UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

SIRLEY JULISSA GUTIERREZ VILLARREAL	)	**CIVIL ACTION NO: 3:25-cv-01777**
VERSUS	)	**JUDGE DOUGHTY**
KEITH DEVILLE, *ET AL.*	)	**MAGISTRATE JUDGE MCCLUSKY**

RESPONSE IN OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS

On behalf of Respondents,
Brian Acuna, Todd M. Lyons, Kristi Noem, Pamela Bondi and Daren K. Margolin

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INTRODUCTION AND STATEMENT OF FACTS

Petitioner, a native and citizen of Honduras, "entered the United States nearly 20 years ago" (ECF No. 1, ¶ 42) but "has no current, lawful status in the United States. ECF No. 1, ¶ 15. Petitioner makes no contention that she was at any time admitted or paroled after inspection by an immigration officer. On September 24, 2025, Petitioner was taken into ICE custody at a USCIS office in New York, and was eventually transferred to the Richwood Correctional Facility in Richwood, Louisiana, where she is currently detained and has been placed in removal proceedings. ECF No. 1, ¶¶ 43-44.

Petitioner is currently in removal proceedings before an immigration court under section 240 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a (ECF No. 1, ¶ 44), because she is an alien present in the United States without being admitted or paroled, or who arrived in the U.S. at a time and place other than as designated by the Attorney General under section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). Although Petitioner has been physically present in the United States for "nearly 20 years" (ECF No. 1, ¶ 45), based on a plain reading of the applicable statutes, she is deemed an applicant for admission, 8 U.S.C. § 1225(a)(1), and detention is mandatory for the duration of her removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner is seeking release from ICE detention claiming that (1) her detention violates the Immigration and Nationality Act and related bond regulations and (2) her detention violates the Due Process Clause of the Fifth Amendment.

STATEMENT OF THE ISSUE

The core issue in this case is what the proper detention authority and due process requirements are for an alien who is present in the United States without being admitted. The Board of Immigration Appeals ("BIA") specifically addressed this issue in *Matter of Yajure Hurtado*, finding in a precedential decision that an immigration judge lacks authority to hold a bond hearing for an alien who is present in the United States without having been admitted pursuant to section 235 of the INA, 8 U.S.C. § 1225 ("INA"). 29 I&N Dec. 216 (BIA Sept. 5, 2025). Accordingly, lower immigration courts have been denying

bond for this category of aliens under this precedential decision and 8 U.S.C. § 1225, which requires mandatory detention for all unadmitted aliens regardless of whether they are placed in expedited removal under § 1225(b)(1) or in standard removal proceedings under § 1225(b)(2). These aliens have since been petitioning district courts for habeas relief arguing that if the unadmitted, undocumented alien is physically "present in" the United States, they are no longer an "applicant for admission" under § 1225 and can only be detained pursuant to the provisions of § 1226, which they claim requires a bond hearing. For the reasons set forth below, and as adopted by courts in this district and others,[1] this proposition contravenes the clear provisions of the INA and its legislative history.

LEGAL FRAMEWORK

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

[1] See, *Oliveira v. Patterson et al.*, 25-cv-1463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Barrios Sandoval v. Acuna*, 25-cv-1467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Kum v. Ross, et al*, No. 25-cv-451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025)(adopting report and recommendation, 2025 WL 3113646 (Oct. 22, 2025) ("Kum's detention is mandatory and lawful under §1225(b)); *Montoya Cabanas v. Bondi, et al*, 25-cv-4830, 2025 WL 3171331 (S.D.Tx. Nov. 13, 2025) (holding that mandatory detention under § 1225(b)(2) is lawful for an alien present in the country for over 20 years without admission); *Garibay-Robledo v. Noem*, 25-cv-177, 2025 WL 2638672 (N.D. Tex Oct. 24, 2025) (denying TRO to inadmissible alien present in the country for over 30 years without admission for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Lopez v. Trump*, 25-cv-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez v. Noem*, 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025)) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde*, 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) (denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)).

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

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

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

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

2. § 1225(b) – Inspection Procedures

Paragraph (b) of § 1225 governs the inspection procedures applicable to *all* applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. § 1225(b)(1) applies to those "arriving in the United States" and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i), (iii). The "certain other aliens" referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply 1225(b)(1)'s expedited removal to an alien who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of multiple years.

Applicants for admission falling under the specifications of subsection (b)(1) are generally subject to expedited removal "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). That includes those applicants for admission who cannot show that they have been present in the United States for at least two years prior to the determination of inadmissibility. Importantly, the two-year physical presence requirement does *not* excuse an applicant from mandatory detention under § 1225, as will be explained below, but only determines whether the applicant will be subject to expedited removal under 1225(b)(1) if they have not been present in the United States for more than two years, or subject to standard removal proceedings under § 1229a if they have been present (albeit not admitted or paroled) for more than two years. § 1225(b)(2) is "broader" than (b)(1), serving as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1). *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer determines that the alien seeking admission is not clearly and

beyond a doubt entitled to be admitted, the alien *shall* be detained for a [removal] proceeding under § 1229a." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens. . .seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). The key distinction between (b)(1) and (b)(2) of 1225 is that only (b)(1) provides for expedited removal, while (b)(2) provides for standard removal proceedings under § 1229a. However, both sections require mandatory detention pending conclusion of the process, whether by expedited removal or the conclusion of § 1229a removal proceedings.

B. Apprehension and Detention under INA 236, 8 U.S.C. § 1226

8 U.S.C. § 1226 applies to "aliens", which means *any* person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). "Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more... classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," it provides that an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a). For aliens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain an alien during removal proceedings.[2] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" alien during the pendency of removal proceedings).

[2] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). If DHS decides to release, it may set a bond or condition the release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If, following apprehension under § 1226(a), DHS determines that an alien should remain detained during the pendency of his or her removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534), nor does it address the applicable burden of proof or particular factors that must be considered. Rather, it grants broad discretionary authority to determine, after arrest pursuant to § 1226(a), whether to detain or release an alien during removal proceedings. If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA which is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including Immigration Judge custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1.

ARGUMENT

I. Petitioner is properly detained under 8 U.S.C. §1225(b)(2) and is not entitled to release.

Petitioner claims that she is not properly detained under INA § 235(b), 8 U.S.C. § 1225(b), and can only be detained, if at all, pursuant to 8 U.S.C. § 1226(a). ECF No. 1, ¶ 49. However, Petitioner is very clearly properly detained under § 1225(b)(2) because she unambiguously meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support Respondents' interpretation. The applicable detention statute, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous. Including its definitions, this statute is only three sentences long. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A). It states:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines

during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

> 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.

8 U.S.C. § 1225(b)(2)(A).[3] The first relevant term is "applicant for admission," which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any alien (a person who is not a citizen or national of the United States, 8 U.S.C. § 1101(a)(3)) "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, under its plain terms, all unadmitted foreign nationals in the United States 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. *See id.* "When a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, under the plain text of the statute, Petitioner is unambiguously an "applicant for admission" because she is a foreign national, she was not admitted, and she was present in the United States when she was detained. ECF No. 1, ¶¶ 15, 42-43 (stating Petitioner is a native and citizen of Honduras with no current legal status in the United States).

The next relevant portion of the statute is whether an examining immigration officer determined that Petitioner was "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" 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)[4]. Therefore, the inquiry is whether an immigration officer determined that Petitioner was seeking a "lawful entry." *See id.* A foreign national's past unlawful physical entry has

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[3] The first clause referencing subparagraphs (B) and (C) is not relevant to this case except to note that (B) specifically excludes aliens to whom paragraph 12(b)(1) applies from the provisions of paragraph 12(b)(2). *See*, 8 U.S.C. §1225(b)(2)(B)(ii).

[4] § 1101(a)(13) also contains subsection (B), which addresses humanitarian parole and specifies that these parolees will not be considered admitted, and subsection (C), which addresses categories of certain aliens present in the United States are nonetheless regarded as "seeking an admission" and includes an alien "attempting to enter at a time and place other than as designated by immigration officers OR *has not been admitted to the United States after inspection and authorization by an immigration officer*". See, § 8 U.S.C. 1101(a)(13)(C)(vi) (emphasis added). This subsection further reiterates a clear statutory intent that aliens present in the United States without inspection and admission are considered to be "seeking admission".

no bearing on this analysis. *See id.* This element of "lawful entry" is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021)(recognizing that "admission" means "lawful entry"). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he or she did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A). Indeed, the charges of removal against Petitioner are based on her unlawful entry due to being present without being admitted or paroled, or arriving in the United States at any time or place other than as designated by the Attorney General. So, unless Petitioner obtains a lawful admission in the future, she will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), and 1227(a)(1)(A).

The INA provides two examples of foreign nationals who have not yet been admitted but are not "seeking admission." The first is someone who withdraws his or her application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). This means even in removal proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the United States for more than two years who have not been lawfully admitted and who do not agree to immediately depart are seeking admission and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is *not* the same as an expedited removal under § 1225(b)(1). Instead, under the clear provisions of §1225(b)(2), removal proceedings must proceed as outlined under § 1229a. Accordingly, Petitioner is still "seeking admission" under § 1225(b)(2) because she has not agreed to depart, and she has not yet conceded her removability or allowed her removal proceedings to play out – she wants to be

admitted via her removal proceedings. *See Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (discussing how "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival)" is deemed "an applicant for admission").

The Court should find that Petitioner is still "seeking admission" to the United States. Petitioner has not agreed to immediately depart, which logically means that she must be seeking to remain in this country, which requires an "admission" (i.e. a "lawful entry" as discussed above). Petitioner's interpretation that she is not an "applicant for admission" under § 1225 defies the legal presumption created by the definition of the term, which characterizes *all* unlawfully present foreign nationals as applying for admission until they are either removed or successfully obtain a lawful entry. *See* 8 U.S.C. § 1225(a)(1). Further, treating Petitioner as if she is no longer "seeking admission" would reward her for violating the law, provide her with better treatment than a foreign national who lawfully presented themselves for inspection at a port of entry, and encourage others to enter unlawfully - defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a "perverse incentive to enter at an unlawful rather than a lawful location"). Accordingly, Petitioner's interpretation of "seeking admission" under § 1225 and the perverse result its application would achieve is patently unreasonable.

The final textual requirement here is that Petitioner "*shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). As explained above, Petitioner is not in expedited removal at all. She has instead been placed in full removal proceedings where she will receive the benefits of the procedures in immigration court (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. Petitioner in fact states in her pleading that she is in removal proceedings before the Lasalle Immigration Court pursuant to § 1229a. ECF No. 1, ¶ 44. Therefore, she also meets this textual element within § 1225(b)(2)(A) because she is in 1229a removal proceedings and is thus subject to

mandatory detention during the pendency of these proceedings.

In sum, the plain text of § 1225(b)(2) unambiguously applies to Petitioner. "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). Therefore, no further exercise in statutory interpretation is necessary or permissible and the Court should conclude Petitioner's detention under § 1225(b)(2) is lawful.

II. Petitioner's argument that § 1226 (and not § 1225) should apply to her detention is flawed.

1. § 1225 applies to an alien that is present in the United States who has not been admitted.

Petitioner's argument that being present in the United States for 20 years makes § 1225(b)(2)(A) inapplicable to her is unpersuasive. The BIA has long recognized that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012). Petitioner "provides 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 section 236(a) of the INA [8 U.S.C. § 1226(a)]." *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (citing *Matter of Lemus-Losa*, 25 I&N Dec. at 743 & n.6).

Statutory language "is known by the company it keeps." *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221; *Lemus-Losa*, 25 I&N Dec. at 743.

2. Applying § 1225 to "applicants for admission" who are present in the U.S. does not render the provisions of § 1226 superfluous.

Any argument that DHS's interpretation of § 1225 would render § 1226 unnecessary is incorrect. The crux of this dispute is one of statutory interpretation. § 1225(b) provides for mandatory detention of any alien "who is an applicant for admission." And "applicants for admission" specifically includes all aliens present in the United States who have not been admitted or who arrive in the United States. 8 U.S.C. § 1225(a)(1). Accordingly, whether an alien is inside the U.S. at the time of encounter with an ICE official does not matter if that alien entered at an unknown location, successfully evaded U.S. Border Patrol for some unknown amount of time and effected an unlawful entry into the interior of the United States. That alien nonetheless remains an "applicant for admission" who is subject to mandatory detention once apprehended unless paroled by DHS in its sole discretion.

Notwithstanding the mandatory detention provisions of both § 1225(b)(1) and (b)(2), § 1226 can clearly apply to another category of aliens that are not covered under § 1225 - those who are present in the United States and are *not* applicants for admission. Although already admitted, therefore not an applicant for admission within the definition of § 1225(a)(1), an alien may still become removable for certain reasons, subjecting them to "arrest and detention pending a decision on whether the alien is to be removed from the United States", which is a proper application of § 1226.

A careful reading of § 1225 clearly shows that it only pertains to applicants for admission – which does not encompass every category of alien that may be present in the United States. § 1225 prescribes the specific procedures for inspection by the immigration officers to determine whether to admit or remove applicants for admission (i.e. whether under § 1229a proceedings or by expedited removal) and requires mandatory detention during that process. Conversely, § 1226 applies to "aliens", which means *any* person who is not a citizen or national of the United States. 8 U.S.C. §1101(a)(3). Therefore, § 1226 does not exclude applicants for admission and authorizes arrest, revocation of bond and parole, and detention. § 1226 also does not permit discretionary detention or bond for those aliens who are also

"applicants for admission" under § 1225(a), because that would be inconsistent with the obvious statutory intent to detain aliens who are applicants for admission on a non-discretionary basis as set forth in §§ 1225(b)(1)(B)(iii)(IV) and (b)(2)(A).

3. Congress intended to *mandate* detention for all applicants for admission under § 1225.

Congress provided that mandatory detention pending removal proceedings is the norm—not the exception—for those who enter the country without inspection and who lack documents sufficient for admission or entry. *See* 8 U.S.C. § 1225(b)(2). And for good reason: detention pending removal proceedings reflects the reality that aliens have avoided inspection by sneaking into the United States. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). When Congress enacted 8 U.S.C. § 1225(b) as part of the immigration reforms of 1996, it determined that treating all unadmitted aliens similarly in terms of detention and removal eliminated unintended consequences and perverse incentives that pervaded the prior system, under which undocumented aliens who entered without inspection received more procedural protections—including the ability to seek release on bond—than those who presented themselves for inspection at ports of entry. In essence, the pre-1996 law favored those that entered the U.S. illegally and clandestinely, which Congress sought to end.

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

> Congress acted, in part, to remedy the "unintended and undesirable consequence" of having created a statutory scheme where aliens who entered without inspection "could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," including the right to request release on bond, while aliens who had "actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings,'" and were subject to mandatory custody. (Citing *Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). . . Thus, after the 1996

> enactment of the IIRIRA, aliens who enter the United States without inspection or admission are "applicants for admission" under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1), and subject to the inspection, detention, and removal procedures of section 235(b) of the INA.

Id. at 223.

This history supports the result required by the plain language of the statute itself. Indeed, other district courts, including courts from within this district, have recognized that mandatory detention of inadmissible aliens for the duration of their removal proceedings is required by 1225(b)(2). *Oliveira,* 2025 WL 3095972 (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Barrios Sandoval,* 2025 WL 3048926 (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2); *Garibay-Robledo,* 2025 WL 2638672 (denying TRO to inadmissible alien present in the country for over 30 years without admission for 9 years because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Lopez,* 2025 WL 2780351 (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez,* 2025 WL 2730228 (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena,* 2025 WL 2108913 (denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)); *Kum,* 2025 WL 3113644 (W.D. La. Nov. 6, 2025)(adopting report and recommendation, 2025 WL 3113646 (Oct. 22, 2025)) (holding an individual who entered the United States on July 17, 2023 but was not admitted or paroled was an "applicant for admission").

Petitioner apparently argues that the plain language of § 1225(b)(2) does not matter, because the government has in the past treated certain aliens who enter without inspection but who are arrested in the interior as subject to discretionary detention under § 1226(a). But this prior practice has no bearing on the legal issues here, as detention is mandated by the plain language of the statute. After all, where (as here)

"the words of a statute are unambiguous, this first step of the interpretive inquiry [*i.e.*, construing the statutory text] is [the court's] last." *Rotkiske v. Klemm*, 589 U.S. 8, 13 (2019).

Respondents are aware of prior rulings in this District and others rejecting this argument in similar cases, but Respondents respectfully maintain that this Petitioner is nonetheless an applicant for admission subject to mandatory detention under § 1225(b)(2) in light of the legislative history, the reasoning outlined by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the aforementioned decisions of sister courts supporting this proper application of the INA. The contrary decisions of other districts cited by Petitioner are not binding on this Court and should not override the clear congressional mandate of detention under the provisions of 8 U.S.C. §1225(b). Additionally, the two contrary decisions from this District (*Kostak* and *Lopez-Santos*, discussed below) were rendered before or very shortly after the *Hurtado* BIA decision was published and those courts did not enjoy the full discussion of the legislative history and statutory analysis of the *Hurtado* decision when rendering these decisions on an expedited basis. Additionally, and most importantly, these decisions did not order release of the detainee and only ordered the government to provide a bond hearing to the detainee in immigration court within a specified time frame under § 1226(a). Accordingly, the Court should not order release under the reasoning of those decisions.

First, the decision in *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) was rendered by the court prior to the BIA's issuance of its precedential decision in *Hurtado* and, in that case, the court did not order release of the detainee. Instead, in considering a motion for temporary restraining order seeking release from detention and finding (without a full statutory analysis) a 'likelihood of success on the merits' of the petitioner's claim that she was not subject to mandatory detention under § 1225(b)(2)(A), the court ordered the government to provide petitioner with an individualized bond hearing. The court noted a statement by the Supreme Court in *Jennings* that "the decision of who may enter and who may remain 'generally begins at the Nation's borders and ports of entry, where the

[g]overnment must determine whether an alien seeking to enter the country is admissible.'". *Id.* at *3 (citing *Jennings*, 583 U.S. at 287). The court further noted that *Jennings* stated that § 1225(b) "applies primarily to aliens seeking entry into the United States." *Id.* Finally, the court noted that § 1226 "applies to aliens already present in the United States". *Id.* (citing *Jennings*, at 303). *Id.* While these observations are not wrong, this analysis stopped short and failed to observe that § 1225 and § 1226 are not mutually exclusive (as explained above), and while a determination of admission "generally begins at the border", those cases do not encompass the situation where an alien crossed the border illegally and eluded immigration authorities while unlawfully present in the United States for some amount of time. Therefore, while § 1225 applies to aliens seeking entry into the United States (i.e. "applicants for admission"), that term does not exclude those applicants that have crossed the border illegally and are present in the United States unlawfully without admission or parole.

Further, in *Lopez-Santos v. Noem, et al*, No. 25-cv-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025), the district court granted the habeas petition in part only six days after the *Hurtado* decision was rendered by the BIA. In that case, the court found the petitioner was not subject to mandatory detention and expedited removal under § 1225 and ordered the government to provide a bond hearing. Like Petitioner in the instant case, the petitioner in *Lopez-Santos* entered the United States on an unknown date at an unknown location without admission or parole. In its decision, the court focused mainly on the issue of expedited removal, accepting petitioner's statement that he had resided continuously in the United States for the past twenty years and noting that expedited removal is not available under § 1225 if the applicant has been physically present in the United States for the 2-year period immediately prior to the date of determination of admissibility, citing provisions of § 1225(b)(1). *Id.* at *4. The court then further stated that because the Notice to Appear from ICE did not designate the petitioner for expedited removal but instead designated him for standard removal proceedings under § 240 of the INA, the petitioner should not be subject to mandatory detention under § 1225. *Id.* at *5. Therefore, without any

discussion of § 1225(b)(2) at all, the court found that the petitioner was detained under § 1226(a) and must be afforded a bond hearing. While the court correctly noted that section 240 of the INA, which corresponds to 8 U.S.C. § 1229a removal proceedings, is not expedited removal under § 1225(b)(1), the court also stopped its statutory analysis too soon when it failed to consider the provisions of §1225(b)(2)(A) which, as explained above, specifically provide for standard removal proceedings of an applicant for admission under § 1229a, while still mandating detention during those proceedings. Therefore, while the petitioner in *Lopez-Santos* was not subject to expedited removal, he was still subject to mandatory detention under § 1225(b)(2)(A) and should not have been found eligible for a bond hearing under § 1226(a).

Additionally, Respondents note another decision from this district, *Martinez v. Trump, et al*, No. 25-cv-01445, 2025 WL 2642278 (W.D. La. Oct. 22, 2025). In that case, the immigration judge granted bond to the petitioner, but that was later overturned and vacated by the BIA in accordance with the precedential ruling in *Hurtado*. *Id.* at *1. The district court in *Martinez* granted Petitioner a TRO and ordering that the initial bond be reinstated, finding that, "as an alien already present in the United States," he was subject to § 1226 and not § 1225. *Id.* at *5. The court focused on the term "arriving" in § 1225(a) and found that "present" invoked § 1226. *Id.* However, this analysis failed to consider that an "alien" as described in § 1226 is not the same as an "applicant for admission" under § 1225. Instead, "alien" and "applicant for admission" are two distinctly defined terms in the INA, as discussed above, and § 1225 specifically applies to the class of aliens who are treated as "applicants for admission":

> **(1) Aliens treated as applicants for admission**
>
> An alien present in the United States who has not been admitted ***or*** who arrives in the United States (whether or not at a designated port of arrival….) shall be deemed for purposes of this chapter an applicant for admission.

§ 1225(a)(1) (emphasis added). The statute specifically defines two categories of an "applicant for admission": (1) those who are present without admission, OR (2) those who arrive in the United States.

Therefore, either subset of aliens can be treated as applicants for admission whether they are arriving or are already present without admission. The *Martinez* court did not consider the second category of alien who is also an applicant for admission when it ruled that § 1226 must apply simply because the petitioner was already present in the United States and no longer arriving.[5] The petitioner in that case, just like Petitioner in this case, was present ***without admission***, making them both applicants for admission subject to mandatory detention under § 1225(b)(2), since they were both present in the United States without admission for longer than two years, subjecting them to § 1229a removal proceedings (and not expedited removal under § 1225(b)(1)).

Conversely, recent decisions of sister courts are instructive and support Respondents' application of § 1225(b)(2) mandatory detention to this Petitioner. In its very detailed analysis, the court in *Barrios Sandoval v. Acuna*, et al No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025), held that a petitioner allegedly present in the country for over nine years, but without admission or parole, was lawfully detained under § 1225(b)(2) and therefore not entitled to a bond hearing.[6] This holding was mirrored in *Oliveria v. Patterson, et al,* No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025), involving a petitioner allegedly present in the country for over 3 years, but without admission or parole. The courts in *Barrios Sandoval* and *Oliveria* engaged in a multi-part statutory analysis of 8 U.S.C. §§ 1225 and 1226 including: (1) who qualifies as an "applicant for admission" under § 1225(a), (2) whether detention is required for all "applicants for admission" under §1225(b), (3) what class of aliens (not "applicants for admission") §1226 applies to, and (4) why the proper application of 1225(b) mandatory detention does not render § 1226 superfluous. *Id.* The courts noted the distinction between §1225(b)(1) and (b)(2), where (b)(1) sets forth expedited removal procedures and (b)(2) "standard" removal proceedings under § 1229a. *Id.* Importantly

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[5] Appeals are pending in both the *Kostak* and *Martinez* cases. *See Kostak v. Trump*, 25-30620 (5th Cir. 10/30/25) and *Martinez v. Trump,* 25-30621 (5th Cir. 10/30/25).

[6] Although argued in the briefing, the court did not consider jurisdiction stating, "[b]ecause the Court determines that the Petitioner is not entitled to habeas relief under the facts presented, the Court declines to determine the applicability of the jurisdiction-stripping provisions of the INA cited by the Respondents." *Barrios Sandoval,* 2025 WL 3048926 at *2; *Oliveira,* 2025 WL 3095972.

though, the courts found that *both* sections require mandatory detention until the conclusion of the inspection process. *Id.* The courts gave an example of how § 1226 can be properly applied, as the Supreme Court did in *Jennings*. Finally, the courts explained how this analysis differed from that of other district court decisions that have rejected Respondents' argument that § 1225(b) mandatory detention applies to petitioners like the ones in both *Barrios Sandoval* and *Oliveira*, as well as the instant case, where that petitioner is present without admission, regardless of the time that alien has resided unlawfully in the United States.

Similarly, the district court in *Kum v. Ross, et al*, No. 25-cv-451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025)(adopting report and recommendation, 2025 WL 3113646 (Oct. 22, 2025)), correctly applied the definition of "applicant for admission" to a petitioner who was present in the United States without having been admitted or paroled under § 1225(a)(1). The court noted, as Respondents aver in this case, that an applicant for admission is subject to mandatory detention pending full removal proceedings under § 1225(b)(2)(A), also citing *Jennings*, 583 U.S. at 299, and 8 C.F.R. § 235.3(b)(3) (a noncitizen placed into Section 1229a removal proceedings in lieu of expedited removal proceedings under Section 1225(b)(1) "shall be detained" pursuant to 8 U.S.C. § 1225(b)(2)). The court further noted that an applicant for admission under § 1225(b) has no statutory entitlement to a bond hearing, citing both *Thuraissigiam,* 591 U.S. at 111, and *Jennings*, 583 U.S. at 302. Accordingly, the court denied and dismissed the habeas petition in that matter.

Further, a district court in Northern District of Texas recently denied an injunction and request for a bond hearing under § 1226, noting the very real distinction between an "arriving alien" and an "applicant for admission" with respect to the application of § 1225(b) and its mandatory detention requirement. *See Garibay-Robledo,* 2025 WL 2638672. The *Garibay-Robledo* opinion states:

> To be sure, an arriving alien is an applicant for admission: Subsection 1225(a)(1) defines applicant for admission, in part, as "[a]n alien . . . who arrives in the United States." But the same provision *also* defines an applicant for admission as "[a]n alien present in the

> United States who has not been admitted." *Id.* This is not the most intuitive definition of the term, but it is the one that Congress enacted into law.

Id. at *4. (emphasis added). The court conducted a review of legislative history and further noted that by defining "applicants for admission" broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally. *Id.* at *6-7. *See also Montoya Cabanas v. Bondi, et al,* 25-cv-4830, 2025 WL 3171331 (S.D.Tx. Nov. 13, 2025) (holding that mandatory detention under § 1225(b)(2) is lawful for an alien present in the country for over 20 years without admission); *Lopez v. Trump*, 25-cv-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on 1225(b)(2) and inapplicability of 1226); *Chavez v. Noem*, 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde*, 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) (denying habeas relief for inadmissible alien in the country for 20 years based on 1225(b)).

Accordingly, this Court should follow the reasoning of these decisions and decline to extend the holdings of *Kostak, Martinez,* and *Lopez-Santos* to the facts of this case. Instead, the Court should find that Petitioner is properly detained under § 1225(b)(2) and subject to mandatory detention as an applicant for admission during the pendency of her removal proceedings under § 1229a.

III. Alternatively, the Court should require administrative exhaustion before ordering a bond hearing.

When Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs" whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* Here, the court may require that Petitioner obtain a denial of bond in immigration court and at least attempt to appeal any denial of bond to the BIA, before considering the merits of her claims. *See, e.g., Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 876–77 (E.D. Wis. 2007).

As alluded to above, Congress has provided a robust administrative hearing and appeal process for foreign nationals in removal proceedings that include evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). Requiring Petitioner to exhaust that process before seeking review in federal court may reduce the number of similar cases filed in this court. Therefore, before the request to order a bond hearing is ripe for consideration by this Court, Petitioner should exhaust her administrative remedies by proceeding with any hearing in immigration court and, if denied a bond hearing, seeking appellate review of these administrative decisions to the BIA, which would be her right under the applicable provisions of the INA.

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

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Petitioner. See 8 U.S.C. § 1225(a)(1). And Congress directed that aliens like Petitioner shall be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they have crossed borders and traveled in violation of United States law. That is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with this power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be

held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.").

In another immigration context (aliens already ordered removed and awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as unnecessarily restrictive in other contexts, such as during the pendency of removal proceedings under § 1225(b) and § 1226(c). This was an express holding of *Jennings,* stating "In Parts III-A and III-B [of the opinion], we hold that, subject only to express exceptions, §§ 1225(b) and 1226(c) authorize detention until the end of applicable proceedings." *Jennings,* at 296-97. The Supreme Court in *Jennings* explained in detail why the *Zadvydas* opinion does not provide authority to graft a time limit onto the text of § 1225(b) (as opposed to § 1231(a)(6), which authorizes the detention of aliens who have already been removed from the country), noting that § 1225(b) uses the word "shall" instead of "may", specifies a clear time frame for detention during the pendency of proceedings, and provides an express exception to detention, which signals that there are no other circumstances under which a § 1225 detainee may be released. *Id.* at 298-300.

Further, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings. 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* Likewise, Petitioner's temporary detention pending her removal proceedings does not violate due process. She has only been detained since September 24, 2025 as her process unfolds. Petitioner's ample available process in her current removal proceedings demonstrates no lack of procedural due process—nor any deprivation of liberty "sufficiently outrageous" required to establish a substantive due process claim. *See generally Reed v. Goertz,* 598 U.S. 230, 236 (2023). Petitioner's detention

is not punitive or for other reasons than to address her removability from the United States and is also not indefinite, as it will end upon the conclusion of her removal proceedings. A period of detention for the purpose of removal proceedings or to effectuate removal simply does not violate the constitution. Moreover, as the court noted in its report and recommendation in *Kum,* even lengthy detention is mandatory and lawful under § 1225(b). *Kum,* No. 25-cv-00451 at *4, n. 2 (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional).

Although Petitioner is alleging that she should not be detained during the pendency of her removal proceedings, Congress made the decision to detain her during the removal proceedings which is a "constitutionally permissible part of that process." *See Demore,* 538 U.S. at 531.

V. This Court lacks jurisdiction over this matter.

Even though Respondents can successfully oppose the merits of Petitioner's challenge to DHS's detention classification under the INA, the Court lacks jurisdiction to even consider the merits of this matter under 8 U.S.C. §§ 1252 and 8 U.S.C. §1226(e), for the reasons set forth below.

1. 8 U.S.C. § 1252 channels all challenges to removal orders and removal proceedings to the Courts of Appeals.

Petitioner's petition is a collateral attack on her removal proceedings dressed up as a request for a bond hearing. Congress has foreclosed this type of challenge. Multiple provisions of 8 U.S.C. § 1252 strip this Court of jurisdiction over Petitioner's request, and Petitioner cannot sidestep that the substance of her claims are barred by § 1252 by restyling them as something else. "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Here, Congress has spoken with unmistakable clarity. § 1252(b)(9) mandates 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." It further specifies that "no court shall have jurisdiction, by habeas corpus . . . or by any other provision of law," to review such questions except in

that context. 8 U.S.C. § 1252(b)(9). § 1252(g) is equally categorical, barring jurisdiction over "any cause or claim" arising from the government's decision to "commence proceedings," "adjudicate cases," or "execute removal orders." 8 U.S.C. § 1252(g).

Petitioner's claims fall squarely within these prohibitions. She is not challenging the conditions of confinement or the length of detention—issues courts have occasionally recognized as falling outside § 1252(b)(9)'s sweep. *See Jennings*, 583 U.S. at 294 (plurality opinion).[7] Instead, she asks this Court to second-guess DHS's decision to commence proceedings under § 1229a and whether and how an immigration judge, subject to precedential decisions of the BIA, grants bond in the midst of these ongoing removal proceedings. That is precisely the sort of interference Congress barred—multiple times over—in § 1252. As *Jennings* explained, habeas cannot be used to "challeng[e] the decision to detain them in the first place." *Id.* The Supreme Court has been explicit: detention pending removal is a "specification of the decision to 'commence proceedings' which . . . § 1252(g) covers." *Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999).

§ 1252(b)(9) is extraordinarily (and intentionally) broad, channeling "all questions of law and fact" that "arise from" removal actions into the petition-for-review process. *Id.* at 9. Courts may retain jurisdiction to hear claims entirely independent of removal, but not those—like Petitioner's—that strike at the heart of the government's authority to detain during removal proceedings.

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[7] As Justice Thomas explained in his concurrence in *Jennings*, "Section 1252(b)(9) is a 'general jurisdictional limitation' that applies to 'all claims arising from deportation proceedings' and the 'many decisions or actions that may be part of the deportation process. 'Detaining an alien falls within this definition—indeed, this Court has described detention during removal proceedings as an 'aspect of the deportation process.' . . . The phrase 'any action taken . . . to remove an alien from the United States' must at least cover congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien's removal." *Jennings*, 583 U.S. at 317-18 (Thomas, J., concurring in part and concurring in the judgment) (citations omitted).

2. 1226(e) precludes judicial review of the Attorney General's decisions regarding Petitioner's detention or release.

If this Court finds that Petitioner can only be detained pursuant to the provisions of INA 236(a), which is denied by Respondents, then this Court must likewise find that it is precluded from reviewing any decision by the Attorney General to detain petitioner and to deny bond. 8 U.S.C. § 1226(e) provides:

> **(e) Judicial Review**. The Attorney General's discretionary judgment regarding the application of [Section 1226] shall not be subject to review. No court may set aside any action or decision by the Attorney General under [Section 1226] regarding detention of any alien or the revocation or denial of bond or parole.

Accordingly, § 1226(e) precludes an alien from challenging discretionary judgment or decision by the Attorney General regarding his or her detention or release. *See Jennings*, 138 S. Ct. at 841 (*citing Demore v. Kim*, 538 U.S. 510, 516 (2003)). The Supreme Court noted in *Jennings* that 1226(e) does not preclude challenges to the statutory framework that permits the alien's detention without bail. *Id.* In this case, Petitioner is not challenging the constitutionality of the statutory provisions of the INA as enacted by Congress. Instead, Petitioner is directly challenging the Attorney General's decision to detain her under section 235 rather than grant her a section 236(a) bond hearing. Accordingly, this challenge is clearly precluded by 1226(e) and this Court should decline to review them.

3. The Court lacks jurisdiction to grant declaratory relief.

Petitioner asks the Court in her Prayer for Relief to declare her detention unlawful. Petitioner cites no authority under which the Court can grant such relief. However, the INA precludes judicial review of a claim by an alien arising from the decision or action of the Attorney General to commence proceedings (in this case under § 1225(b)(2)(A), which requires mandatory detention) or to adjudicate cases (in this case, to hold removal proceedings in accordance with § 1229a). Therefore, to the extent Petitioner is seeking this declaratory relief, this Court lacks subject matter jurisdiction to grant it.

VI. Petitioner is not entitled to EAJA fees.

Petitioner asks this Court to award costs and attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412. However, Petitioner is not entitled to such relief. "EAJA is a limited waiver of sovereign immunity allowing for the imposition of attorney's fees and costs against the United States in specific civil actions." *Barco v. Witte*, 65 F.4th 782, 784 (citing *Ardestani v. I.N.S.*, 529 U.S. 129, 137, 112 S.Ct. 515, 116 L.Ed.2d 496 (1991)). The "threshold issue" in *Barco* was whether "EAJA expressly and unequivocally waives the United States' sovereign immunity regarding attorney's fees in immigration habeas corpus actions." *Barco*, 65 F.4th at 785. Finding that habeas proceedings are not purely civil proceedings, but are hybrid" cases, the Court concluded that EAJA's limited waiver of sovereign immunity does not extend to immigration habeas actions. *Id.* Therefore, regardless of the resolution of Petitioner's claims, the Court should reject her request for EAJA fees and costs.

CONCLUSION

For the reasons explained above, Petitioner's petition for writ of habeas corpus should be denied and Petitioner's detention should remain undisturbed for the duration of her removal proceedings. As an inadmissible alien seeking admission, she is subject to mandatory detention for the duration of her removal proceedings pursuant to 8 U.S.C. § 1225(b)(2) and is therefore not entitled to a bond hearing under § 1226. Additionally, Petitioner is not entitled to the requested declaratory relief nor any attorneys' fees and costs under EAJA.

Respectfully submitted,

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