UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

MARTIN AVILA ARANDA, PETITIONER

v. CIVIL ACTION NO. 4:25-cv-00156-GNS

SAMUEL OLSON, Field Office Director,
Louisville Field Office, Immigration and
Customs Enforcement, in his official capacity; et al. RESPONDENTS

MOTION TO DISMISS AND RESPONSE TO ORDER TO SHOW CAUSE

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

Respondents assert that aside from their jurisdictional challenge the issue in this case is whether Petitioner is properly detained under 8 U.S.C. § 1225(b)(2). Respondents acknowledge that the Court has previously ruled on the jurisdictional question and the substantive question regarding § 1225. Respondents do not believe that a hearing will aid in the efficient resolution of this matter and are willing to waive the hearing and submit this matter for decision on the briefs.

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

INTRODUCTION

Petitioner was not lawfully admitted to the United States, and he has no lawful immigration status. Petitioner is currently detained by the U.S. Immigration and Customs Enforcement ("ICE") while the Agency[2] pursues administrative removal proceedings against her. Aranda challenges the Agency's decision to detain him under a statutory provision that does not entitle him to a bond hearing. The Court lacks jurisdiction over Petitioner's claims under 8 U.S.C. § 1252(b)(9) and § 1252(g). But even if the Court possessed jurisdiction, because Petitioner has not been admitted to the United States, he is an applicant for admission and lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Congress enacted 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission," and it defined that term to encompass any "alien present in the United States who has not been admitted" following inspection by

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

immigration authorities. 8 U.S.C. §§ 1225(a), (b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection.

There is no dispute that Petitioner is an "applicant for admission" under § 1225(a). That provision specifically provides that any "alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." § 1225(a)(1). Petitioner is present in the United States, and he has not been admitted. Despite the clear statutory text, Petitioner claims he is entitled to a bond hearing and potential release—notwithstanding 8 U.S.C. § 1225's prohibition.

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

Petitioner cites district court opinions favoring a different interpretation and application

of 8 U.S.C. § 1225(b)(2). [Doc. 1, PageID.12-13].[3] More recently, other courts have noted that some cases favoring Aranda's interpretation of § 1225(b)(2) "appear to defer substantially to each other," lacked "compelling analyses," "are not precedential," are "limited," and were "decided on an expedited basis and in a short time frame." *Olalde v. Noem*, 2025 WL 3131942, at *1 (E.D. Mo. Nov. 10, 2025); *see also Rojas v. Olson*, 2025 WL 3033967, at *5, 9-10 (E.D. Wis. Oct. 30, 2025). "[N]o appellate court has yet reached the issue, and the statutory text is more consistent with Respondents' position." *Rojas*, 2025 WL 3033967 at *5. "What governs this case is the text of the statute, not what other district courts have concluded." *Olalde*, 2025 WL 3131942 at *1. Nevertheless, a number of district courts analyzing the text of § 1225(b)(2) have found that it applies to aliens such as Petitioner. *See Ramos v. Lyons*, 2025 WL 3199872, at *8 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, 2025 WL 3208284, at *6 (E.D. Cal. Nov. 17, 2025); *Valencia v. Chestnut*, 2025 WL 3205133, at *4 (E.D. Cal. Nov. 17, 2025); *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24, 2025); *Oliveira v. Patterson*, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Garibay-Robledo v. Noem*, No. 3:25-CV-177-H, Doc. 9 (N.D. Tex. Oct. 24, 2025); *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Pipa-Aquise v. Bondi*, 2025 WL 2490657, at 2 (E.D. Va. Aug. 5, 2025). In

[3] One such case (*Pizarro Reyes v. Raycraft*, 25-1982) is before the Sixth Circuit on appeal. The Sixth Circuit recently ordered expedited briefing in that matter. It should be fully briefed by mid-January.

one of those cases, "after additional research and analysis", a judge who previously held that § 1226 applied in these situations later determined that to be an erroneous conclusion and held that § 1225(b)(2) instead applied. *Ramos*, 2025 WL 3199872 at *4. Application of the statutory text of § 1225(b)(2) leads to the conclusion that aliens such as Petitioner are subject to mandatory detention.

FACTUAL BACKGROUND

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

Elgin, Illinois, police arrested Avila on August 3, 2025, for a domestic battery misdemeanor assault. [**Exhibit 1**, Form I-213 at 2, 3.] Petitioner's case came to the attention of Chicago ICE officers that monitor arrest databases. [*Id.* at p. 2.] Avila was found to be a citizen of Mexico with no lawful status to be in the United States and issued a warrant of arrest. [*Id.; see also* **Exhibit 2**, Form I-200, Warrant for Arrest.] ICE officers then identified Petitioner on August 4, 2025, as he exited the Kane County Sherriff's Department. [**Ex. 1 at** 3.] Petitioner admitted to the officers that he was present in the United States without inspection and with no applications for relief pending with ICE. [*Id.*] He was then taken into custody, determined to be "an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card or other valid entry document" and/or "an immigrant not in possession of a valid unexpired passport, or other suitable travel document" in violation of 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA), and served an Notice to Appear (NTA) in immigration court on August 25, 2025. [**Exhibit 3,**

Notice to Appear.] Petitioner was offered the opportunity to voluntarily depart from the United States, but he declined that offer. [**Ex. 1** at 3.] In October 2025, he filed an application for relief from removal and to adjust status. [Doc. 1-1, PageID.30-44.] Petitioner's next immigration court hearing is currently scheduled for December 3, 2025.

ARGUMENT

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

The Court lacks jurisdiction to consider this petition under two provisions of the INA. First, 8 U.S.C. § 1252(g) strips the Court of subject matter jurisdiction over Petitioner's claims as they are "arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien . . . ." 8 U.S.C. § 1252(g); *see also Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at 8-9 (6th Cir. Aug. 13, 2025) (explaining that § 1252(g) applies to habeas claims and does not violate the Suspension Clause). Here, Petitioner is challenging ICE's decision to detain him, under 8 U.S.C. § 1225(b)(2), at the commencement of his 8 U.S.C. § 1229a removal proceedings. The decision to detain arose from the commencement of his removal proceedings, which began once the NTA was issued on August 4, 2025. [**Ex. 3.**] The detention, therefore, is "connected directly and immediately" with the commencement of Petitioner's removal proceedings. *See Tsering v. ICE*, 403 F. App'x 339, 343 (10th Cir. 2010) (cleaned up); *see also Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 943 (5th Cir.1999). Thus, the Court cannot review the Agency's decision to detain him.

"Other circuits have recognized this straightforward point." *Ozturk v. Hyde*, 2025 WL 2679904, at *2 (2d Cir. Sept. 19, 2025) (Menashi, J., concurring). "By its plain terms," Section 1252(g) "bars [the courts] from questioning [the government's] discretionary decisions to commence removal" of the petitioner, which include the "decision to take him into custody and to detain him during his removal proceedings." *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016); *see also Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) ("Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings."); *Suri v. Trump*, 2025 WL 1806692, at 11 (4th Cir. July 1, 2025) (Wilkinson, J., dissenting) (When the government detains an alien "pending a decision on whether the alien is to be removed—the detention arises from the commencement of proceedings or adjudication of cases."). Accordingly, "claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction." *Limpin v. United States*, 828 F. App'x 429, 429 (9th Cir. 2020); *see also Sissoko v. Rocha*, 509 F.3d 947, 949-50 (9th Cir. 2007).

It is true that Section 1252(g) does not cover "all claims" arising from decisions to commence proceedings, adjudicate cases, or execute removal orders. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999) (explaining the scope of § 1252(g) and holding that it deprived the court of jurisdiction because the claims arose from the commencement of proceedings). But § 1252(g) continues to bar review of narrow matters "arising from" those decisions—such as the Agency's decision to detain Petitioner. *See id.* Holding otherwise ignores the term "arising from"

in the statute and flouts the maxim of statutory construction against superfluities. *Hibbs v. Winn*, 542 U.S. 88, 89 (2004). Accordingly, the Court should interpret section 1252(g) to revoke the Court's jurisdiction to review the Agency's decision to detain Petitioner, as it was "arising from" the Agency's decision to commence his removal proceedings.

Secondly, 8 U.S.C. § 1252(b)(9) strips the Court of jurisdiction to review Petitioner's habeas claims as the petition requires the Court to answer legal and factual questions "arising from any action taken or proceeding brought to remove . . . " him. *See* 8 U.S.C. § 1252(b)(9). Petitioner asks the Court to interpret the INA to determine which legal authority authorizes his detention during his removal proceedings. [*See generally* Doc. 1.] "This is a purely legal question of statutory interpretation . . . ." *Guerra v. Woosley*, 2025 WL 3046187 at *5 (W.D. Ky. Oct. 31, 2025). Answering such a legal question is precluded under 8 U.S.C. § 1252(b)(9). Moreover, granting the habeas petition would require the Court to make the factual determination that Petitioner is not removable as inadmissible, because he was: (1) admitted or paroled into the United States, or (2) has documentation authorizing his presence in the United States. It cannot do so. If the Court exercised jurisdiction, in contravention of Section 1252(b)(9), to make the factual determination as to his admissibility and the legal holding identifying the statute governing his detention, it could create the absurd holding that "it is unconstitutional for the government to detain aliens pending removal for a reason that allows the government to remove them." *Ozturk*, 2025 WL 2679904 at 2 (Menashi, J., concurring). This is exactly what Congress sought to preclude in Section 1252(b)(9). The jurisdictional bars in § 1252 do not prevent the adjudication of a claim that is "unrelated

to any removal action or proceeding," *Delgado v. Qurantillo*, 643 F.3d 52, 55 n.3 (2d Cir. 2011) (cleaned up), or "independent of challenges to removal orders," H.R. Rep. No. 109-72, at 176 (2005). But when individuals, such as Petitioner here, are "challenging the decision to detain them in the first place" arguing there is no factual support for initiating removal proceedings or legal support for detaining them throughout the duration of those proceedings, that is a challenge to the removal proceedings that Congress has barred. *Jennings*, 583 U.S. at 294 (plurality opinion).

The Supreme Court in *Jennings* gave district courts guidance as to the claims that *would* be limited by § 1252(b)(9):

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

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

Petitioner is "challenging the decision to detain [him]" as part of his formal removal proceedings. He specifically challenges ICE's removal proceedings decision to detain him under § 1225(b)(2). *See, e.g., Li v. United States Citizenship & Immigr. Servs.*, 2021 WL 6882637, at *2 (C.D. Cal. Dec. 2, 2021) (distinguishing *Jennings* and finding lack of jurisdiction under § 1252(b)(9)); *and Conteh v. Wolf*, 2020 WL 6363910 at *5 (D. Mass. Oct. 29, 2020) ("Justice Alito's framework is particularly instructive. In concluding that the claims in *Jennings* were *not* subject to § 1252(b)(9)'s jurisdictional bar, he seems to

have set forth three categories of claims that *are*: (1) cases where an alien is seeking review of an order of removal; (2) cases where an alien is seeking review of the government's decision to detain him or seek removal; and (3) cases where an alien is seeking to challenge 'any part of the process by which [the alien's] removability will be determined.'").

Accordingly, the Court should dismiss Petitioner's habeas petition because it requires the Court to answer legal and factual questions, and in any event, may be presented before the Immigration Judge, the Board of Immigration Appeals ("BIA"), and then to the Sixth Circuit Court of Appeals—but not to this Court.

I. Alternatively, Petitioner Bears the Burden of Proving His Detention Is Unlawful Under 8 U.S.C. § 1225(b).

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

As an applicant for admission, 8 U.S.C. § 1225(b) governs Petitioner's detention. An alien—such as Petitioner—"who arrives in the United States, or is present in this country but has not been admitted, is treated as an applicant for admission." *Jennings*, 583 U.S. at 281 (cleaned up). "Applicant for admission" is defined in 8 U.S.C. § 1225(a)(1): "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1101(a)(13)(A) defines "[a]dmission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer".

As an "applicant for admission," Petitioner must "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S at 287. Section 1225(b)(1), also known as Expedited Removal Proceedings, addresses both the detention and removal of "aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* (cleaned up). Section 1225(b)(2) "is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. Such aliens are subject to the 8 U.S.C. § 1229a removal statute and referred "for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country." *See Jennings*, 583 U.S. at 288 (cleaned up). Further, noncitizens "shall be detained" for those removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

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

Petitioner's argument to the Court is that 8 U.S.C. § 1225(b) does not apply to him. Examination of the statutory text and the Supreme Court's examination of that text in *Jennings* demonstrates that Petitioner is lawfully detained under 8 U.S.C. § 1252(b)(2).

Petitioner has no grounds on which to contest his removability for being present in the United States without being admitted or paroled. He entered the United States without inspection. [Doc. 1, PageID.6.] Thus, he is by statute an applicant for admission *and* seeking admission. The INA makes clear that "applicants for admission" may be required to testify as to their "purposes and intentions . . . in seeking admission." 8 U.S.C. § 1225(a)(5) (emphasis added). It therefore follows that an "applicant for admission" and a person "seeking admission" are one and the same. Further, § 1225(b)(2) states that an "applicant for admission" must be detained unless he—i.e., the "alien seeking admission"—can prove beyond a doubt that she is entitled to be admitted. Any interpretation of § 1225(b)(2), which argues those are distinct terms and not synonyms, renders § 1225(b)(2) internally contradictory. The Court should avoid this "patently absurd" interpretation which draws a distinction between the terms. *See United States v. Brown*, 333 U.S. 18, 27 (1948) (a court can reject the plain language interpretation of a statute if such an interpretation would lead to "patently absurd consequences"). Though this might at first glance seem counterintuitive, "[w]hen a statute includes an explicit definition, [courts] must follow that definition." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, Petitioner is an "applicant for admission"—i.e., an alien seeking admission—and, consequently, she is detained under § 1225(b)(2)(A).

Petitioner's proffered application of § 1225 and § 1226 would create "an 'anomaly' … 'whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.'" *Chavez,* 2025 WL 2730228, at 4–5 (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). Congress intending such an anomaly is implausible, given the text and purposes of those two sections; permitting that anomaly would "undermine the intent of Congress in enacting the IIRIRA." *Sandoval*, 2025 WL 3048926 at *6, n.7.

Other courts recognize this application of § 1225(b)'s text. One example comes from the Eastern District of Missouri: "Under § 1225(a)(1), '[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission.'" *Olalde*, 2025 WL 3131942 at *3. The *Olalde* court addressed and rejected an alien petitioner's arguments "that 'seeking admission' to imply some 'action' beyond continuous presence in the country when an individual has been in the country for several years" and that "seeking admission" "applies only to recently arrived noncitizens seeking entry at a border or point of entry, where they are examined by an immigration officer." *Id.* But, in any event, Petitioner here was offered the opportunity to leave the United States voluntarily, and he refused. Then he filed an application for relief and adjustment of status. [Doc. 1-1, PageID.30-44.]

In one case, a court acknowledged its prior agreement with Petitioner's interpretation of §§ 1225 and 1226, but reversed course and agreed with the United States' proffered application of § 1225, noting in part "the longstanding 'entry fiction'

doctrine." *Ramos*, 2025 WL 3199872 at 4, 7. "Under that doctrine, an alien who is physically present but has not been lawfully admitted into the country is 'legally considered to be detained at the border and hence as never having effected entry into this country.'" *Id.* at 7 (quoting *Alvarez-Garcia v. Ashcroft*, 378 F.3d 1094, 1097 (9th Cir. 2004)). "[T]hough she currently stands on United States soil, she is 'still in theory of law at the boundary line and ha[s] gained no foothold in the United States.'" *Id.* (quoting *Kaplan v. Tod*, 267 U.S. 228, 230 (1925)). "A contrary rule creates difficult and improper line drawing exercises for courts and is inconsistent with the entry fiction doctrine." *Id.* "For example, if § 1225(a) is interpreted as applying only to aliens at the border (despite no support in the text for that limitation), then where does the statute's application end? One mile from the border? Twenty-five miles? And how quickly must the alien be apprehended before the statute no longer applies? Within one hour? One day? One week?" *Id.* The *Ramos* court noted that *DHS v. Thuraissigiam*, 591 U.S. 103, 139 "reject[ed] the rule that alien has entered the country simply because he has set foot on U.S. soil, because the rule 'would undermine "the sovereign prerogative" of governing admission to this country.'" *Id.* at *8.

The Eastern District of Wisconsin issued a detailed critique of the claim that § 1225(b)(2) does not apply to aliens such as Petitioner. Addressing the text of 8 U.S.C. §§ 1225 and 1226, that court held that an alien such as Petitioner "meets the definition of 'applicant for admission' in § 1225(a)(1)," because he is "an alien 'present' in the United States and he has not been 'admitted.'" *Rojas*, 2025 WL 3033967 at *8. "Under the plain terms of Section 1225(a)(1), he is 'deemed' an applicant for admission for purposes of

Chapter 12 of Title 8, which governs Immigration and Nationality. Of all the statutory terms at issue, this is perhaps the most straightforward." *Id.* The *Rojas* court similarly rejected the Petitioner's claim that "additional language in Section 1225(b)(2) that refers to aliens who are 'seeking admission' . . . was intended to apply only to those aliens who arrive and are being detained at the border." *Id.* The *Rojas* court noted that while "Section 1225(b)(2) . . . refers to aliens 'seeking admission,' . . . this language is best read as simply another way of referring to aliens who are applicants for admission." *Id.*; *see also Sandoval*, 2025 WL 3048926 at *3-4. "Such a reading of the statute comports with Congress' addition of § 1225(a)(1) by [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)]." *Chavez*, --- F.Supp.3d ----, 2025 WL 2730228, at *4.

Petitioner cites other district courts that have interpreted §§ 1225 and 1226 in the manner he prefers. But "the overwhelming majority of district courts sometimes get the law very wrong." *Olalde*, 2025 WL 3131942 at *1 (citing *Trump v. CASA, Inc.*, 606 U.S. 831, 840 (2025) (declaring universal injunctions beyond the equitable authority of federal district courts despite widespread use of that injunction)). Moreover, "some of the court decisions" holding that § 1226 is applicable "appear to defer substantially to each other," *id.*, and "many of these district court cases were decided before—or soon after—the BIA issued its opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." *Sandoval*, 2025 WL 3048926, at *6.

B. Scrutiny of common arguments against application of § 1225(b)(2).

1. <u>The Laken Riley Act does not disturb § 1225(b)(2)'s application to Petitioner, and does not render §§ 1225 and 1226 superfluous.</u>

The Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025), does nothing to alter § 1225(b)(2)'s application to Petitioner. "The Laken Riley Act added another exception to the Attorney General's power to allow bond under § 1226. Specifically, the Act restricts the Attorney General from releasing 'any alien' who is 'inadmissible' under certain provisions and 'is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of' certain crimes." *Id.* (quoting 8 U.S.C. § 1226(c)(1)(E)). The "Laken Riley Act may apply to situations where § 1225 might not." *Id.* "For example, an individual who has been admitted through fraud might not be an 'applicant for admission' under § 1225." *Id.* (citing 8 U.S.C. § 1182(a)(6)(C)(i)). "But the Laken Riley Act may require that person to be detained even if § 1225 would not apply." *Id.*

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

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

Even if one accords overlap to §§ 1225 and 1226, "it is perfectly possible to interpret the provisions as merely overlapping, and Congress often takes a 'belt and suspenders approach' to legislation." *Olalde*, 2025 WL 3131942 at *4 (quoting *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 14 n.5 (2020)). "Section 1226(c) regulates not only what the Attorney General must do (take aliens into custody), but also when the Attorney General must do so." *Id.* (citing 8 U.S.C. § 1226(c)(1), (c)(3)). "By contrast, § 1225 does not specify a timeline for when an alien is to be taken into custody." *Id.* The *Olalde* court also noted that "while the canon against superfluity 'applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times,' it is 'pretty weak when applied to acts of Congress enacted at widely separated times.'" *Id.* (quotation omitted). Moreover, "amendment to § 1226 by the recent Laken Riley Act doesn't imply that § 1225(b)(2)(A) should be read contrary to its clear terms." *Cabanas*, 2025 WL 3171331 at *6.

"Simply put, amendment by the recent Laken Riley Act to § 1226 isn't superfluous. Beyond that, and regardless, the Supreme Court holds, 'Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.'" *Cabanas*, 2025 WL 3171331 at *6 (quoting *Barton v. Burr*, 590 U.S. 222, 239 (2020)). "'[T]he canons of statutory construction should only be used to resolve remaining ambiguity, not to inject it where it does not exist.'" *Id.* (quoting *Garibay-Robledo*, No. 1:25-cv-177, Doc. 9).

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

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

Similarly, the *Olalde* court noted "the longstanding practice of the Board of

Immigration Appeals," which "acknowledged 'for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection.'" *Olalde*, 2025 WL 3131942 at *5 (citing *Matter of Yajure Hurtado*, 29 I&N at 225, n.6). Though "'the longstanding practice of the government . . . can inform a court's determination of what the law is,'" "a 'long-established practice' does not justify a rule that denied statutory text its fairest reading." *Id.* (quoting *Loper Bright*, 603 U.S. at 386, and *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015)). T[he *Olalde* court noted that "the 'weight' of an administrative agency's judgment depends 'upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.'" *Id.* Regarding the prior interpretation of § 1225, the court explained that it accorded that little weight because there was little explanation for that interpretation. *Id.*

3. <u>There is no "arriving alien" distinction that precludes application of § 1225(b)(2).</u>

Two courts recently addressed the title of § 1225 and its inclusion of the term "arriving aliens," explaining in detail why they reached a very different conclusion than cases cited by Petitioner such as *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025). "The three subjects referenced in [the title of § 1225] are separated by semi-colons, and § 1225(b)(2) addresses the third subject ('referral for hearing'), not the second subject ('expedited removal'). Another provision of § 1225 requires inspection of '[a]ll aliens . . . who are applicants for admission or *otherwise* seeking admission.'" *Olalde*, 2025 WL 3131942 at *3 (quoting § 1225). "This text

reinforces the reading that all 'applicants for admission' are 'seeking admission' because it recognizes that there are 'other[ ]' ways to seek admission besides being an 'applicant[ ] for admission.'" *Id.* "Also, the Immigration and Nationality Act does not define 'admission' merely as 'entry.' Rather 'admission' means 'the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.'" *Id.* (quoting 8 U.S.C. § 1101(a)(13)(A)). "An alien can have physically entered the country many years before and still be an applicant for lawful entry, seeking legal 'admission.'" *Id.* (citing *Matter of Lemus*, 25 I&N Dec. 734, 743 n.6 (BIA 2012)).

"Further, the rest of § 1225 establishes that Congress knows how to limit the scope of the text geographically and temporally when it wants to. For example, § 1225(b)(1)(A)(i) applies to an alien 'who is arriving in the United States.' Here, in contrast, § 1225(b)(2) has no similar language limiting applicability only to aliens who are in the process of 'arriving.'" *Id.* at *4. "Likewise, § 1225(b)(1)(A)(iii) applies to an alien who cannot show he has been physically in the United States 'continuously for the 2-year period immediately prior.' Yet the very next paragraph (§ 1225(b)(2), the provision applicable here) includes no time limit." *Id.* "If Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Id.* "[The Petitioner] asks the Court to insert 'some arbitrary time limit devised by courts' that is not in the text of the statute." *Id.* (quoting *Jennings*, 583 U.S. at 304).

Another court noted that "there isn't a separate concept applicable to an 'arriving alien' as distinct from an 'applicant for admission.'" *Cabanas*, 2025 WL 3171331 at *5.

"The problem with the argument, however, is that Congress could have said that § 1225(b) applied only to arriving aliens if that's what was meant. But it didn't, even as three other closely related subsections did." *Id.* "Congress chose not to use 'arriving alien' in § 1225(b)(2)(A). As such, it simply cannot be said to be limited to aliens arriving at the border." *Id.*

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

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

As the BIA determined, "aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A)[] and must be detained for the duration of their removal proceedings." *Hurtado*, 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300 (holding that these provisions of the INA "unequivocally mandate that aliens falling within their scope [of section 1225(b)(1) and (2)] shall be detained," and that "[u]nlike the word may, which implies discretion, the word shall usually connotes a requirement")). The Court should defer to this persuasive interpretation of the statute, even if it is not bound by it. *See Pemberton v. Bell's Brewery, Inc.*, 150 F.4th 751, 763, n. 4 (6th Cir. 2025) (explaining that *Skidmore* deference survived the Supreme Court's decision in *Loper Bright*, 603 U.S. at 402). Contrary to other holdings, *see e.g., Beltran Barrera v. Tindall*, 2025 WL 2690565, at 3 (W.D. Ky. Sep. 19,

2025), the BIA's decision is persuasive and accurately construes the statutory text. As the BIA explained, an "applicant for admission" under 8 U.S.C. § 1225(a)(1), by virtue of his entry without inspection, must necessarily be considered as "seeking admission," as the term of art is used in 8 U.S.C. § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220; see also *Rojas*, 2025 WL 3033967 at *8 (explaining that "seeking admission" "is best read as simply another way of referring to aliens who are applicants for admission"). This interpretation is supported by agency precedent, *see Matter of Lemus*, 25 I. & N. Dec. 734, 743, n.6 (BIA 2012) (noting that "many people who are not actually requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws"), and the Supreme Court's decision in *Jennings* which ignored the "seeking admission" portion of § 1225(b)(2)(A), instead interpreting the relevant portion of this provision to be whether an official determined they were "not clearly and beyond a doubt entitled to be admitted." *Jennings*, 583 U.S. at 288.

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

> For this Court to conclude that an alien who has unlawfully entered the

> United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA. This Court thus "refuse[s] to interpret the INA in a way that would in effect repeal [Congress's] statutory fix."

Sandoval, 2025 WL 3048926 at *6, n. 7 (quoting *Gambino-Ruiz*, 91 F.4th at 990).

II. Petitioner Is and Has Been Afforded All Due Process to which She Is Entitled.

Petitioner claims he has been deprived of due process. [Doc. 1, PageID.20.] But he is properly detained under 8 U.S.C. § 1225(b)(2), so he cannot show that his detention violates her due process rights. "[D]ue process is flexible," and "calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also Landon v. Plasencia*, 459 U.S. 21, 34 (1982). As an applicant for admission detained under 8 U.S.C. § 1225(b)(2), Petitioner does not have due process rights beyond those provided in 8 U.S.C. § 1225. *See Thuraissigiam*, 591 U.S. at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). This "rests on fundamental propositions: the power to admit or exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." *Id.* at 139 (cleaned up). The *Rojas* court also provided useful analysis on this point, noting that applicants for admission have limited liberty interests, while the United States has "a powerful interest in

maintaining the detention in order to ensure that removal actually occurs." 2025 WL 3033967 at *13-14. Further, there is little chance of erroneous deprivation of any rights for aliens admittedly subject to removal, as Petitioner is. *Id.* at *13. Accordingly, Aranda's petition presents no basis on which to find that her detention violates any procedural due process rights.

III. This Court Should Not Release Petitioner Prior to the Immigration Judge Entertaining a Bond Hearing.

Petitioner incorrectly asserts that he is detained pursuant to § 1226, even though he is an applicant for admission under the INA. Nevertheless, Petitioner requests that this Court find he should be detained under § 1226, but then requests that the Court immediately release him. Doc. 1, PageID.16.] That is contrary to § 1226.

Section 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings,* 583 U.S. at 288. Section 1226(a) provides that "an alien may be . . . detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez,* 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji,* 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the alien, it may set a bond and/or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that an alien should remain detained during the pendency of her removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§

236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen on bond. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);[4] *see also* 8 C.F.R. § 1003.19(d). If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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

CONCLUSION

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

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[4] The BIA has identified a non-exhaustive list of factors the immigration judge may consider. *Guerra*, 24 I. & N. Dec. at 40.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2025, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Petitioner.

/s/ Timothy D. Thompson
Timothy D. Thompson
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