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

GUSTAVO RODRIGUES PEREIRA, *Petitioner*, v. DAVID O'NEILL, ET AL., *Respondents.*	No. 25-cv-6543

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

On November 17, 2025, Immigration and Customs Enforcement (ICE) detained Petitioner Gustavo H. Rodrigues Pereira ("Petitioner" or "Rodrigues Pereira"), who has been in removal proceedings since 2022, pursuant to 8 U.S.C. § 1225(b)(2). Rodrigues Pereira petitions this Court for a writ of habeas corpus, challenging the authority of the U.S. Secretary of the Department of Homeland Security, among others, to detain him under § 1225(b)(2). As Petitioner acknowledges, he was never inspected and admitted to the United States and was already in removal proceedings at the time that he was detained. Petitioner nonetheless seeks immediate release from custody. *See* Petition for Writ of Habeas Corpus, ECF No. 1, ¶ 2.

The specific legal question raised by the petition has been considered by numerous courts in the wake of the Board of Immigration Appeals' (BIA's) decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The majority of the resulting decisions have rejected the government's position, including five decisions

from this District as of the time of this filing.[1] *See Patel v. McShane*, No. 25-cv-5975, 2025 WL 3241212 (E.D. Pa. Nov. 20, 2025) (Brody, J.); *Nidaye v. Jamison*, No. 25-cv-6007, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025) (Sánchez, J.); *Demirel v. Fed. Det. Ctr. Philadelphia*, No. 25-cv-5488, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025) (Diamond, J.); *Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399, at *4-7 (E.D. Pa. Nov. 14, 2025) (Wolson, J.); *Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 WL 3171639, at *1-2 (E.D. Pa. Nov. 13, 2025) (Kenney, J.). The Third Circuit has not addressed the question. For the reasons set forth herein, the Court should dismiss the petition for lack of jurisdiction and failure to exhaust administrative remedies. In the alternative, should the Court reach the petition's merits, it should adopt the government's interpretation of the scope of § 1225(b)(2), consistent with the plain language of the statute.

Factual and Procedural Background

Petitioner Rodrigues Pereira is a citizen and national of Brazil. Petition ¶ 2. It is undisputed that Petitioner entered the United States on May 18, 2022, from Mexico near San Ysidro, California, without inspection. *Id.* He was arrested by Customs and Border Patrol (CBP) shortly thereafter and detained for approximately 24 hours. Petition ¶ 2 and Ex. A (Notice to Appear). On or about May 19, 2022, Petitioner was served with a Notice to Appear (NTA) in Immigration Court, which charged him with entering the United States without admission or

[1] Including the present matter, there are approximately 20 pending habeas petitions confronting the same legal issue in this District, in addition to those that have already been decided.

parole after inspection in violation of the Immigration and Nationality Act and placed Petitioner into removal proceedings. *Id.* He was released from custody the same day on an order or recognizance. *Id.*

On November 17, 2025, Petitioner was detained when he reported to ICE Enforcement and Removal Operations for a scheduled appointment. Petition ¶ 3. Petitioner was then transported to the Philadelphia Federal Detention Center.

On November 19, 2025, Petitioner filed his Petition. The venue for his ongoing removal proceedings has been changed to the Immigration Court in Elizabeth, New Jersey, and Petitioner is next scheduled to appear before an Immigration Judge on December 2, 2025. Pursuant to this Court's Order dated November 20, 2025, ECF No. 3, Petitioner remains in the district at the Philadelphia Federal Detention Center.

Legal Standard

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

Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977);

Reno v. Flores, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of

the alien's either absconding or engaging in criminal activity before a final decision can be made.").

Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2) and must therefore make a strong showing to demonstrate that his continued detention violates the Constitution or laws of the United States. *See United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953) ("This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power"); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 402 F. Supp. 251, 254 (E.D. Pa. 1975) ("[D]efendants here carry a heavy burden, for a strong presumption of validity attaches to an Act of Congress.").

Argument

Rodrigues Pereira's petition should be denied because: (1) this Court lacks jurisdiction to intervene in his removal proceedings, (2) he has failed to exhaust administrative remedies, (3) he is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2), and (4) his detention does not offend due process.

I. The District Court lacks jurisdiction to intervene in removal proceedings.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction to address his claims. *See Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 818 (3d Cir. 2023), *cert. denied*, 144 S. Ct. 1007 (2024); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). He cannot meet this burden because his

claims are jurisdictionally barred under 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a).

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

Petitioner challenges the determination by the Secretary of Homeland Security to detain him pursuant to § 1225(b)(2), as opposed to § 1226(a). But Congress has provided that "no court shall have jurisdiction to hear any cause or claim" that arises from "the decision or action" to "commence" removal proceedings or "adjudicate [those] cases." 8 U.S.C. § 1252(g); *AADC*, 525 U.S. at 483; *Tazu v. Att'y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020). The Court lacks jurisdiction to adjudicate Petitioner's claims insofar as they arise "from the decision or action by the Attorney General [or Secretary of Homeland Security] to commence proceedings [and] adjudicate cases." § 1252(g); *Tazu*, 975 F.3d at 296; *Valencia-Mejia v. United States*, Civ. No. 08-2943, 2008 WL 4286979, at *3 (C.D. Cal. Sept. 15, 2008).

The Secretary's decision to detain is a "specification of the decision to 'commence proceedings' which . . . § 1252 covers." *AADC*, 525 U.S. at 474, 485 n. 9; *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning [the government's] discretionary decisions to commence removal" of a foreign national, including the "decision to take him into custody *and to detain him during his removal proceedings*" (emphasis added)); *Sissoko v. Mukasey*, 509 F.3d 947, 949 (9th Cir. 2007); *S.Q.D.C. v. Bondi*, Civ. No. 25-3348, 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025); *see also Linarez v. Garland*, Civ. No. 24-0488, 2024 WL 4656265, at *4 (M.D. Pa. Sept. 24, 2024), report and

recommendation adopted sub nom. *Cordon-Linarez v. Garland*, 2024 WL 4652824 (M.D. Pa. Nov. 1, 2024) ("in our view, the Attorney General's discretionary decision to place Linarez in expedited removal proceedings is precisely the action this statute refers to"); *Saadulloev v. Garland*, Civ. No. 23-0106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067-68 (N.D. Ill. 2007) (claim challenging arrest and detention during removal proceedings was barred under § 1252(g)).

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

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

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

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

While § 1225(b)(9) may not bar claims challenging the conditions or scope of detention of aliens in removal proceedings, it does bar claims "challenging the decision to detain them in the first place." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion); *S.Q.D.C.*, 2025 WL 2617973, at *3.[2] By making such a challenge, the habeas claim here requires a court to answer "legal questions" that arise from "an action taken to remove an alien." *Jennings*, 583 U.S. at 295 n. 3 (plurality opinion). Petitioner's claims "fall within the scope of § 1252(b)(9)." *Id.*

[2] See also *Jennings*, 583 U.S. at 317 (Thomas, J., concurring in part and concurring in the judgment) ("Section 1252(b)(9) is a 'general jurisdictional limitation' that applies to 'all claims arising from deportation proceedings' and the 'many decisions or actions that may be part of the deportation process.' Detaining an alien falls within this definition—indeed, this Court has described detention during removal proceedings as an 'aspect of the deportation process.' . . . The phrase 'any action taken to remove an alien from the United States' must at least cover congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien's removal." (alterations and citation omitted) (quoting *AADC*, 525 U.S. at 482–83; *Demore*, 538 U.S. at 523; and 8 U.S.C. § 1252(b)(9))).

"Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—which legal or factual—arising from *any* removal-related activity can be reviewed *only* through the PFR [*i.e.*, petition for review] process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007).

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

provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294-95 (plurality in *dicta* presuming § 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

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

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

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

II. Petitioner failed to exhaust administrative remedies.

While the government does not dispute that the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), controls as to the applicability of § 1225(b)(2)—and by extension the availability of a bond hearing—the existence of this decision should not nullify the entire administrative process, nor should it

allow an alien in Petitioner's position the ability to skip this process entirely and proceed directly to the district court for immediate review.

The regulatory process Congress created affords Petitioner the opportunity to redress his concerns administratively. Following it would provide the court of appeals a complete record should he ultimately seek review. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) ("exhaustion promotes efficiency, including by encouraging parties to resolve their disputes without litigation"); *Laguna Espinoza v. Director of Detroit Field Office*, Civ. No. 25-2107, 2025 WL 2878173, at *3 (N.D. Cal. Oct. 9, 2025) (dismissing habeas petition challenging detention under § 1225(b) for failure to exhaust). Petitioner's failure to exhaust should cause this Court to dismiss the habeas petition in favor of the administrative process.

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

Waiving exhaustion would also "encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district

court." *Aden*, 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on district courts. Indeed, exhaustion promotes judicial efficiency by reserving the courts' resources for matters that cannot be resolved administratively. *MacKay v. U.S. Veterans Admin.*, Civ. No. 03-6089, 2004 WL 1774620, at *4, n. 8 (E.D. Pa. Aug. 5, 2004), *aff'd*, 115 F. App'x 601 (3d Cir. 2004); *Biear v. Att'y Gen. United States,* 905 F.3d 151, 156 (3d Cir. 2018) ("Generally, the law requires exhaustion of administrative remedies before a plaintiff may seek relief in district court."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency").

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

III. Petitioner is lawfully in detention pursuant to 8 U.S.C. § 1225(b)(2).

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

There is a statutory distinction between aliens who are detained after lawful admission into the United States and those who are present without lawful admission. An alien who "arrives in the [U.S.]," or is "present" in this country but "has not been admitted," is considered an "applicant for admission" under 8 U.S.C. § 1225(a)(1). *Jennings*, 583 U.S. at 287; *Garibay-Robledo v. Noem, et al.*, Civ.

No. 25-0177, slip op. at *1-2 (N.D. Tx. Oct. 24, 2025) (ECF No. 9). Applicants for admission are either covered by § 1225(b)(1) or § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (§ 1225(b)(2) "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)") (emphasis added).

Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that § 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens").

Petitioner falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. He is an "applicant for admission" to the United States. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ."). Petitioner entered without inspection. *See* Petition ¶ 2. Consequently, he is an "applicant for admission" and

his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A) (stating applicant for admission "shall be" detained).

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

The Board of Immigration Appeals confirmed the application of § 1225 to applicants for admission present within the United States, in a published formal decision earlier this year. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Hurtado*, the BIA affirmed the decision of the immigration judge finding the

Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was present in the United States for almost three years but was never admitted shall be detained under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an alien who unlawfully entered the United States in 2022 and was granted temporary protected status in 2024. *Id.* at 216-17. That status was revoked in 2025, and the alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. When the alien sought a redetermination of his custody status, the immigration judge held the Court did not have jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

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

Next, the BIA rejected the alien's argument that the mandatory detention scheme under § 1225 rendered the recent amendment to § 1226 under the Laken Riley Act superfluous. *Id.* The BIA explained, "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute 'shall be detained for [removal proceedings].'" *Id.* at 222. According to the BIA, any redundancy between the two statutes does not give license to "rewrite or eviscerate" one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).[3]

Thus, because Hurtado was present in the United States (regardless of how long) and because he was never admitted, under § 1225(b) he was subject to mandatory detention during his removal proceedings and not entitled to a bond hearing. *See id.* at 228. The BIA mandate is clear: "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who

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

are present in the United States without admission." *Id.* at 225. Indeed, this ruling emphasizes that § 1225(b)(2) applies to aliens, like Petitioner, who are present in the United States but have not been admitted.

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

to the United States. *See* 8 U.S.C. § 1225(b)(2)(A); *see also Pena v. Hyde*, Civ. No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025). Nothing in either § 1225(b)(2) or § 1226(a) provides that the government must default to detaining an alien pursuant to §1226(a) if he is subject to detention under § 1225(b)(2) as well.

Although the Third Circuit Court of Appeals has not yet ruled on whether an alien like Petitioner may be detained under § 1225(b)(2), district courts in Pennsylvania and New Jersey (and elsewhere) have generally ruled contrary to the government's reading of the statute. Notably, five courts in the Eastern District of Pennsylvania recently ruled against the government. *See Patel*, 2025 WL 3241212; *Nidaye*, 2025 WL 3229307; *Demirel*, 2025 WL 3218243; *Kashranov*, 2025 WL 3188399; *Cantu-Cortes*, 2025 WL 3171639, at *1-2.[4] However, these courts effectively read into the statute a limitation that is simply not there—that § 1225(b)(2) only applies to applicants for admission who are actively seeking to enter the United States, typically near the border. *See, e.g., Kashranov*, 2025 WL 3188399, at *6; *see also Bethancourt Soto v. Louis Soto,* Civ. No. 25-16200, 2025 WL 2976572 (D. N.J. Oct. 22, 2025).

The statute itself does not contain any such limitation. *See* 8 U.S.C. § 1225(a) (defining applicant for admission as either "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . .") (emphasis

[4] As the Court in *Demirel* noted, at the time of its November 18, 2025, decision, there were "288 district court decisions addressing this issue. In all but six, the Government's interpretation of the INA—the same interpretation it urges here—was rejected." 2025 WL 3218243, at *1.

added). Further, Congress defined *all* aliens who are present in the United States without being admitted as "applicant[s] for admission," regardless of when they entered. *See* 8 U.S.C. § 1225(a)(1). When an immigration officer encounters and examines an applicant for admission who seeks to remain in the United States, and that alien (like Petitioner) desires to remain in the United States, he is necessarily "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). Otherwise, the alien must "withdraw the application for admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4). An alien continues to be "seeking admission" while in immigration removal proceedings to determine whether he can "be admitted to the United States." *See* 8 U.S.C. § 1229a(3); *In Re Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (recognizing that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). In other words, an "applicant for admission" is necessarily "seeking admission." *See Rojas v. Olson*, Civ. No. 25-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025); *but see Bethancourt Soto v. Soto*, Civ. No. 25-16200, 2025 WL 2976572, at *6 (D. N.J. Oct. 22, 2025).

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

IV. Petitioner's detention does not offend due process.

Congress broadly crafted "applicants for admission" to include undocumented aliens, like Petitioner, who are present within the United States. *See* 8 U.S.C. § 1225(a)(1). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded").

The Supreme Court has repeatedly recognized this profound interest. Petitioner's mandatory detention pursuant to §1225(b) will only last the duration of his removal proceedings. *Demore,* 538 U.S. at 512 ("[B]ecause the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings"); *see also Jennings,* 583 U.S. at 304. In light of Congress's interest in regulating immigration, including by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns without engaging in the test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See generally Demore*, 538 U.S. at 531.

Petitioner's detention pending his removal proceedings does not violate the Due Process Clause. He has been detained since November 17, 2025. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (detention less than six months presumed

constitutional). In short, his immigration proceedings are just beginning and available process in his current removal proceedings demonstrates no lack of procedural due process—nor any deprivation of liberty "sufficiently outrageous" required to establish a substantive due process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal, which is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531.

The Third Circuit has recognized that there may come a time when mandatory civil detention without a bond hearing becomes unreasonable. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) (analyzing detention under § 1226(c)); *but see C.B.*, 2025 WL 2977870, at *5 ("Neither the United States Supreme Court nor the Court of Appeals for the Third Circuit has directly addressed whether arriving aliens detained under § 1225(b) have the same due process right to a bond hearing upon unreasonable detention as that afforded to noncitizens being held under § 1226(c)"). Petitioner, however, does not allege, nor could he show, that his detention has become unreasonable under the analysis set forth in *German Santos*.

Conclusion

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

Respectfully submitted,

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Dated: November 24, 2025

CERTIFICATE OF SERVICE

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

/s/ Lauren DeBruicker
Lauren DeBruicker
Assistant United States Attorney

Dated: November 24, 2025

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GUSTAVO RODRIGUES PEREIRA, Petitioner, v. DAVID O'NEILL, *et al.* Respondents.	Case No. 2:25-cv-06543-KSM

PETITIONER'S REPLY BRIEF
IN SUPPORT OF THE
PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner submits this reply brief in support of his Petition for Writ of Habeas Corpus.

In sum, Petitioner's habeas rests on the argument that he is being unlawfully detained without bond pursuant to 8 U.S.C. § 1225(b)(2), and that his detention should be governed by § 1226(a). *See* Petition for Habeas Corpus, ECF No. 1, *generally*.

Petitioner is aware of over 280 decisions that have addressed the question and have rejected the government's position. *Demirel v. Federal Detention Center Philadelphia*, et al., No. 25-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025).

In recent days, the Eastern District of Pennsylvania has joined these courts. *See Cantu-Cortes, v. O'Neill, et al.,* No. 25-CV-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025); *Kashranov v. J.L. Jamison, et al.,* No. 2:25-CV-05555-JDW, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025); *Patel v. McShane*, No. 25-cv-5975 (E.D. Pa. Nov. 20, 2025); *Ndiyae v. J.L. Jamison, et al.*, No. 25-cv-06007 (E.D. Pa. Nov. 19, 2025).

Petitioner notes no issue with Respondents' factual and procedural background. ECF. No. 5, p. 2-3.

II. JURISDICTION

Respondents claim that this Court is statutorily barred from hearing this case because the Immigration and Nationality Act ("INA") contains a variety of jurisdiction stripping provisions, codified at 8 U.S.C. § 1252. ECF No. 8, p. 5-12. Respondents argue that three such provisions prevent this Court from hearing the petitioner's claim. *Id.* As numerous courts have already found, none does.

a. 8 U.S.C. § 1252(g)

The respondents first point to § 1252(g), arguing it strips this Court of jurisdiction to review the decision to detain the petitioner. ECF No. 8, p. 6. That provision states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." § 1252(g).

Notably, Petitioner's removal proceedings commenced years before his detention, and was and remains actively in the adjudication process (ECF No. 1, Exh. A). Petitioner does not, at any point in his Petition or these proceedings, challenge the Attorney General's authority to commence or adjudicate proceedings.

Respondents quote *Reno v. Am.-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471 (1999) to assert that "[t]he Secretary's decision to detain is a 'specification of the decision to "commence proceedings" which … § 1252(g) covers.'" ECF No. 8, p. 6-8. While the quoted part of Respondent's citation does exist in *AADC,* the word 'detain' or even reference to detention, let alone the Secretary's decision to detain, is completely absent in *AADC.* It is unclear how Respondents glean that *AADC* supports the principal that § 1252(g) extends to the decision to detain *or* under what section of the INA one is detained under.

In fact, Respondents' analysis flies in the face of *AADC*. In *AADC*, the Supreme Court held that § 1252(g) did not apply to anything beyond those "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret [the language in § 1252(g)] to sweep in any claim that can technically be said to "arise from" the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves."). The *AADC* Court stated that it made sense for Congress to target these three stages because at each stage the former INS has discretion to abandon the endeavor, and at the time § 1252(g) was enacted, the former INS routinely had been defending suits challenging its exercise of discretion in deportation cases. *DeSousa v. Reno*, 190 F.3d 175, 182 (3d Cir. 1999) (internal citations omitted). Interpreting § 1252(g) beyond those three discrete actions – as Respondents ask this Court to do – would treat § 1252(g) as an extremely broad provision that would apply to every deportation-related challenge, because every such challenge could be deemed a suit related to the commencement or adjudication of removal proceedings. *Id.* The Supreme Court and the Third Circuit have explicitly rejected such a broad interpretation of § 1252(g), instead finding that it is "a narrow" provision. *Id.*

Petitioner does not, at any point in his Petition or these proceedings, challenge the three specific decisions made by the executive that are covered by § 1252(g): decisions to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." Petitioner's detention pursuant to § 1225(b)(2) may occur during—but is nonetheless independent of—his removal proceedings. Accordingly, § 1252(g) does not strip this Court of jurisdiction.

b. 8 U.S.C. § 1252(b)(9)

Next, Respondents argue that § 1252(b)(9), deprives this Court of jurisdiction because – according to Respondents – Petitioner's claims arise from Respondents' actions taken to remove him from the United States. ECF No. 8, p. 7.

Section 1252(b)(9) provides:

> "Judicial 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 under this section.... [N]o court shall have jurisdiction ... to review such an order or such questions of law or fact."

Respondents contend this section means that Petitioner's detention, which arose out of Respondents' attempt to remove him from the country, cannot be reviewed until a final removal order is issued, and then only by a circuit court. ECF No. 8, p. 9-10. This argument relies on language of § 1252(a)(5) that states that judicial review of a removal order is only available through a petition filed "with an appropriate court of appeals." *Id.* at 10. Respondents thus read these two provisions (§ 1252(a)(5) and § 1252(b)(9)) as working together to divert all claims relating to removal proceedings to a court of appeals post-removal order. *Id.*

Respondents cite to *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), in support of their claim that "[t]aken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the PFR process." ECF No. 8, p. 9 (emphasis in original). Respondents' reliance is misplaced; they have again cherry-picked select wording without analysis, as they did with *AADC*. The Court in *J.E.F.M.*, on the very next page, goes on to "distinguish[] between claims that 'arise from' removal proceedings under § 1252(b)(9)—which must be channeled through the PFR process—and claims that are collateral to, or independent of, the removal process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032

(9th Cir. 2016). The *J.E.F.M.* Court then re-affirmed the long-standing principal "that § 1252(b)(9) *does not apply to federal habeas corpus provisions* that do not involve final orders of removal." *Id.* (emphasis added).

Again, the Respondents construe the statutory text too broadly. A careful reader will notice that the language in § 1252(b)(9) is similar to that in § 1252(g)—the words "arising from," which the Supreme Court in *AADC* interpreted narrowly, appear again. Indeed, the Court later held in *Jennings* that § 1252(b)(9) did not bar it from hearing a petition alleging that the plaintiff's detention was overly prolonged in violation of due process. 583 U.S. at 291, 294–95. Just like the petitioner in *Jennings*, Petitioner here is not "challenging the decision to detain [him] in the first place or to seek removal; and [he is] not even challenging any part of the process by which [his] removability will be determined." *Id.* at 294. Rather, Petitioner is challenging his detention under § 1225 and his entitlement to a bond hearing. *Jennings* holds that § 1252(b)(9) does not bar this Court from hearing his claim.

c. 8 U.S.C. § 1252(a)(2)(B)(ii)

Respondents next argue that § 1252(a)(2)(B)(ii) shields from judicial review discretionary decisions like what charges of inadmissibility to lodge. ECF No. 8, p. 10. When the Government argues that a statutory scheme "prohibit[s] all judicial review" of agency decision-making, it bears a "heavy burden." *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 188 (3d Cir. 2020). The entirety of Respondents' argument is:

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

ECF No. 8, p. 10. Respondents fail to meet their "heavy burden." Again, Petitioner is not challenging Respondents' "decision to detain him during removal proceedings." Nor is the Petitioner necessarily challenging the "charges of inadmissibility" lodged against him. Petitioner is challenging his detention under § 1225 and his entitlement to a bond hearing. These are threshold legal questions and are "not a matter of discretion." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

III. EXHAUSTION

Respondents assert that Petitioner has failed to exhaust administrative remedies, and as such, this matter should be dismissed. ECF No. 8, p. 10. An exhaustion requirement "is a matter of sound judicial discretion." *Cirko on behalf of Cirko v. Comm'r of Soc. Sec.*, 948 F.3d 148, 153 (3d Cir. 2020), *quoting Cerro Metal Prods. v. Marshall*, 620 F.2d 964, 970 (3d Cir. 1980).

Respondents do not articulate exactly what administrative remedy Petitioner should have taken before petitioning this Court. Petitioner interprets Respondents' argument to mean that, prior to bringing this claim, Petitioner should have first challenged the decision in *Matter of Yajure Hurtado* and its impact, *with the* BIA. This would be a fool's errand.

Exhaustion is unnecessary if the issue presented is one that consists purely of statutory construction. *Vasquez v. Strada*, 684 F.3d 431, 433–34 (3d Cir. 2012). And exhaustion "is likewise not required when it would be futile." *Id.* Just two months ago, the BIA held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, if Petitioner were to move for a bond hearing, the Immigration Judge would be bound by *Matter of Yajure Hurtado* with no room for discretion.

Further, requiring Petitioner to exhaust his appeal to the BIA prior to litigating his claims before this Court is futile. Such a requirement "would almost certainly result in the BIA persisting in its earlier rulings and applying those rulings to Petitioner, all while he remains in detention without the bond hearing due him." *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025).

Indeed, Respondents' brief supports the futility of such an appeal – Respondents state:

> The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted by a three-appellate judge panel. *See id. generally.* It is binding on all immigration judges in the United States… In the Board's own words, *Hurtado* is a "precedential opinion." *Id.* at 216… Indeed, this is the law of the land in immigration court today.

ECF No. 8, p. 16, n. 4.

Accordingly, this Court should follow the other decisions within this Court and other federal District Courts and waive exhaustion as futile.

IV. PETITIONER'S DETENTION PURSUANT TO 8 U.S.C. § 1225(b)(2) IS UNLAWFUL

Respondents aver that "Petitioner's argument that he is being held pursuant to the wrong statutory provision fails on the merits." ECF No. 8, p. 12. It is worth repeating that now nearly 300 decisions across the country agree with Petitioner's position.

The crux of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226.

Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) "mandate[s] detention of applicants for admission until [removal] proceedings have concluded." *Jennings*, 583 U.S. at 297.

Individuals detained following examination § 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)).

Section 1226 permits the government "to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289. Under § 1226(a), "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The government then "may continue to detain the arrested" noncitizen during removal proceedings or "may release" the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2).

A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. *See* 8 C.F.R. § 236.1(d)(1); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). At that hearing, the immigration judge must release the noncitizen unless the government establishes either by clear and convincing evidence that he poses a danger to the community or by a preponderance of the evidence that poses a flight risk. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 276 (3d Cir. 2018); *see also Matter of Patel*, 15 I&N Dec. 666 (BIA 1976) [Bond should be granted unless there is a finding that the individual is a threat to public safety or national security or is likely to abscond]; *Matter of Daryoush*, 18 I&N Dec. 352 (BIA 1982).

Section 1226(c), however, "'carves out a statutory category of aliens who may not be released' during removal proceedings, outside of certain limited circumstances." *Jennings* at 289; *see* 8 U.S.C. § 1226(a) (authorizing discretionary detention "[e]xcept as provided in subsection (c)"). This mandatory detention provision applies to noncitizens who are inadmissible or deportable on certain criminal or terrorist grounds. *Id.* at 527 n.2.

a. Petitioner is neither an 'applicant for admission' nor is he 'seeking admission' to the United States.

The Respondents emphasize that Petitioner falls squarely within § 1225(a)(1)'s definition of an "applicant for admission" because he was neither admitted nor paroled into the country. ECF No. 8, p. 14 ("This includes Petitioner, who is an alien present in the country but not yet admitted."). The government asserts that mandatory detention under § 1225(b)(2)(A) applies to any "applicant for admission" – including any noncitizen who entered the United States without inspection, regardless of how long he has been present in the country. *Id.* p. 18-19.

The interpretation of the applicable statutes by Respondents here and by the BIA in *Yajure Hurtado* overlooks part of the language in § 1225(b)(2)(A), it gives little consideration to the overall statutory scheme, and it ignores § 1226. Section 1225(b)(2)(A) requires mandatory detention of all "applicants for admission" if the examining immigration officer determines that "an alien seeking admission is not clearly beyond a doubt entitled to be admitted." (emphasis added). "Applicant for admission" is defined in the statute as an alien "present in the United States who has not been admitted." § 1225(a)(1). It is undisputed that, when Petitioner was arrested, he was present in the United States and had not been admitted. Therefore, he clearly qualifies as an "applicant for admission" under this broad language.

But that does not end the interpretative inquiry. The statute that mandates detention does not state that all "applicants for admission" shall be detained. It narrows this mandatory detention to aliens who are "seeking admission." Had Congress intended for this subsection to apply to all applicants for admission, it could have said so by simply replacing the phrase "an alien seeking admission" with the term "an applicant for admission"; or, to be even more succinct, it could have replaced the phrase "an alien seeking admission" with the word "alien." Under either of these constructions, it would be clear that "applicant for admission" means the same thing as "alien

seeking admission," which is Respondents' interpretation of the statute. But this is not the language that Congress chose.

Instead, Congress chose the phrase, "an alien seeking admission." Because this phrase is not defined in the statute, the Court must construe it based upon its ordinary everyday meaning. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 69 (2012). "Seeking admission" is a participial phrase that modifies the noun alien. It narrows the meaning of alien to one who is attempting to obtain lawful admission to the United States. "Seek" is an active verb, not a type of status. Seek, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/seek [https://perma.cc/42LS-5YMV] (defining "seek" as "to try to acquire or gain"). The Court cannot simply disregard these words as superfluous. It must assume that Congress intended for them to have a purpose. Scalia & Garner, supra, at 174 (describing the "surplusage canon": "If possible, every word and every provision is to be given effect .... None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

Thus, based on a plain reading of the language and aided by these standard canons of statutory construction, § 1225(b)(2)(A) applies to aliens in the United States who have not been admitted ("applicants for admission" definition) ***and*** who are attempting to obtain lawful admission to the United States. *See, eg. J.A.M. v. Stereval*, et al., No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *3 (M.D. Ga. Nov. 1, 2025).

This interpretation is also consistent with the framework of § 1225, which focuses on the admission of aliens upon their arrival to the United States or upon an attempt to obtain admission after arrival. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (Kennedy, J.) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory

language at issue, *as well as the language and design of the statute as a whole.*") (emphasis added). This so-called "whole-text canon" calls on the interpreter to consider the entire text "in view of its structure and of the physical and logical relation of its many parts." Scalia & Garner, supra, at 167. Its cousin canon counsels that the title and headings for statutory provisions may sometimes be indicators of meaning. *Id.* at 221. Section 1225 focuses on "inspection" of aliens upon their arrival and/or when they otherwise present themselves for admission. In addition to the statutory language previously discussed, the framework of the statute and the headings within the statute are consistent with the interpretation that the statute applies to aliens who are actively seeking admission to the United States.

At the time of his arrest, Petitioner was an alien in the United States who had not been lawfully admitted, but based on the present record, he was not attempting to be lawfully admitted. *See* ECF No. 1, Ex. A. Therefore, it cannot be said that he qualifies as an "alien seeking admission" subject to mandatory detention under § 1225(b)(2)(A), which requires both presence and seeking admission.

Section 1226(a) supports and bolsters this interpretation. It must be read in conjunction with § 1225. *See Id.* at 252 ("Statutes *in pari materia* are to be interpreted together, as though they were one law."). And these provisions should be read harmoniously when possible. They should not be interpreted in a way that renders them incompatible or contradictory. *Id.* at 180. Section 1226(a) cannot simply be ignored when interpreting the requirements for detention. *United States v. Butler*, 297 U.S. 1, 65 (1936) (Roberts, J.) ("These words cannot be meaningless, else they would not have been used."). Congress clearly intended for some aliens, who are arrested and similarly situated to Petitioner, to be provided with the opportunity for a bond. The plain language of § 1226(a)(2) can mean nothing else. The only way to reach the interpretation urged by

Respondents is to ignore the statute's plain language, which the rules of statutory construction do not countenance.

Reading §§ 1226(a)(2) and 1225(b)(2)(A) harmoniously and in context, there is only one reasonable interpretation: for an alien seeking admission upon his arrival to the United States or at some later time, Congress has determined that his detention is mandatory while a determination is made as to whether he is allowed entry and admission. But, for aliens who are found in the country unlawfully and are arrested, an immigration officer or immigration judge has the discretion, after considering all the circumstances, not to detain such aliens and instead grant them release on bond.

Further, reading § 1226(a) as requiring an initial detention decision by DHS is the only way to make sense of the broader statutory and regulatory scheme, which provides for an opportunity to appeal a detention decision to an immigration judge who then conducts their own assessment of the noncitizens' flight risk and dangerousness, among other factors. *See* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge ... may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service."). If all noncitizens subject to § 1226(a) could simply be detained on a categorical (or arbitrary) basis without any kind of individualized assessment, it would make little sense to permit such individuals an opportunity to challenge their detention by an appeal before an immigration judge on the basis of specific factors such as dangerousness or flight risk.

This conclusion is further confirmed by looking to § 1226(c), which carves out certain disfavored criminal non-citizens whom the Government is required to detain. 8 U.S.C. § 1226(c). There would be little need for such a carveout requiring detention of certain criminal noncitizens if § 1226(a) were intended to authorize the categorical detention of any noncitizen unlawfully

present inside the country. Rather, § 1226(a) clearly requires some exercise of discretion when determining whether or not to detain a noncitizen in the first instance.

Respondents argue that this interpretation would lead to incongruous treatment of aliens and subject the lawful applicant to more stringent requirements than the unlawful alien evader. ECF No. 8, p. 15. Respondents, however, focus on the wrong question. The relevant distinction is not between "aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years" and those who appear at a port of entry. *Id.* Rather, it is between persons inside the United States and persons outside the United States. That distinction is consistent with the long history of our immigration laws and with the Constitution. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). It is therefore reasonable to read these statutes against that backdrop. *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *12 (D. Mass. Aug. 19, 2025).

The basic doctrine that treats arriving aliens who appear at a point of entry and apply for admission as not being considered "in the United States" despite their physical presence is known as the entry fiction doctrine. This legal principle, established by the Supreme Court in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), holds that aliens seeking initial admission are legally treated "as if stopped at the border" regardless of whether they are physically detained within U.S. territory. Under this doctrine, physical presence at a port of entry does not constitute legal "entry" or "admission" into the United States for immigration law purposes.

Indeed, the Supreme Court in *Shaughnessy* explained this "incongruous treatment" directly, stating,

> It is true that aliens who have once passed through our gates, **even illegally**, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law. But an alien on the threshold of initial entry stands on a different footing: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."

Shaughnessy at 212, (emphasis added).

This principal has long been upheld and so it is *not* the lynchpin issue that Respondents make it out to be. *See, eg. Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 447 (3d Cir. 2016), *citing Mathews v. Diaz*, 426 U.S. 67, 77, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to th[e] constitutional protection [of the Due Process Clause]."); *Zadvydas*, 533 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But, once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* (citations omitted).

Respondents also rely on *Jennings v. Rodriguez*, 583 U.S. 281 (2018) to support their interpretation of § 1225(b)(2). ECF No. 8, p. 12-14. Although that decision did involve the same provisions of the INA at issue here here, the issue presented in *Jennings* was different, and therefore, the Supreme Court did not interpret the precise language of the relevant statutes involved here. The issue before the Supreme Court in *Jennings* was whether the INA implicitly requires periodic bond hearings for certain alien detainees. *Id.* at 296-97. The Supreme Court did not have to decide whether an alien arrested in the United States, after having been in the country illegally for several years, qualified as "an applicant for admission" who was "seeking admission" and thus

was subject to mandatory detention under § 1225(b)(2) or whether the alien was entitled to a bond hearing under § 1226(a).

In addition to being distinct and thus not binding precedent for this matter, *Jennings* is not even analogous and thus does not constitute persuasive authority. Respondents pick certain isolated phrases from *Jennings*' general background description of the INA detention framework to bolster their position that every alien arrested in the United States—regardless of their lack of criminal history and the absence of any evidence that they would be a flight risk or a danger to the community—is now subject to mandatory detention without the opportunity for a bond hearing, notwithstanding the clear language of § 1226(a). Respondents latch on to the majority opinion's description of § 1225(b)(2) as a "catchall" provision that they argue is intended to include all aliens, including those who did not seek admission when they initially entered the United States or who never sought admission thereafter. ECF No. 8, p. 13. It may indeed be a "catchall," but it only catches "aliens seeking admission." Significantly, the Supreme Court did not specifically engage in any statutory construction of the phrase "alien seeking admission" in the context of § 1225(b)(2). It did not need to because that was not the issue in *Jennings*. Accordingly, this Court should find Respondents' reliance upon *Jennings* unpersuasive.

Respondents use (or misuse, more accurately) *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) in the same manner that they use *Jennings*. ECF No. 8, p. 13. Respondents continue their practice of picking certain isolated phrases to support the notion that Petitioner squarely meets the definition of an arriving alien under § 1225. However, *Thuraissigiam* dealt with an individual who was issued an expedited removal order and was then provided an opportunity to establish a "credible fear of persecution." *Thuraissigiam* at 103. An asylum officer rejected his credible-fear claim, a supervising officer agreed, and an Immigration Judge affirmed. *Id.*

Thuraissigiam sought the Court's intervention requesting a new opportunity to apply for asylum on previously unstated grounds. *Id.* Accordingly, the Supreme Court analyzed an as-applied challenge to whether 8 U.S.C. § 1252(e)(2) violates the Suspension Clause and the Due Process Clause. *Id.* As in *Jennings,* the Supreme Court did not specifically engage in any statutory construction of the phrase "alien seeking admission" in the context of § 1225(b)(2). It did not need to because it was not at issue in *Thuraissigiam.* Accordingly, this Court should find Respondents' reliance upon *Thuraissigiam* unpersuasive.

To be clear, Petitioner has always been treated by Respondents as subject to discretionary detention under § 1226, rather than mandatory detention under § 1225. *See* ECF No. 1, Ex. A. It was not until the BIA arbitrarily decided that the uncontested law, practice, and policy of the past thirty years was suddenly incorrect did Respondents decide to treat Petitioner differently.

For these reasons, this Court should find the BIA's recent decision in *Matter of Yajure Hurtado*, and the Respondents' arguments which largely parrot the BIA's rationale as unpersuasive.

b. Long-standing agency practice shows that § 1226(a) applies here

Petitioner's position is not a novel interpretation of the INA. It has been Respondents' own interpretation of these provisions since they were first enacted thirty years ago. They held this view until suddenly reversing course two months ago in a policy ICE issued "in coordination with the Department of Justice."

Following IIRIRA, the agency drafted new regulations that provided: "[a]liens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum

Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The relevant regulations restrict only "arriving aliens" from an immigration court bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B). An "arriving alien" is, as relevant here, "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1001.1(q).

In fact, as recently as August 4, 2025 (a mere 30 days before *Matter of Yajure Hurtado* was decided), the Attorney General designated for publication a decision in which the BIA reviewed under § 1226(a) the merits of a bond request by a noncitizen who unlawfully entered the United States. *Matter of Akhmedov*, 29 I&N Dec. 166, 166 n.1 and 166-67 (BIA 2025).

"The longstanding practice of the government can inform a court's determination of 'what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). Here too, Respondents' longstanding practice should inform the Court's decision.

V. DUE PROCESS

Respondents aver that "[i]n light of Congress's interest in regulating immigration, including by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns without engaging in the *Mathews v. Eldridge* test," citing to *Demore v. Kim,* 538 U.S. 510 (2003), generally. ECF No. 8, p. 20. *Denmore* facially challenged the constitutionality of the mandatory detention provisions of § 1226(c); but there was no dispute in *Denmore* relating to which section of the INA pertained to *Denmore.* 538 U.S. at 522–23. The *Denmore* Court noted that, "it is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Id.* at 523. It would be beyond a stretch – an absolute fiction – to read *Denmore* as

stating that the Fifth Amendment did not apply to an individual challenging what they believed was an erroneous deprivation of their liberty without due process.

The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. CONST. amend. V. The Due Process Clause extends to all "persons" regardless of status, including non-citizens, whether here lawfully, unlawfully, temporarily, or permanently. *Zadvydas* at 693. To determine whether detention violates procedural due process, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Further, government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances "where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas* at 690.

a. Petitioner's Private Interest

First, Petitioner's "private interest … affected by the official action is the most elemental of liberty interests—the interest in being free from physical detention." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, (2004). Respondent's reliance on *Demore* and the Congress's interest in regulating immigration does little to tip the scales. "It is clear that commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States,* 463 U.S. 354, 361, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (emphasis added; internal quotation marks

omitted). At this stage in the *Mathews* calculus, the Court must consider the interest of the *erroneously* detained individual. *Carey v. Piphus*, 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Hamdi* at 2646–47.

b. The Risk of an Erroneous Deprivation

As to the second prong of the *Mathews v. Eldridge* balancing test, the Court should find that the risk of erroneous deprivation is particularly high here. The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as Petitioner has raised significant and supported legal arguments against Respondents' detention of Petitioner under §1225(b). *See* ECF No. 8, generally. Further, Respondents have presented no evidence in the record suggesting that Petitioner is a flight risk or a danger to his community; only that he is subject to mandatory detention. *See id.*

As evinced in the underlying petition before this Court, Petitioner was originally held under § 1226(a)'s discretionary provisions and is now being held in mandatory detention through an agency extension of § 1225(b)(2)(A)'s mandatory detention provisions against him. And, "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Loper Bright Ent.*, 603 U.S. at 413.

In Petitioner's case, immigration officials, vested with authority delegated by Congress to the Attorney General and DHS, first determined that standard removal proceedings and discretionary detention under Section 1226(a) applied to his case. ECF No. 1, Exh. A. The unilateral decision by the BIA to use *Matter of Yajure Hurtado* to extend a different statute to

Petitioner's circumstances despite earlier determining otherwise now leaves his liberty interest at risk. Petitioner contends that the Respondents may not now extend the bounds of their authority to apply § 1225(b)(2)(A) against him, and this Court must ensure proper application of the laws against Petitioner.

c. The Government's Interest

The final *Mathews* factor concerns the United States' interest in the proceedings, as well as any financial or administrative burdens associated with permissible alternatives. *Mathews*, 424 U.S. at 335. Petitioner recognizes that the United States has an interest in meaningful immigration laws that advance its stated policies. However, the United States has an equal and countervailing interest in consistent application of its laws and ensuring that those laws are applied under the proper means. It is not appropriate to utilize the "wrong" statute against any person to ensure their continued detention. Respondents may not choose unilaterally when and how to apply duly enacted laws.

The Government's interests in detaining noncitizens are (1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes. *Zadvydas,* 533 U.S. at 690, 121 S.Ct. 2491. Respondents have provided no evidence or argument that Petitioner is either a flight risk or a danger, and the record would indicate that he is neither: he has no criminal record whatsoever, and he has attended his ICE and Immigration Court appointments when required, even on October 17, 2025, when he understood that there was a likelihood that ICE would detain him under its new and brazen policies. Respondents cannot show that their interest in detaining Petitioner without a bond hearing outweighs Petitioner's liberty interests; nor can they show that the effort and cost of providing Petitioner with procedural safeguards is burdensome.

Accordingly, all three *Mathews* factors weigh heavily in support of Petitioner.

VI. CONCLUSION

Petitioner respectfully requests that this Honorable Court grant this petition for writ of habeas corpus because he is detained in violation of federal law and/or the Constitution. Petitioner further requests this court order his immediate release from custody.

Respectfully Submitted,

Date: November 24, 2025

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