S.C. § 1226(a)." *Hurtado*, 29 I. & N. Dec. at 221. As the Western District of Louisiana put it,

> For this Court to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA. This Court thus "refuse[s] to interpret the INA in a way that would in effect repeal [Congress's] statutory fix."
>
> *Sandoval*, 2025 WL 3048926 at *6, n. 7, quoting *Gambino-Ruiz*, 91 F.4th at 990.

III. De Corral Is and Has Been Afforded All Due Process to which She Is Entitled.

De Corral raises due process generally. (Doc. 1, PageID.6-9, ¶¶ 18, 20-23, 25-26.). As she is properly detained under 8 U.S.C. § 1225(b)(2), she cannot show that her detention violates his due process rights. "[D]ue process is flexible," and "calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also Landon v. Plasencia,* 459 U.S. 21, 34 (1982). As an applicant for admission detained under 8 U.S.C. § 1225(b)(2), De Corral does not have due process rights beyond those provided in 8 U.S.C. § 1225. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). This "rests on fundamental propositions: the power to admit or exclude aliens is a

sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Id.* at 139 (cleaned up). The *Rojas* court also provided useful analysis on this point, noting that petitioners in De Corral's circumstances have limited liberty interests, while the United States has "a powerful interest in maintaining the detention in order to ensure that removal actually occurs." 2025 WL 3033967 at *13-14. Further, there is little chance of erroneous deprivation of any rights for aliens admittedly subject to removal, as De Corral is. *Id.* at *13.

De Corral's petition makes no allegation that she was not given notice of the charges against her, given access to counsel, or will have an opportunity to be heard by an immigration judge. Accordingly, her petition presents no basis on which to find that her detention violates any procedural due process rights.

IV. This Court Cannot Release De Corral Prior to the Immigration Judge Entertaining a Bond Hearing.

De Corral incorrectly asserts that she is detained pursuant to § 1226, even though she is an applicant for admission under the INA. Nevertheless, De Corral requests that this Court find she should be detained under § 1226, but then requests that the Court immediately release her. (Doc. 1, PageID.9.). That is a legal oxymoron. Her request denies the very process statutorily mandated by the detention statute she claims as applicable.

Section 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings*, 583 U.S. at 288. Section 1226(a) provides that "an alien may be . . . detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*,

141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the alien, it may set a bond and/or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that an alien should remain detained during the pendency of 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 to release the noncitizen on bond. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);[6] *see also* 8 C.F.R. § 1003.19(d). If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Section 1226(a) does not provide an alien with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Section 1226 release under bond occurs only when the detained alien moves for bond, and circumstances forming bond and release, are determined by an immigration judge, not by a district court. The idea that § 1226 simply permits release is antithetical to its language and its statutory purpose of detention. A finding that a detained alien should be detained under § 1226, rather than § 1225(b)(2), is not a finding for release, but rather a finding that the alien should be detained, unless she moves the

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

immigration court for a bond and is so granted.

CONCLUSION

Because the Court lacks jurisdiction, the Court should dismiss the instant petition. Alternatively, the Court should deny the petition, because Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2) and the Agency has afforded her all due process to which she is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2025, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Petitioner.

/s/ Jason Snyder
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