UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ALEX ANDRES JAPON BENITES *Petitioner*, *v.* GREG HALE, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF NORTHWEST STATE CORRECTIONAL FACILITY; DAVID WESLING, IN HIS OFFICIAL CAPACITY AS ACTING BOSTON FIELD DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; VERMONT SUB-OFFICE DIRECTOR OF IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; TODD M. LYONS, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND PAMELA BONDI, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL, *Respondents*.	)	Case No. 2:25-cv-885

FEDERAL RESPONDENTS' OPPOSITION TO
EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

David Wesling, in his official capacity as Acting Field Office Director of the Boston Field Office of United States Immigration and Customs Enforcement ("ICE")[1]; the Vermont Sub-Office

[1] David Wesling is currently the Acting Field Office Director of the Boston Field Office of United States Immigration and Customs Enforcement. *See* Fed. R. Civ. P. 25(d).

Director of Immigration and Customs Enforcement, Enforcement and Removal Operations; Todd Lyons, in his official capacity as Acting Director of ICE; Kristi Noem, in her official capacity as Secretary of the United States Department of Homeland Security ("DHS"); Marco Rubio, in his official capacity as Secretary of State; and Pamela Bondi, in her official capacity as United States Attorney General (collectively, "Federal Respondents") respectfully submit this opposition to the Amended Petition for Writ of Habeas Corpus that Alex Andres Japon Benites ("Petitioner") filed with this Court on November 14, 2025 (ECF No. 9) (the "Petition").

PRELIMINARY STATEMENT

Petitioner is a noncitizen who entered the United States unlawfully on or about December 16, 2022, and did not encounter an immigration officer at the time of his entry. On November 5, 2025, Petitioner was taken into custody by U.S. Customs and Border Protection ("CBP"). He was subsequently transferred to ICE custody. Petitioner is currently in removal proceedings and remains detained by ICE in Vermont. Petitioner seeks habeas relief, contending principally that the basis for his detention was unclear, as he had not been served with a Notice to Appear ("NTA") and placed in removal proceedings. However, Petitioner was served with an NTA on November 7, 2025, he is currently in removal proceedings, and he is being detained pending those removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Therefore, the Court should deny the Petition.

While Petitioner has not alleged a statutory violation, should the Court consider whether his detention is statutorily authorized, Section § 1225(b)(2) mandates detention because Petitioner is an applicant for admission and is not clearly and beyond a doubt entitled to be admitted. Federal Respondents acknowledge that courts within this district and most courts across the country have held that petitioners under similar circumstances are detained under 8 U.S.C. § 1226(a) and therefore entitled to a bond hearing. *See, e.g.*, *Yupangui v. Hale et al.*, No. 2:25-cv-884, 2025 WL

3207070, at *3 (D. Vt. Nov. 17, 2025) (collecting cases); *Gonzales Lopez v. Trump et al.*, No. 2:25-cv-863, at *5 (Nov. 17, 2025) (collecting cases); *Piedrahita-Sanchez v. Turek et al*, No. 2:25-cv-875, at *6-7 (D. Vt. Nov. 14, 2025) (collecting cases). However, that approach is inconsistent with the text and the purpose of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). IIRIRA amended the Immigration and Nationality Act ("INA") to provide that "[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. § 1225(a)(1). Petitioner concedes in his Petition that he entered the United States without inspection and that he is not lawfully admitted. By virtue of that status, Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). His Petition thus lacks merit and should be denied. In any event, his request for an order releasing him from ICE custody is improper; should the Court disagree with Federal Respondents and determine that Petitioner is subject to detention under 8 U.S.C. § 1226(a) and, hence, entitled to a bond hearing before an Immigration Judge, the proper habeas remedy would be to order such a hearing.

RELEVANT BACKGROUND

A. Factual History

Petitioner is a noncitizen who entered the United States unlawfully on or around December 16, 2022. *See* Amend. Pet. ¶¶ 13, 23. He was not encountered by immigration officers at the time of his entry. Ex. A, Declaration of Deputy Chief of Staff Sarah Lapointe ¶ 7. On November 5, 2025, CBP detained Petitioner in Vermont pursuant to 8 U.S.C. § 1225, and issued him a Form I-200 Warrant for arrest. *See* Amend. Pet. ¶ 27; Ex. A, ¶ 8. On November 7, 2025, CBP served on Petitioner an NTA charging Petitioner under 8 U.S.C. § 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I) as an alien present in the United States who has not been admitted or paroled. Ex. A ¶ 8. Petitioner was placed in removal proceedings. *Id.* ¶ 10. On November 20, 2025, an immigration judge conducted

an initial master calendar hearing in Petitioner's removal proceedings and continued the matter at the request of his immigration attorney. *Id.* ¶ 11. A master calendar hearing in his removal proceedings is scheduled for December 4, 2025. *Id.*[2]

Petitioner seeks habeas relief before this Court, contending that because counsel had been unable to ascertain whether Petitioner had been served with a NTA or otherwise placed in removal proceedings, Petitioner's detention violated his due process rights under the Fifth Amendment. *See* Amend. Pet. ¶¶ 31, 40. Petitioner also requested a Temporary Restraining Order ("TRO") requiring that Petitioner not be moved out of the United States or the District of Vermont. ECF No. 4. The Court granted Petitioner's request for a TRO, ECF. No. 5, and issued an Order to Show Cause why a writ of habeas corpus should not be granted to determine whether "Petitioner 'was ordered removed under 8 U.S.C. 1225(b)(1),'" ECF No. 6 at 3 (quoting 8 U.S.C. § 1252(e)(2)(B)).

B. Relevant Legal Framework

1. Historical Overview of the Immigrations Laws and the Elimination of Preferential Treatment for Persons Who Enter the United States Illegally

Our immigration laws have long authorized immigration officials to charge noncitizens as removable from the country, to arrest noncitizens subject to removal, and to detain noncitizens during their removal proceedings. *See, e.g.*, *Abel v. United States*, 362 U.S. 217, 232-37 (1960). With specific regard to detention, Congress enacted a multi-layered statutory framework governing, among other things, the detention of noncitizens pending a decision on their removal. *See generally* 8 U.S.C. §§ 1225, 1226. That legal framework was amended significantly in 1996 to address, among other things, lawmakers' concerns that noncitizens who entered the United States unlawfully were, until that time, afforded greater legal rights and protections than those who

[2] Because Petitioner is in full removal proceedings, he is not subject to expedited removal.

properly presented at a port of entry or otherwise lawfully sought admission to the country, resulting in a perverse incentive for noncitizens to attempt to enter the country unlawfully.

Prior to 1996, the INA treated noncitizens differently based on whether they had physically "entered" the United States. *See, e.g.*, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same); *Ibragimov v. Gonzales*, 476 F.3d 125, 130 n.11 (2d Cir. 2007). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and, whether such an individual had physically entered the United States "dictated what type of [removal] proceeding applied" and whether the individual would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099; *see, e.g.*, *Ibragimov*, 476 F.3d at 130 n.11.

At that time, the INA provided for two separate types of proceedings to adjudicate the legal status of noncitizens: "deportation" proceedings and "exclusion" proceedings. *Ibragimov*, 476 F.3d at 130 n.11. Noncitizens who arrived at a port of entry would be placed in exclusion proceedings and subject to mandatory detention absent a grant of humanitarian parole. *See Hurtado*, 29 I. & N. Dec. at 223; 8 U.S.C. §§ 1225, 1226(a) (1995). In contrast, noncitizens who physically (albeit unlawfully) entered the United States would be placed in deportation proceedings and, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)); *see, e.g.*, *Hing Sum*, 602 F.3d at 1100; *Ibragimov*, 476 F.3d at 130 n.11.

The pre-1996 INA framework had an "unintended and undesirable consequence" of creating a statutory scheme under which "'non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' while non-citizens who actually presented themselves to authorities [at a port of

entry] were restrained by 'more summary exclusion proceedings.'" *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3rd Cir. 2012) (quoting *Hing Sum*, 602 F.3d at 1100); *see also* H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry").

In 1996, Congress overhauled the INA through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that enactment added 8 U.S.C. § 1225(a)(1) to the INA to "ensure 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.'" *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (quoting 8 U.S.C. § 1225(a)(1) and citing House Rep. at 225-29 (1996)). Towards that end, IIRIRA replaced the focus on physical "entry" with a focus on lawful "admission," 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) (emphasis added). In other words, IIRIRA amended the INA to no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. IIRIRA relatedly eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

2. Detention of Applicants for Admission Under 8 U.S.C. § 1225

Section 1225(a) defines an "applicant for admission" as "[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 . . .) . . . ." 8 U.S.C. § 1225(a)(1). Subsection (a) of the statute further provides that

"[a]ll aliens . . . who are applicants for admission or otherwise seeking admission . . . shall be inspected by immigration officers" to determine their admissibility. 8 U.S.C. § 1225(a)(3).

Upon requisite inspection by immigration officers, all applicants for admission generally "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). And, "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up).

Section 1225(b)(1), which provides a track for *expedited* removals, applies generally to aliens who are "arriving in the United States" and found to be inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7) (*i.e.*, due to certain fraud or willful misrepresentation, or lack of valid documentation) at the time of inspection. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(1) also permits the Attorney General to designate certain other aliens for expedited removal, provided that such aliens: have not been admitted or paroled into the United States; are inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7); and have not affirmatively shown to the immigration officer that they have been present in the United States continuously for the two-year period immediately preceding inspection. 8 U.S.C. § 1225(b)(1)(A)(iii).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)," *id.*, to include noncitizens who are already present in the United States and who have not been lawfully admitted. *See* 8 U.S.C. § 1225(a)(1). Under § 1225(b)(2), an individual "who is an applicant for admission" "shall be detained" for full (*i.e.*, non-expedited) removal proceedings under 8 U.S.C. § 1229a "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*,

29 I. & N. Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025). While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

The mandatory detention required by Section 1225(b)(2) extends throughout the applicant for admission's removal proceeding. *See Jennings*, 583 U.S. at 302. Once the applicant for admission is in removal proceedings, an Immigration Judge "shall conduct proceedings for deciding the inadmissibility or deportability of [the] alien." 8 U.S.C. § 1229a(a)(1). Such proceedings are the "sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3).

3. Detention of Other Aliens Under 8 U.S.C. § 1226

Section 1226 provides for arrest and detention "on a warrant" "pending a decision on whether the [subject] alien is to be removed from the United States." 8 U.S.C. § 1226(a). The statute does not make reference to applicants for admission. Under § 1226(a), the government may detain an alien during removal proceedings, release the individual on bond, or release the individual on conditional parole. An alien can request a custody redetermination by an Immigration Judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the Immigration Judge may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). If, after the bond hearing, either party disagrees with the decision of the Immigration Judge, that party may appeal that decision to the Board of Immigration Appeals ("BIA"). *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Section 1226(c), however, mandates detention without the opportunity for bond or parole

for certain criminal noncitizens who are being released by another law enforcement agency. Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The detention is mandatory for these individuals "when the alien is released [from custody of other authorities], without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.*

STANDARD OF REVIEW

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress has separately stripped the court of jurisdiction to hear the claim. To warrant a grant of habeas relief, the burden is on the petitioner to prove that his custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Walker v. Johnston,* 312 U.S. 275, 286 (1941); *Skaftourous v. United States*, 667 F.3d 144, 158 (2d Cir. 2011).

ARGUMENT

I. THE COURT SHOULD DENY THE PETITION.

A. <u>Petitioner Was Issued an NTA.</u>

This Court should deny Petitioner's request for habeas relief because–contrary to the allegations pled in his Petition–he was served with an NTA stating the basis for his removal, and removal proceedings have been initiated. Petitioner's claim for habeas relief is premised on alleged due process violations stemming from a lack of notice regarding the basis for his detention

and removal proceedings. *See* Amend. Pet. ¶ 40. However, Petitioner was served with an NTA on November 7, 2025, and removal proceedings have commenced. Ex. A ¶¶ 8, 10. Therefore, Petitioner has not met his burden to prove that his custody violates the Constitution or laws of the United States.

B. Petitioner's Detention Is Mandated by 8 U.S.C. § 1225(b)(2).[3]

While Petitioner does not allege his detention violates the INA, to the extent the Court reaches the validity of the statutory basis for his detention, Petitioner is subject to mandatory detention under Section 1225(b)(2). "As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Here, an examination of the relevant statutory text supports Federal Respondents' position that Petitioner is an applicant for admission who is subject to mandatory detention under Section 1225(b)(2)(A).

1. Petitioner Is an Applicant for Admission.

Petitioner is an applicant for admission because he is present in the United States without having been lawfully admitted to the country. Section 1225(a)(1) defines an "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . ." 8 U.S.C. §1225(a)(1). In other words, the term encompasses both arriving aliens and those who are already in the United States, albeit without having been lawfully admitted. *See id*; *Cruz-Miguel v. Holder*, 650 F.3d 189, 197 (2d Cir. 2011) ("After IIRIRA, both aliens arriving at the border and aliens already present in the United States without inspection [and

[3] Because Petitioner is detained pursuant to Section 1225(b)(2) and subject to regular removal proceedings, the jurisdictional limits imposed by 8 U.S.C. § 1252(e)(2) do not apply here, as that provision pertains to judicial review of habeas corpus proceedings when a petitioner is subject to expedited removal under Section 1225(b)(1).

admission] are deemed 'applicants for admission' who must "be inspected by immigration officers' to determine their admissibility.") (quoting 8 U.S.C. §§ 1225(a)(1), 1225(a)(3)); *Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) (explaining that individuals whose entry into the United States was not lawful or authorized are not considered "admitted" to the United States, and they are treated as "applicants for admission" and deemed to be legally at the border); *see also* 8 U.S.C. § 1101(a)(13)(A) (defining "admission and "admitted" with respect to an alien as "the *lawful* entry of the alien into the United States after inspection by immigration and authorization by an immigration officer") (emphasis added).

Petitioner is present in the United States, and he does not (and cannot) assert that he has been lawfully admitted to the United States. Indeed, he concedes that he entered the United States unlawfully and wishes to apply for asylum or apply for residency after getting married. *See* Amend. Pet. ¶¶ 23-25. As such, Petitioner fits squarely within Section 1225(a)(1)'s definition of an "applicant for admission," and he will remain an applicant for admission until the conclusion of his removal proceedings. *See, e.g.*, *Ibragimov*, 476 F.3d at 131 ("[A]n individual who is an 'applicant for admission' to the United States at the time of his removal proceeding is deemed to be legally at the border and bears the burden of establishing that he is 'clearly and beyond doubt entitled to be admitted and is not inadmissible . . . .").[4]

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[4] In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court noted that 8 U.S.C. § 1226 applies to "certain aliens already in the country," *id.* at 289, and some district courts have cited that passage in refusing to apply § 1225(b) to noncitizens who are present in the country without having been lawfully admitted. *See, e.g.*, *Lopez Benitez v. Francis*, No. 25-CV-5937, 2025 WL 2371588, at *3, 5 (S.D.N.Y. Aug. 13, 2025). However, Federal Respondents' interpretation is consistent with the language from *Jennings*; § 1226 is the exclusive source of detention authority for certain aliens who already in the country, such as those who were admitted to the United States but are now removable. Nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority applicable to aliens already in the country. Indeed, the Supreme Court's use of the word "certain" in the subject passage conveys the opposite. At a minimum, that language from *Jennings* is ambiguous and thus insufficient to displace the statute's plain text,

The title of Section 1225 does not alter this textual analysis. *See* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"). Some district courts have relied on the title of Section 1225 to conclude that its reference to "arriving aliens" "indicates that it does not refer to noncitizens present already [in the United States]." *Yupangui*, 2025 WL 3207070, at *4; *Piedrahita-Sanchez*, No. 2:25-cv-875, at *7. However, this logic is inconsistent with the text of the statute. First, the relevant portion of the title reads: "*expedited removal* of inadmissible arriving aliens[.]" Section 1225 provides for two tracks of removal proceedings: expedited removal pursuant to Section 1225(b)(1) and non-expedited removal proceedings set forth under Section 1225(b)(2). Therefore, the title's reference to "arriving aliens" pertains only to those who may be subject to expedited removal under Section 1225(b)(1), which is inapplicable here.

Second, Section 1225 clearly covers noncitizens other than those who are "arriving," as it repeatedly draws distinctions between "arriving aliens" and "other" types of noncitizens who are not admitted. Indeed, the definition for "applicant for admission" itself distinguishes between noncitizens present in the United States "who [have] not been admitted *or* who arrive[] in the United States . . . ." 8 U.S.C. § 1225(a)(1) (emphasis added); *see also id.* § 1225(b)(1) (title referring to "inspection of aliens arriving in the United States *and certain other aliens who have not been admitted or paroled*") (emphasis added); *id.* § 1225(b)(1)(A)(iii) (providing process for noncitizen "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 a 2-year period* immediately prior to the date of

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particularly given the manifest congressional purpose of eliminating preferential treatment for those who enter the country unlawfully, as discussed above.

determination of inadmissibility") (emphasis added). To interpret Section 1225 as applying only to "arriving" noncitizens would render these other provisions meaningless. Thus, the title of Section 1225 does not support the proposition that this provision only applies to noncitizens who are "arriving" because the text of the statute provides processes applicable to various other noncitizens who are already present in the United States.

2. *Section 1225(b)(2) Mandates the Detention of Applicants for Admission Who Are Placed Into Full Removal Proceedings Upon Inspection.*

As an applicant for admission who is "not clearly and beyond a doubt entitled to be admitted" to the country, and who does not meet the criteria for expedited removal under § 1225(b)(1), Petitioner is subject to mandatory detention pursuant to § 1225(b)(2). 8 U.S.C. § 1225(b)(2); *see, e.g.*, *Jennings*, 583 U.S. at 288. Section 1225(b)(2) provides that an alien who is an applicant for admission "shall be detained" for removal proceedings when the examining immigration officer determines that "[the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2). The statute's use of the term "shall" makes clear that detention is mandatory under the specified circumstances. *See Chavez v. Noem*, No. 25-CV-2325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (holding, in the context of denying motion for temporary restraining order, that movant-petitioners who entered the United States without inspection or parole were subject to mandatory detention under § 1225(b)(2)); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, *1 (D. Mass. July 28, 2025) (holding, in the context of denying habeas relief, that 1225(b)(2) applied to require the detention of the petitioner, who entered the country unlawfully and remained an "applicant for admission" despite a pending visa application).

Petitioner falls squarely within the ambit of § 1225(b)(2). As discussed above, he is an applicant for admission because he was "present in the United States" when he was encountered

by immigration officers, and he has "not been admitted," 8 U.S.C. § 1225(a)(1), and he does not contend that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). To the contrary, he concedes that he entered unlawfully and has not been admitted. *See* Amend. Pet. at ¶ 23-25. Petitioner is thus properly subject to mandatory detention while he is in removal proceedings. *See* 8 U.S.C. § 1225(b)(2).

Nevertheless, many district courts have concluded Section 1225(b)(2) authorizes mandatory detention only if an applicant for admission is taking an additional affirmative or present step of "seeking admission," *i.e.*, making a "present attempt to lawfully 'go in' to the United States." *See, e.g.*, *Gonzales Lopez*, No. 2:25-cv-863, at *7; *see also Yupangui*, 2025 WL 3207070, at *4; *see also Piedrahita-Sanchez*, No. 2:25-cv-875 at *9. This reading, however, once again ignores the text of Section 1225. Section 1225(a)(1) expressly provides that a noncitizen who, like Petitioner, is present in the United States without having been admitted, is an "applicant for admission," and § 1225(a)(3) makes clear that an "applicant for admission" is, simply by virtue of that status, deemed to be "seeking admission." *See* 8 U.S.C. § 1225(a)(3) ("All aliens who are applicants for admission *or otherwise seeking admission* . . . .") (emphasis added); *Mejia Olalde v. Noem et al.*, No. 1:25-cv-168-JMD, 2025 WL 3131942, at *3 (W.D. Mo. Nov. 10, 2025) (explaining an "applicant for admission" is someone who is "seeking admission"); *Chavez*, 2025 WL 2730228, at *4 (rejecting the petitioners' argument that § 1225(b)(2) did not apply to them because they entered the United States unlawfully and had not "affirmatively sought admission"). Stated differently, an applicant for admission is legally deemed to be seeking admission to the United States irrespective of whether the noncitizen does, in fact, presently seek to physically enter the United States. This interpretation of "applicant for admission" comports with Second Circuit precedent that has repeatedly recognized, "[a]liens not admitted are treated as 'applicants for

admission,'" and "[t]hey are 'deemed to be legally at the border' and bear the burden of establishing their entitlement to admission." *Ascencio-Rodriguez*, 595 F.3d at 108 n.3 (quoting *Ibragimov*, 476 F.3d at 131).

Federal Respondents' interpretation of § 1225(b)(2) is also supported by the legislative history of the INA. Application of § 1226(a) to Petitioner would subvert IIRIRA's express goal of eliminating preferential treatment for aliens who manage to enter the United States unlawfully without inspection and admission. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting statutory interpretation that would lead to a result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

As discussed above, one of IIRIRA's express objectives was to dispense with the inequitable pre-1996 statutory framework under which noncitizens who entered the United States unlawfully were given "equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection" at the border, including the right to secure release on bond. House Rep. at 225. Applying § 1226(a) to Petitioner's detention would restore the regime that Congress sought to discard; it would require detention for those who present themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who manage to evade immigration authorities, enter the United States unlawfully, and remain in the country unlawfully until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate.[5]

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[5] Prior agency practice does not change the foregoing analysis. In cases such as this, courts must "independently interpret the statute [at issue] and effectuate the will of Congress subject to constitutional limits." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). The agency's prior practice therefore carries little weight here. *See, e.g.*, *Romero v. Bondi*, No. 25-cv-993, 2025 WL 2490659, at *3 (E.D. Va. July 2, 2025) (holding, in the context of denying habeas relief, that

Finally, Federal Respondents' reading of Section 1225(b)(2) does not render superfluous Congress's recent amendment of Section 1226(c) through the Laken Riley Act, as some district courts have concluded. *See, e.g.*, *Gonzales Lopez*, No. 2:25-cv-863, at *8-9; *Yupangui*, 2025 WL 3207070, at *5; *see also Piedrahita-Sanchez*, No. 2:25-cv-875 at *10-11. That law requires mandatory detention of criminal noncitizens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in Section 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible noncitizens who were admitted in error, as well as those never admitted. And, it provides no opportunity for humanitarian parole. That means there is no surplusage, as Section 1225(b)(2) has no application to individuals who were admitted in error and removes the possibility of parole for those covered by Section 1226(c).

To be sure, the Laken Riley Act's application to aliens who are inadmissible under §1182(a)(6)(A)—for being "present . . . without being admitted or paroled"—overlaps with Section 1225(b)(2)(A). Both statutes mandate detention of "applicants for admission" who fall within the specified grounds of inadmissibility. However, "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton*, 590 U.S. at 223. And "even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)." *Mejia Olalde*, 2025 WL 3131942, at *4. Thus, as an applicant for admission who is present in the United States and who cannot establish that he is entitled to admission, Petitioner is subject to mandatory detention pursuant to Section 1225(b)(2)(A).

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the petitioner's detention was governed by § 1225(b)(1)(B)(ii) because, despite being released under § 1226(a) and later re-detained, the petitioner had never been admitted into the United States and he therefore remained an "applicant for admission").

C. Petitioner's Detention Does Not Violate the Constitution.

Because Petitioner is properly detained pursuant to Section 1225(b)(2), which mandates detention during removal proceedings, he is not entitled to a bond hearing. Petitioner claims that his lack of access to a bond hearing violates due process, but it is well established that "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

In *Demore*, the Supreme Court upheld the constitutionality of a statutory provision that requires mandatory detention during removal proceedings without access to bond hearings. The Court "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Id.* at 523. In doing so, the Court reaffirmed its "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings[.]" *Id.* at 526; *see also id.* ("[W]hen the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal."); *id.* at 522 ("Congress may make rules as to aliens that would be unacceptable if applied to citizens.").

Petitioner's detention pursuant to § 1225(b), while mandatory, is not indefinite.[6] Rather, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, detention shall continue "until removal proceedings have concluded."

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[6] Moreover, while section 1225(b) does not provide for bond hearings, it does not entirely preclude relief from detention; DHS is statutorily authorized to grant those detained under §§ 1225(b)(1) or (b)(2) temporary parole for "urgent humanitarian reasons or significant public benefit." *See, e.g., Jennings,* 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)). Here, the Petition is silent as to whether Petitioner has sought such parole, but at the time of filing, it does not appear that he has. Ex. A ¶ 12.

Id. (internal citation omitted). "Once those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297.[7] Here, Petitioner has not challenged the length of his detention, nor can he credibly do so, as he has been detained for less than three weeks as of the time of this submission. *See* Amend. Pet. at ¶ 4.

D. Any Potential Relief Should be Limited to a Bond Hearing.

Petitioner requests that the Court order, among other things, that Petitioner be afforded a bond hearing, and that he be released from ICE custody. *See* Amend. Pet. at 8 (Petitioner's prayer for relief). Should this Court disagree with Federal Respondents and determine that Petitioner is subject to detention pursuant to 8 U.S.C. § 1226(a), the appropriate remedy would be to order that Petitioner be provided a bond hearing, not immediate release.

Although some courts have ordered the immediate release of a detainee held in violation of due process, "the comfortable majority position—both historically and in recent weeks—is to instead require a bond hearing before an [Immigration Judge]." *Lopez-Arevelo v. Ripa*, No. 25-CV-337, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025). As the court noted in *Lopez-Arevelo*, the petitioner's rights "are not violated by the very fact of his detention. Rather, they are violated because he has been detained without a bond hearing that accords with due process." *Id.* District courts across the country have thus ordered that a bond hearing be held in cases presenting such circumstances. *See, e.g., Yupangui*, 2025 WL 3207070, at *7-8; *Gonzales Lopez*, No. 2:25-cv-863, at *13; *Piedrahita-Sanchez*, No. 2:25-cv-875, at *16-19; *Lopez-Arevelo*, 2025 WL 2691828, at *12 (citing *Velasquez Salazar v. Dedos*, No. 25-CV-835, 2025 WL 2676729, at *9

[7] In *Demore*, the Supreme Court explained that, unlike the potentially indefinite detention at issue in *Zadvydas v. Davis*, 533 U.S. 678 (2001), which was a case that concerned the detention of aliens *following a final order of removal*, detention during removal proceedings has a "definite termination point" and therefore does not implicate the same due process concerns. 538 U.S. at 529.

(D.N.M. Sept. 17, 2025)); *Morgan v. Oddo*, No. 24-CV-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-CV-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025). *But see, e.g.*, *Lopez Benitez v. Francis*, No. 25-CV-5937, 2025 WL 2371588, at *15 (S.D.N.Y. Aug. 13, 2025) (ordering immediate release following the grant of habeas relief for a violation of due process).

For the foregoing reasons, intervention by this Court is unwarranted at this juncture, and the Petition should be denied. However, even if the Court were to find that Petitioner has met his burden to justify judicial intervention at this juncture, the Court should not order his immediate release. Instead, the Court should in such instance order that Petitioner be afforded a bond hearing before an Immigration Judge in the first instance.

II. THE TRO SHOULD BE DISSOLVED.

Petitioner has not complied with Federal Rule of Civil Procedure 65. Under Rule 65, a TRO without notice to the adverse party may be issued "only if" supported by facts alleged in an affidavit or verified complaint. Fed. R. Civ. P. 65(b)(1)(A). Moreover, the attorney for the party seeking the TRO must certify in writing the efforts made to notify the adverse party and why notice should not be required. Fed. R. Civ. P. 65(b)(1)(B). Neither requirement was satisfied here. Furthermore, there is no need for injunctive relief pending resolution of Petitioner's claims, which may be resolved expeditiously as they present purely legal issues. "A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course," *Bracy v. Gramley*, 520 U.S. 899, 904, (1997), and thus, the Court can, without delay, adjudicate the merits of the Petition itself.

CONCLUSION

For the reasons discussed above, the Court should (1) deny the Amended Petition for a Writ of Habeas Corpus (ECF No. 9) and (2) dissolve the Court's Temporary Restraining Order of November 14, 2025 (ECF No. 5).

Dated at Burlington, in the District of Vermont, this 21st day of November, 2025.

Respectfully submitted,

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