

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-62395-BB

ELMER CARTAGENA BONILLA,  
Petitioner

v.

KRISTI NOEM, Secretary, U.S.  
Department of Homeland Security,  
*et al.*,  
Respondents.

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**RESPONDENTS' MEMORANDUM OF FACT AND LAW IN  
RESPONSE TO COURT ORDER (ECF NO. 4)**

Respondents, through the undersigned Assistant United States Attorney, respectfully submit this *Memorandum of Fact and Law* in Response to this Court's Order requiring Respondents to "file a memorandum of fact and law to show cause why [Petitioner Elmer Cartagena Bonilla's ("Petitioner") *Emergency Petition for Writ of Habeas Corpus* ("Petition") under 28 U.S.C. § 2241 (ECF No. 1)] should not be granted" (ECF No. 4 at 2).

**BACKGROUND**

Petitioner is a native and citizen of Guatemala who entered the United States without prior authorization or inspection in 2019 (ECF No. 1 at 14). Because Petitioner was in the United States without lawful authorization, he was arrested in September 2025 (*id.* at 2), and was served a Notice to Appear in October 2025, placing him in removal proceedings pursuant to 8 U.S.C. § 1229a (*id.* at 17). Moreover, because Petitioner arrived in the United States with no prior authorization or inspection, he was deemed an "applicant for admission" and was detained, pursuant to 8 U.S.C. § 1225(b), without the right to a bond hearing (*id.* at 2).

On November 24, 2025, Petitioner filed the instant Petition, in which he raises several claims. First, Petitioner claims that Respondents violated Petitioner's Fourth Amendment rights when they engaged in policies based on alleged "discriminatory animus" (*id.* at 19. *See also id.* at 6-10 (describing purported animus)). As discussed below, the Supreme Court stated that petitions for writ of *habeas corpus* are not the appropriate means to address such claims. *Allen v. McCurry*, 449 U.S. 90, 104 (1980) (describing how the purpose of *habeas* relief "is not to redress civil injury, but to release the applicant from unlawful physical confinement").

Second, Petitioner alleges that Respondents violated the Administrative Procedure Act, 5 U.S.C. §§ 701-706, in several ways. As to Respondents' alleged failure "to follow the procedural requirements governing the treatment of affirmative asylum applications and the transfer of jurisdiction between USCIS and EOIR" (ECF No. 1 at 22), this Court lacks jurisdiction to review Petitioner's claims that Respondents improperly initiated proceedings against him. As to the government's alleged improper determination that, consistent with 8 U.S.C. § 1225(b), Petitioner is not entitled to a bond hearing (ECF No. 1 at 2), the plain language supports Respondents' reading of the applicable statute.

## ARGUMENT

### **I. Petitioner's Alleged Civil Rights Violations Are Not Properly Brought in a Habeas Petition.**

Petitioner alleges several civil rights violations in his Petition, including that he was improperly arrested under the Fourth Amendment, deprived of procedural and substantive due process under the Fifth Amendment, and that he was racially profiled (ECF No. 1 at *passim*). These allegations are not properly brought forth in a *habeas* petition. The purpose of *habeas* relief "is not to redress civil injury, but to release the applicant from unlawful physical confinement." *Allen v. McCurry*, 449 U.S. 90, 104 (1980). In the above allegations, Petitioner

is not challenging his current detention but rather the alleged unlawful conditions surrounding his arrest.

Thus, those claims should be brought in a civil-rights action instead of a *habeas* petition. “Claims so far outside the ‘core’ of habeas may not be pursued through habeas.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020); see *France v. Ripa*, Case No. 24-cv-24333-ALTMAN, 2025 WL 895168, 2025 U.S. Dist. LEXIS 82572, at \*1 (S.D. Fla. Jan. 15, 2025) (finding that a civil-rights action, instead of a *habeas* petition, was the proper avenue for relief when petitioner alleged that his Eighth Amendment rights were violated when ICE used excessive force.); *King v. Carlton*, Case No. 21-cv-21634-BLOOM, 2021 WL 2012371, 2021 U.S. Dist. LEXIS 95563, at \*1 (S.D. Fla. May 19, 2021) (finding when a “Plaintiff alleges civil rights violations and seeks to challenge the conditions of his confinement, he should file a civil rights complaint pursuant to 42 U.S.C. § 1983” instead of a *habeas* petition under § 2241.). Therefore, those claims should be denied as they were improperly alleged in a *habeas* petition under § 2241.

**II. This Court Lacks Jurisdiction to Hear Petitioner’s Claims Regarding Respondents’ “Detaining Petitioner” After “Initiating Removal Proceedings.”**

Petitioner asks this Court to review Respondents’ decision to “initiat[e] removal proceedings” against him (ECF No. 1 at 23) and to find that Respondents did so both as part of a nationwide policy of animus (*id.* at 6-10) and as part of a misapplication of the specific rules and procedures related to Petitioner’s unique asylum application (*id.* at 22 (describing Petitioner’s Form I-589)). No matter how Petitioner characterizes his claim, this Court lacks jurisdiction to hear them.

**A. To the Extent Petitioner Alleges Nationwide Conduct, 8 U.S.C. § 1252(e)(3) Bars Review of Petitioner’s Claims.**

Petitioner asks this Court to review “nationwide operations” that Petitioner claims reflect “animus” on the basis of race, ethnicity, or national origin (ECF No. 1 at 6-7). *See also id.* at 20 (describing how the “stop and subsequent arrest . . . flowed directly from official policies and explicit directives...”). Section 1252(e)(3) deprives this Court of jurisdiction, including *habeas corpus* jurisdiction, over such claims. 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), section 1252(e)(3) applies broadly to judicial review of section 1225(b), not just determinations under section 1225(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 “nationwide operations” which is covered by § 1252(e)(3)(A)(ii), and this Court lacks jurisdiction.

**B. 8 U.S.C. § 1252(g) Bars Review of Petitioner's Claims.**

Petitioner asks this Court to review Respondents' decision to "initiat[e] removal proceedings" against him (ECF No. 1 at 23) based on alleged violations of specific procedures related to Petitioner's unique asylum application (*id.* at 22 (describing Petitioner's Form I-589)). Section 1252(g) categorically bars jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action by the [Secretary of Homeland Security] to commence proceedings, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security's decision to commence removal proceedings, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly "aris[es] from" the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) ("The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08-2943 CAS (PJWx), 2008 WL 4286979, at \*4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]") (emphasis added); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at \*6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d

1061 (N.D. Ill. 2007) (“[Plaintiff’s] detention necessarily *arises from* the decision to initiate removal proceedings against him.”) (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (“The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. ... Thus, an alien’s detention throughout this process *arises from* the [Secretary]’s decision to commence proceedings[]” and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). Put in the Supreme Court’s words, detention pending removal is a “specification” of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”).

As such, judicial review of the Petitioner’s claim is barred by § 1252(g).<sup>1</sup>

### **C. 8 U.S.C. § 1252(b)(9) Bars Review of Petitioner’s Claims.**

Finally, this Court lacks jurisdiction to hear Petitioner’s claims, regardless of how they are characterized, because jurisdiction only arises in the Court of Appeals. Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. AADC*, 525 U.S. at 483.

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<sup>1</sup> If this Court disagrees and finds that it has jurisdiction over Count II, it should dismiss that Count because Petitioner has not alleged any specific harm by having an Immigration Judge, pursuant to 8 C.F.R. § 1003.14(b), adjudicate Petitioner’s Form I-589 instead of having USCIS do so. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 342 (2016) (finding no satisfaction of “demands of Article III” because “bare procedural violation . . . may result in no harm”). In this case, the IJ specifically instructed Petitioner to file all applications for relief, but Petitioner failed to file his Form I-589 before the IJ.

Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; see *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at \*2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken 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 [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (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”); accord *Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); cf. *Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *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 Ajlani 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 the court of appeals ensures that aliens 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.”).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those 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 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here, Petitioner challenges the decision and action to detain him, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [him] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial detention”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at \*3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government’s decision to “commence proceedings”). As such, the Court lacks

jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, the Petitioner *does* challenge the government's decision to detain him in the first place. *See, e.g.*, ECF No. 1 at 2 (“The government is detaining him under 8 U.S.C. § 1225(b), claiming he is subject to mandatory detention without the possibility of a bond hearing. This is incorrect.”). Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS's decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

### **III. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Admission or Parole.**

Finally, Petitioner claims that Respondents “improperly denied access to a bond hearing despite qualifying for one under 8 U.S.C. § 1226(a), and Respondents erroneously

applied the legal framework of *Matter of [Yajure] Hurtado*, which does not govern Petitioner's custody status, thereby depriving him of procedural due process" (ECF No. 1 at 25). Accordingly, this case comes down to a question of statutory interpretation. Specifically, what statutory provision controls Petitioner's detention.

Section 1225 applies to "applicants for admission," which includes all "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission are subject to mandatory inspection by immigration officers, 8 U.S.C. § 1225(a)(3), and "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to aliens who arrive in the United States and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings, including, if applicable, referral for a credible fear interview. *See* 8 U.S.C. § 1225(b)(1)(A). If the alien does not indicate an intent to apply for asylum, express a fear of persecution or torture, or is "found not to have such a fear," he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV). If the alien does demonstrate a credible fear, the alien "shall be detained" for further consideration of an asylum application in removal proceedings under 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(1)(B)(ii). Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding under 8 U.S.C. § 1229a "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §

1225(b)(2)(A). Still, the Department of Homeland Security (“DHS”) has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A).

Here, Petitioner admits that he “entered the United States . . . *without inspection* on or about May 29, 2019” and “resided continuously” in the United States since then (ECF No. 1 at 14) (emphasis added). Accordingly, under a plain language reading of § 1225, Petitioner is an applicant for admission and is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the reasons explained more fully below, the Petition should be denied.

Under the plain language of § 1225(b)(2), DHS is prohibited from releasing aliens from DHS custody who, like Petitioner, are present in the United States without admission or parole and are subject to removal proceedings regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”).<sup>2</sup>

**A. The Plain Language of § 1225(b)(2) Mandates Detention of Applicants for Admission.**

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a) defines “applicant for admission” to encompass an alien who either

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<sup>2</sup> Respondents recognize that courts have reached opposite conclusions as to the statutory interpretation issue presented here. A Westlaw search for cases in this District citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), revealed no cases from the Judge assigned this matter.

“arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the Immigration and Nationality Act (“INA”) means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border.

In turn, § 1225(b)(2) provides that “an alien who is an applicant for admission” “*shall* be detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statute’s use of the term “shall” makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception based upon the duration of the alien’s presence in the country or where in the country the alien is located. Therefore, the statute’s plain text mandates that DHS detain all “applicants for admission” who are not clearly and beyond a doubt entitled to be admitted.

Petitioner falls squarely within the statutory definition. He was “present in the United States,” and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a); *see* ECF No. 1 at 14. Moreover, Petitioner cannot establish—and has not even alleged that he can establish—that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, § 1225(b)(2) mandates Petitioner “be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

**B. Applicants for Admission Under § 1225(b)(2) Are Seeking to Be Legally Admitted into the United States.**

As explained above, Petitioner is an “applicant[] for admission” under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. The statute itself makes

clear that an alien who is an “applicant for admission” *is* necessarily “seeking admission.” Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is “seeking admission,” *i.e.*, seeking legal authority to remain in the United States.

**1. The “seeking admission” clause does not negate or otherwise limit the statutorily defined term “applicant for admission”.**

Section 1225(b)(2) requires the detention of an “applicant for admission, if the examining immigration officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an “applicant for admission” is a means of “seeking admission”—no additional affirmative step is necessary. In other words, every “applicant for admission” is inherently and necessarily “seeking admission,” at least absent a choice to pursue voluntary withdrawal or voluntary departure.

For example, § 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (*en banc*) (“or otherwise” means “the first action is a subset of the second action”). Being an “applicant for admission” is thus a particular “way or manner” of seeking admission, such that an alien who is an “applicant for admission” *is* “seeking admission” for purposes of § 1225(b)(2)(A).<sup>3</sup> No separate

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<sup>3</sup> As § 1225 shows, being an “applicant for admission” is only *one* “way or manner” of “seeking admission,” not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful

affirmative act is necessary. *See Matter of Lemus*, 25 I & N. Dec. 734, 743 (BIA 2012) (“[M]any 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”). Accordingly, § 1225(b) unambiguously provides that an alien who is an “applicant for admission” is “seeking admission,” even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

**2. Any perceived redundancy in the statute cannot serve as a basis to avoid the clear language of the statute.**

As explained above, an “applicant for admission” is “seeking admission” under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that “is not a license to rewrite” § 1225 “contrary to its text.” *See Barton v. Barr*, 590 U.S. 222, 239 (2020); *Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance” especially when “the arguably redundant words that the drafters employed ... are functional synonyms” (alterations accepted and emphasis in original)).

“The canon against surplusage is not an absolute rule.” *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). “Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton*, 590 U.S. at 239. “[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Id.* Thus,

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permanent residents returning to the United States are not “applicants for admission” because they are already admitted, but they still may be “seeking admission” under certain circumstances. *See* 8 U.S.C. § 1103(A)(13)(C).

as the Supreme Court explained in *Barton*, “Sometimes the better overall reading of [a] statute contains some redundancy.” *Id.*

Moreover, “the surplusage canon ... must be applied with the statutory context in mind” and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

**C. Section 1226 Does Not Support Petitioner’s Argument.**

Petitioner’s reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner’s detention is controlled by § 1225(b)(2), not § 1226.

Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While there is some overlap between the aliens subject to detention under the two detention provisions, that overlap does not create a redundancy because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to “arrest[] and detain[]” *any* “alien” pending removal proceedings but provides that the Executive also “may release the alien” on bond or conditional parole. 8 U.S.C. § 1226(a). Section 1226(a) provides the detention authority for the significant group of aliens who are *not* “applicants for admission” subject to §

1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the specific governs the general”). For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States. Petitioner’s detention is not controlled by § 1226(a).

**D. The Government’s Reading Comports with Congressional Intent.**

Before 1996, 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. In 1996, Congress passed the 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. Accordingly, the Government’s reading of the statute is not only supported by the express language of § 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099. Accordingly, the INA’s prior framework, which distinguished between aliens based on physical “entry,” had

the ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ including the right to request release on bond, while aliens who had ‘actually presented themselves to authorities for inspection ... were subject to mandatory custody.

*Yajure Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); see also *Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”).

Congress discarded that regime through enactment of IIRIRA. Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the lawful entry of the alien into the United States after inspection and authorization by an immigration

officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been *lawfully* admitted.” House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).

Petitioner’s interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner’s interpretation. *King*, 576 U.S. at 492 (rejecting “petitioners’ interpretation because it would ... create the very [thing] that Congress designed the Act to avoid”). The Government’s reading, on the other hand, is true to Congress’s intent and should be adopted.

**E. The Government’s Reading Accords with *Jennings*.**

The Government’s interpretation is consistent with the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to “impos[e] an implicit 6-month time limit on an alien’s detention” under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government’s reading, the Court recognized in its description of § 1225(b) that §

“1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* at 287.

### CONCLUSION

For all these reasons, this Court should deny the Petition. Petitioner’s claims of a nationwide policy of animus are not properly before *this* Court or through a Petition for *habeas* relief. Moreover, this Court lacks jurisdiction to review Respondents’ decision to initiate proceedings against him. Finally, because Petitioner is an “applicant for admission” to the United States (in that he entered without prior authorization or inspection), he is not entitled to a bond hearing.

Respectfully submitted,

**JASON A. REDING QUIÑONES**  
**UNITED STATES ATTORNEY**

By: *H. Ron Davidson*  
H. RON DAVIDSON  
ASSISTANT U.S. ATTORNEY  
Court ID A5501144  
U.S. Attorney’s Office  
99 N.E. 4th Street, Suite 300  
Miami, Florida 33132  
Telephone: (305) 961-9405  
E-mail: H.Ron.Davidson@usdoj.gov  
*Counsel for Respondents*