UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARVIN ALEXIS GOMEZ VALLECIOS **PETITIONER,** **V.** **KRISTI NOEM, SECRETARY OF UNITED STATES DEPARTMENT OF HOMELAND SECURITY;** **ET. AL.,** **RESPONDENTS.**	**3:25-CV-00573-KC**

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Constitutional Authorities

STATEMENT OF ISSUES

1. Whether mandatory detention under 8 U.S.C. § 1225(b)(2) is unconstitutional as applied to petitioner.

2. Whether the writ of habeas corpus under 28 U.S.C. § 2241 provides any relief other than release.

Federal[1] Respondents provide the following timely response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, including relief Under the Administrative Procedure Act, attorney's fees under the Equal Access to Justice Act ("EAJA")[2], and this Court should deny this habeas petition without the need for an evidentiary hearing.

I. Introduction

ICE has lawful authority to detain Petitioner on a mandatory basis as an applicant for admission (also known as "seeking admission") pending his "full" removal proceedings before an immigration judge under 8 U.S.C. § 1229a. Detention under this provision is governed not only by the plain language of the statute, but also by Supreme Court precedent. The Court also lacks jurisdiction under 8 U.S.C. § 1252(g) to review Petitioner's challenge to the Department of Homeland Security's ("DHS") initial decision to detain him. While Petitioner may still challenge the interpretation or the constitutionality of the statute under which his removal proceedings were brought, he must first make that challenge before the immigration judge and channel review of any adverse (final) decision to the federal circuit court of appeals. 8 U.S.C. § 1252(b)(9).

While as-applied constitutional challenges may be brought in district court under certain circumstances, Petitioner has not raised any colorable claim that mandatory detention under § 1225(b) is unconstitutional as applied to him. His detention is neither indefinite, nor prolonged, as it will end upon the completion of his removal proceedings. Finally, the only remedy available through habeas is release from custody, but even if released, it would not provide him any lawful status in the United States or produce him no net gain. In fact, it will likely delay the adjudication

---

[1] The Department of Justice represents only federal employees in this action.

[2] *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

of any applications for relief from removal and further prolong his unlawful status in the United States. For these reasons and those that follow, this Court should deny this habeas petition.

II. Relevant Facts and Procedural History

Petitioner is a native and citizen of El Salvador. ECF No. 1 ¶¶ 5, 40. On October 22, 2025, U.S. Immigration and Customs Enforcement issued Petitioner a Notice to Appear (NTA). *See* Ex. A (NTA). The NTA charged him as inadmissible to the United States as an alien never admitted or paroled. In December 2023, A Form I-918A was filed on Petitioner's behalf by Petitioner's family member. ECF No. 1 ¶ 41. On December 1, 2023, Petitioner received a "Bona Fide Determination Notice" from USCIS. ECF No. 1 ¶ 41. On October 22, 2025, Petitioner was subsequently placed in removal proceedings after being detained by ICE on his way to work. ECF 1 ¶ 43. Thereafter, Petitioner's counsel filed a writ of habeas corpus in the U.S. District Court of the District of Maryland but dismissed the petition without prejudice once he learned the Petitioner had been transferred out of Maryland to Texas. ECF 1 ¶ 44. On November 19, 2025, Petitioner was stricken from the habeas petition and ordered to file his own action. ECF 1 ¶ 45. Petitioner is currently detained at ERO El Paso Camp East Montana in El Paso, Texas. Petitioner is currently in removal proceedings before an immigration judge with an upcoming hearing scheduled on December 12, 2025. *See* Automated Case Information (last accessed Dec. 8, 2025).

III. Argument

The only relief available to Petitioner through habeas[3] is release from custody. 28 U.S.C. § 2241; *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020). Petitioner, however, has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release.[4] Ordering release in this circumstance produces no net gain to Petitioner, while mandating continued detention until at least the conclusion of removal proceedings furthers the government's interests in enforcing the immigration laws. While deferred action prevents removal, it does not prevent ICE from seeking a removal order or detaining the alien during those proceedings.

A. Mandatory Detention and the "Catchall" Provision

There is no disagreement that Petitioner is in "full" removal proceedings under 8 U.S.C. § 1229a. In "full" removal proceedings, there are two groups of aliens: (1) those charged with never having been admitted to the United States (*i.e.*, inadmissible under § 1182); and (2) those who were once admitted but no longer have permission to remain (*i.e.*, removable under § 1227). 8 U.S.C. § 1229a(e)(2). As outlined in more detail below, Congress intended for the inadmissible aliens in this context to be detained on a mandatory basis under § 1225(b), while the

---

[3] Petitioner did not pay the filing fee for non-habeas claims. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). "When a filing contains both habeas and on-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3. Respondents deny that Petitioner is entitled to any relief under the Administrative Procedure Act (APA). *See* ECF No. 1 ¶3.

[4] Petitioner claims that he has deferred action from USCIS due to a finding that his pending U visa application is bona fide. ECF No. 1 ¶¶ 41. Deferred action is not lawful status, and a bona fide determination does not guarantee a future visa. *See* Chapter 5 - Bona Fide Determination Process | USCIS (last accessed December 8, 2025). While deferred action prevents removal, it does not prevent detention during the process of securing a removal order.

deportable/removable aliens are to be detained under § 1226(a), which allows them to seek bond. This interpretation is consistent with the allocation of the burden of proof during removal proceedings. If the NTA charges the alien under § 1182 as inadmissible, the burden lies on the alien to prove admissibility or prior lawful admission. 8 U.S.C. § 1229a(c)(2). On the other hand, the burden is on the government to establish deportability for aliens charged under § 1227. *Id.* § 1229a(c)(3).

Inadmissible aliens are further categorized as follows: (1) arriving alien; (2) present without admission and subject to either expedited or full removal proceedings; and (3) present without admission and subject only to full removal proceedings. *See* 8 U.S.C. § 1225(b). The third category listed here is referred to as the "catchall" provision. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); 8 U.S.C. § 1225(b)(2)(A).

B. Start with the Statutory Text: § 1225(a)(1) Unambiguously Defines an Applicant for Admission as an Alien Present in the United States Without Having Been Admitted.

The statutory language is unambiguous: "An alien present in the United States who has not been admitted … shall be deemed … an applicant for admission." 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109; *Jennings*, 583 U.S. 288; *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025); *Garibay-Robledo v. Noem, et al*, No. 1:25–CV–177–H (N.D. Tex. Oct. 24, 2025); *Barrios Sandoval v. Acuna, et al*, No. 6:25–CV–01467, 2025 WL 3048926 at *3 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson, et al*, No. 25–CV–01463 (W.D. La. Nov. 4, 2025). Even though DHS encountered Petitioner within the interior of the United States, he is nonetheless an applicant for admission who DHS has determined through the issuance of an NTA is an alien ***seeking admission*** who is not clearly and beyond a doubt

entitled to be admitted to the United States. *See* 8 U.S.C. §§ 1225(b)(2)(A); 1229a (emphasis added). In other words, the INA mandates that such aliens "shall be detained for a proceeding under section 1229a ["full" removal proceedings]...." 8 U.S.C. § 1225(b)(2)(A).

Given the plain language of § 1225(a)(1), Petitioner cannot plausibly argue that he is not an applicant for admission. Nor can Petitioner plausibly challenge a DHS's officer's determination that he is "seeking admission" simply because he is not currently at the border requesting to come into the United States. Indeed, Petitioner deprived the United States of that opportunity at the border, choosing instead to evade the law altogether and sneak into the United States to live undetected and unlawfully for several years. Such evasion, however, does not bestow him with the benefit of additional process beyond what the statute already affords him: "full" removal proceedings. That he must pursue that ample process while detained is consistent with the plain language of the statute and facially constitutional. The Fifth Circuit explored certain nuances associated with the terms "admitted" and "admission" while analyzing a different INA provision that is not at issue here (8 U.S.C. § 1182(h)). *See Martinez v. Mukasey*, 519 F. 3d 532, 541–42 (5th Cir. 2008).

In *Martinez*, the Court reviewed § 1182(h)(2),[5] which statutorily bars certain aliens from eligibility for a discretionary inadmissibility waiver if, for example, the alien was "admitted to the United States as an alien lawfully admitted for permanent residence" and convicted of an aggravated felony since that "admission." *Id.* The relevant question in *Martinez* was whether Congress intended to also statutorily bar those aliens who had adjusted their status to lawful

---

[5] The relevant portion of the statute reads as follows:

> "No waiver shall be granted under this subsection in the case of an alien who has previously been **admitted to** the United States **as an alien lawfully admitted for permanent residence** if either **since the date of such admission** the alien has been convicted of an aggravated felony..." (emphasis added).

permanent resident ("LPR") within the interior of the United States, as opposed to only those who were initially admitted at the port of entry as LPRs. *Id.* at 541–42. Martinez argued that because he had adjusted his status to LPR while in the interior, as opposed to having been admitted as an LPR at the border, he was not statutorily barred from applying for the waiver under § 1182(h)(2), because he was never "admitted" after inspection by an immigration officer. *Id.* at 542. The government, however, argued that because of the agency's interpretation of the word "admission" in the INA's aggravated felony removal provision, the Court should find that aliens who adjusted their status to LPR are also barred from seeking discretionary waivers under § 1182(h)(2), reasoning that adjusting status "accomplished admission" for purposes of the aggravated felony provision. *Id.* (citing 8 U.S.C. § 1227(a)(2)(A)(iii); *In re Rosas-Ramirez*, 22 I&N Dec. 616 (BIA 1999)). The Fifth Circuit, as a result, was left with the task of deciding which interpretation to use to determine whether an LPR who adjusted status within the United States had been "admitted," for purposes of § 1182(h), statutorily barring him from seeking a discretionary waiver. *Id.* at 543. Upon reviewing the plain language of the statute as a whole and in the proper context, the Fifth Circuit rejected the government's interpretation that the word "admission" in that clause applied to an alien who was never inspected or admitted at the border, finding the INA to be unambiguous as to the definition of "admitted" and "admission":

> For determining ambiguity… if this statutory text stood alone, we would define "admitted" by its ordinary, contemporary, and common meaning. … Congress has relieved us from this task, however, by providing the following definition: "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of that alien into the United States *after inspection and authorization* by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Under this statutory definition, "admission" is the lawful entry of an alien after inspection, something quite different … from post-entry adjustment….

Id. at 544. The Court further noted that unlike the stand-alone terms "admitted" or "admission," as used in § 1182(h), the phrase "lawfully admitted for permanent residence" is an entirely separate

term of art defined in § 1101(a)(20), which *does* encompass both admission to the United States as an LPR and post-entry adjustment of status. *Id.* at 546. Section 1182(h), however, expressly incorporates that term of art, as defined by § 1101(a)(20), separate and apart from its use of the stand-alone word "admitted," as defined by § 1101(a)(13). This interpretation, the Court reasoned, denies a waiver to only those aliens who have been "admitted" [§ 1101(a)(13)] to the United States after inspection as "an alien lawfully admitted for permanent residence" [§ 1101(a)(20)]. In other words, the Fifth Circuit found that an alien who was never inspected at the border had never been "admitted" (as defined under § 1101(a)(13)) or granted "admission;" he had only legalized his status within the United States through adjustment of status [§ 1101(a)(20)]. Martinez, as an alien who had eventually adjusted status but who had never been inspected or admitted at the border, was therefore not statutorily barred from applying for the § 1182(h) waiver. Although he was "lawfully admitted for permanent residence," he was never "admitted" after inspection, meaning that he necessarily did not meet the definition of an alien convicted of an aggravated felony "after admission" under § 1182(h).

Like the Fifth Circuit in *Martinez*, this Court should navigate these nuanced issues by examining the unambiguous language of the controlling INA provisions in this case, which clearly define these various terms in proper context. The same phrase the Court analyzed in § 1182(h) appears in the text of § 1225(a)(1): "alien present in the United States who has not **been admitted** … shall be deemed for purposes of this chapter **an applicant for admission**." (emphasis added). The detention statute pertaining to Petitioner plainly refers to "**an applicant for admission**" … who *DHS determines* is "an alien **seeking admission**" who "is not clearly and beyond a doubt **entitled to be admitted**…." 8 U.S.C. § 1225(b)(2)(A). If Petitioner, who has never been "admitted" after inspection by an immigration officer, is not "seeking admission," then the logical

assumption is that he must be seeking his immediate release *via removal from the United States*. Removal, however, is clearly not what Petitioner requests in this habeas petition. He requests release from custody so that he can seek to remain in the United States; in other words, he is "seeking admission."

Under the plain language of this statute, Petitioner (1) has not been "admitted" to the United States after inspection by an immigration officer [§§ 1182(a)(6), 1101(a)(13)]; (2) is an "applicant for admission" [§ 1225(a)(1)];[6] and (3) is subject to detention during "full" removal proceedings as an alien who DHS has determined is seeking "admission" and who is not clearly and beyond a doubt entitled to be "admitted" [§ 1225(b)(2)(A)]. Indeed, to the extent Petitioner challenges an officer's finding under § 1225(b)(2)(A) that he is "seeking admission," that challenge must be raised in removal proceedings and reviewed only by the circuit court of appeals. 8 U.S.C. §§ 1225(b)(4); 1252(b)(9).

C. Congress Intended to Mandate Detention of All Applicants for Admission, Not Just Those Who Presented for Inspection at a Designated Port of Entry.

Congress, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), corrected an inequity in the prior law by substituting the term "admission" for "entry." *See Chavez*, 2025 WL 2730228, at *4 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *United States v. Gambino-Ruiz*, 91 F.4th 918, 990 (9th Cir. 2024)). Under the prior version of the INA, aliens who lawfully presented themselves for inspection were not entitled to seek bond, whereas aliens who "entered" the country after successfully evading inspection were entitled to

[6] Nothing in § 1101(a)(4) contradicts this definition. Section 1101(a)(4) simply differentiates between an alien seeking admission to the United States at entry (with DHS) versus an alien by applying for a visa (with the State Department) with which to eventually seek admission at entry into the United States.

seek bond. *Id.* DHS's current interpretation of the mandatory nature of detention for aliens subjected to the "catchall" provision of § 1225 furthers that Congressional intent. *Id.* Petitioner's interpretation, however, would repeal the statutory fix that Congress made in IIRIRA. *Id.*

1. Section 1226(a) Is Not Superfluous, Nor Does It Entitle Release or Mandate a Bond Hearing.

That does not leave § 1226(a) meaningless. Section 1226(a) applies to aliens within the interior of the United States who were once lawfully admitted but are now subject to removal from the United States under 8 U.S.C. § 1227(a). *See Jennings,* 583 U.S. at 287–88. As described, *supra*, aliens can be charged in removal proceedings as removable under § 1227(a) in certain circumstances, such as, for example, overstaying a visa or committing specific criminal offenses after having been lawfully admitted. Section 1226(a) allows DHS to arrest and detain an alien during removal proceedings and release them on bond, but it does not mandate that all aliens found within the interior of the United States be processed in this manner. 8 U.S.C. § 1226(a). Notably, § 1226(a) does not require the government to bear the burden of proof at the heightened standard of clear and convincing evidence. There is no binding legal support for Petitioner's argument that this burden should be shifted and heightened, even if § 1226(a) did provide him with a bond hearing.

Notably, Petitioner does not claim he is removable under § 1227(a); indeed, his NTA shows he is charged as "inadmissible" under § 1182(a). As such, it is his burden—not the Government's—to prove he is admissible to the United States. He does not and cannot make such a showing. By statutory definition, therefore, he is an applicant for admission who is seeking admission to the United States.

2. The Laken Riley Act Is Not Superfluous.

Nor does this interpretation render the Laken Riley Act superfluous simply because it appears redundant. Indeed, "redundancies are common in statutory drafting … redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute…" *Barton v. Barr*, 590 U.S. 222, 229 (2020). Even Justice Scalia acknowledged in *Reading Law* that "Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012), 176–77 (emphasis added). Moreover, as the BIA explains, the statutes at issue in this case were:

> … implemented at different times and intended to address different issues. The INA is a complex set of legal provisions created at different times and modified over a series of years. Where these provisions impact one another, they cannot be read in a vacuum.

Matter of Yajure Hurtado, 29 I&N Dec. 216, *227 (BIA 2025). This explanation tracks the Fifth Circuit's approach and reasoning in *Martinez*, 519 F. 3d at 541–42.

D. Petitioner Does Not Overcome Jurisdictional Hurdles.

Section 1252(e)(3) deprives this court of jurisdiction, including habeas corpus jurisdiction, over Petitioner's challenge to detention under § 1225(b)(2)(A). Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)–(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Unlike other provisions within § 1252(e), § 1252(e)(3) applies

broadly to judicial review of § 1225(b) as a whole, not just determinations under subsection (b)(1). *Compare* 8 U.S.C. § 1252(e)(1)(A), (e)(2), *with* 8 U.S.C. § 1252(e)(3)(A). *See Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.' ... We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship."). Here, Petitioner challenges the determination, set forth in writing by both the Department of Justice and DHS, that aliens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). *See, e.g.*, ECF No. 1 ¶¶ 105-109. Petitioner thus seeks judicial review of a written policy or guideline implementing § 1225(b), an action that can be sought only in the District of D.C. under § 1252(e)(3)(A)(ii). *See also* 8 U.S.C. § 1225(b)(4).

Moreover, where an alien challenges ICE's decision to detain him and seek a removal order against him, or if an alien challenges any part of the process by which his removability will be determined, the court lacks jurisdiction to review that challenge. 8 U.S.C. § 1252(g); *see also Jennings*, 583 U.S. at 294–95. In *Jennings*, the Court did not find that the claims were barred, because unlike Petitioner here, the aliens in that case were challenging their continued and allegedly prolonged detention during removal proceedings. *Id.* Here, however, Petitioner is challenging the decision to detain him in the first place, which arises directly from the decision to commence and/or adjudicate removal proceedings against him. *See id.* This is exactly the type of challenge *Jennings* referenced as unreviewable. *Id.*

Finally, there is a channeling provision § 1252(b)(9), which mandates that judicial review

of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action or proceeding brought to remove an alien from the United States must be reviewed by the court of appeals upon review of a final order of removal. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL2617973 (D. Minn. Sept. 9, 2025).

E. On Its Face, and As Applied to Petitioner, § 1225(b)(2)(A) Comports with Due Process.

Section 1225 does not provide for a bond hearing, regardless of whether the applicant for admission is placed into full removal proceedings. The Supreme Court upheld the facial constitutionality of § 1225(b) in *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). An "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n.12 (1983).

That the alien in *Thuraissigiam* failed to request his own release in his prayer for relief does not make the holding any less binding here. *But see Lopez-Arevelo v. Ripa*, No. 25–CV–337–KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025). The alien in *Thuraissigiam* undisputedly brought his claim in habeas, and the Court noted that even if he had requested release, his claim would have failed. *Thuraissigiam*, 591 U.S. at 118–19. Regardless of whether the alien in *Thuraissigiam* was on "the threshold of entry" as an applicant for admission detained under § 1225(b)(1), as opposed to an applicant for admission found within the interior and detained under § 1225(b)(2), the reasoning of *Thuraissigiam* extends to all applicants for admission. Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *Id.; see also Jennings*, 583 U.S. at 297–303.

Mandatory detention of an applicant for admission during "full" removal proceedings does not violate due process, because the constitutional protections are built into those proceedings,

regardless of whether the alien is detained. 8 U.S.C. § 1229a. The alien is served with a charging document (an NTA) outlining the factual allegations and the charge(s) of removability against him. *Id.* § 1229a(a)(2). He has an opportunity to be heard by an immigration judge and represented by counsel of his choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). He can seek reasonable continuances to prepare any applications for relief from removal, or he can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should he receive any adverse decision, he has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5).

Moreover, relief applications are heard more expeditiously on the detained docket than the non-detained docket. *See* Section 9.1(e), Executive Office for Immigration Review | 9.1 - Detention | United States Department of Justice (last accessed December 8, 2025). Some relief applications are subject to an annual cap, requiring immigration judges to "reserve" decisions to grant the application. *See* 8 C.F.R. § 1240.21(c); OPPM 17-04 (last accessed December 8, 2025). Judges are not required to reserve decisions in detained cases, however. *Id.* Detained aliens are specifically exempt from the annual cap for cancellation of removal.

While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioner here raises no such claim where he has been detained for only a brief period pending his removal proceedings. For aliens, like Petitioner, who are detained during removal proceedings as applicants for admission, what Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. The "catchall" provision at § 1225(b)(2)(A) requires two things: (1) a DHS determination that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted; and (2) detention

during "full" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). The NTA in this case provides both. On December 12, 2025, Petitioner is scheduled for a hearing in removal proceedings before an immigration judge on the detained docket. *See* Automated Case Information (last accessed December 8, 2025). As applied here to Petitioner, § 1225(b)(2)(A) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

F. Ex Post Facto Clause Does Not Apply.

Even if Petitioner relied on the prior interpretation of the INA, there is no indication that the new interpretation punishes as a crime Petitioner's prior "innocent" actions. The Supreme Court's decisions in *INS v. St. Cyr*, 533 U.S. 289, 325 (2001) and *Vartelas v. Holder*, 566 U.S. 257, 66 (2012) are both distinguishable, as the alien in those cases had relied on prior versions of the law when considering criminal charges. The Fifth Circuit's decision in *Monteon-Camargo v. Barr* is distinguishable for the same reasons – a new agency interpretation retroactively affected the immigration consequences of prior criminal conduct. 918 F.3d 423 (5th Cir. 2019).

Petitioner's entry in this case was unlawful at the time he entered the United States and remains unlawful today for the same reasons. The current interpretation of the controlling detention statute is not punitive, nor does it deprive him of any defense to removal charges that were available to him under the prior interpretation. The only thing that has changed is the agency's interpretation as to whether Petitioner can seek release on bond while he is in removal proceedings. The statute itself, however, has not changed since Petitioner's entry.

The federal Constitution prohibits both Congress and the States from enacting any "ex post facto law." U.S. Const. art. I, § 9, cl. 3; U.S. Const. art. I, § 10, cl. 1. "Retroactive application of a law violates the Ex Post Facto Clause only if it: (1) 'punish[es] as a crime an act previously committed, which was innocent when done;' (2) 'make[s] more burdensome the punishment for a

crime, after its commission;' or (3) 'deprive[s] one charged with crime of any defense available according to law at the time when the act was committed.'" *Jackson v. Vannoy*, 981 F.3d 408, 417 (5th Cir. 2020) (quoting *Collins v. Youngblood*, 497 U.S. 37, 52 (1990)). "A statute can violate the Ex Post Facto Clause . . . only if the statute is punitive." *Does 1-7 v. Abbott*, 945 F.3d 307, 313 (5th Cir. 2019) (per curiam) (citation omitted).

The Supreme Court and the Fifth Circuit have long recognized that removal proceedings are nonpunitive. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984); *Gonzalez Reyes v. Holder*, 313 F. App'x 690, 695 (5th Cir. 2009). With IIRIRA in 1996, Congress intended to enact a civil, nonpunitive regulatory scheme to fix a statutory inequity between those aliens who present themselves for inspection and those who do not. IIRIRA, among other things, substituted the term "admission" for "entry," and replaced deportation and exclusion proceeding with removal proceedings. *See, e.g., Tula Rubio v. Lynch,* 787 F.3d 288, 292 n.2, n.8 (5th Cir. 2015) (collecting cases). In other words, in amending the INA, Congress acted in part to remedy the "unintended and undesirable consequence" of having created a statutory scheme that rewarded aliens who entered without inspection with greater procedural and substantive rights (including bond eligibility) while aliens who had "actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings'" and subjected to mandatory detention. *Martinez v. Att'y Gen.,* 693 F.3d 408, 414 (3d Cir. 2012) (*quoting Hing Sum v. Holder*, 602 F.3d1092, 1100 (9th Cir. 2010)). Therefore, application of the IIRIRA to Petitioner does not violate the Ex Post Facto Clause.

This administration's interpretation of mandatory detention of applicants for admission only advances Congressional intent to equalize the playing field between those who follow the law and those who do not. Nothing prevents the agency from implementing policy decisions and

interpretations that differ from those of prior administrations. The plain language of the statute in this case is clear, regardless of whether the agency interpreted it differently in the past than it interprets it today. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024); *Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (no amount of policy talk can overcome a plain statutory command). DHS does not dispute that this interpretation differs from the interpretation that the agency has taken previously, nor does it dispute that the agency's own regulations necessarily support the prior interpretation. The statute itself, however, has not changed. Based upon the foregoing, DHS's current interpretation of the mandatory nature of detention under § 1225(b) is nonpunitive.

IV. Conclusion

The Court should deny the Petition in its entirety. Petitioner (1) has not been "admitted" to the United States after inspection by an immigration officer [§§ 1182(a)(6), 1101(a)(13)]; (2) is an "applicant for admission" [§ 1225(a)(1)]; and (3) is subject to detention during "full" removal proceedings as an alien who DHS has determined is seeking admission and is not clearly and beyond a doubt entitled to be admitted [§ 1225(b)(2)(A)]. DHS has statutory authority to detain Petitioner on a mandatory basis during his removal proceedings. Petitioner's pre-removal-order detention is facially constitutional and constitutional as applied to him, as the statute does not provide for a bond hearing, and his detention is not prolonged or indefinite.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: */s/ Tasha May*

Tasha May
Assistant United States Attorney
North Carolina Bar No.: 55518
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7130 (phone)
(210) 384-7358 (fax)
LaTasha.May@usdoj.gov

/s/ Fidel Esparza, II
Fidel Esparza, III
Assistant United States Attorney
Texas Bar No. 24073776
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7026 (phone)
(210) 384-7358 (fax)
Fidel.Esparza@usdoj.gov

Attorneys for Federal Respondents