

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 25-25567-BECERRA

PAULINO GARCIA-GOMEZ,
ISIDRO GARCIA-GOMEZ,
Petitioners,

v.

GARRETT RIPA, in his official capacity as
Field Office Director of U.S. Immigration and
Customs Enforcement Miami Field Office;
KRISTI NOEM, in her official capacity as the
Secretary of the U.S. Department of Homeland
Security; PAMELA BONDI, in her official capacity as
Acting Attorney General of the United States.
Respondents.

**RESPONDENTS' RETURN IN OPPOSITION
TO THE PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, by and through the undersigned Assistant United States Attorney, submit the following return in opposition to the Petition for Writ of Habeas Corpus (ECF No. 1) (Petition). For the reasons set forth below, the Petition should be denied.¹

INTRODUCTION

Petitioners, Paulino Garcia-Gomez and Isidro Garcia-Gomez, entered the United States without inspection or parole in 2008 and 2004, respectively. Petition at ¶¶ 20-36. They were detained on October 9, 2025, and are currently in custody at Broward Transitional Center, in

¹ Respondents recognize that courts in this District have rejected similar arguments to those presented herein. *See, e.g., Perez v. Parra*, Case No. 25cv24820 (S.D. Fla.). Courts in this District and elsewhere, however, have also *denied* habeas petitions on the grounds presented herein. *See, e.g., Order on Petition for Writ of Habeas Corpus*, ECF No. 15 in *Rodriguez Izquierdo v. Ripa*, Case No. 25-61845-CIV-SMITH; *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025); *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025)

Pompano Beach, Florida, pending removal proceedings. *Id. Id.* at ¶ 2 They allege that they are being unlawfully denied a bond hearing. *Id.* at ¶ 55.

Petitioners argue that because they were apprehended after having lived in the United States for several years, neither of them is an “arriving alien” subject to INA § 235 (8 U.S.C § 1225), but are instead subject to INA § 236(a) (8 U.S.C § 1226(a)), a provision of the INA that authorizes the arrest and detention of aliens pending removal on a warrant issued by the Attorney General, and which allows discretion for the alien’s release on bond or through conditional parole. Petition at ¶ 45. Petitioners ask the Court to issue “a writ of habeas corpus requiring that they be released unless Respondents provide a bond hearing under [8 U.S.C.] § 1226(a) within seven (7) days..” Petition at 2.

This case thus comes down to a question of statutory interpretation. Specifically, what statutory provision controls each Petitioner’s detention? As demonstrated below, each Petitioner is an applicant for admission, as defined under § 1225(a)(1), who entered the United States without inspection and is subject to INA § 235(b)’s (8 U.S.C § 1225(b)) unequivocal requirement of detention.

Section 1225(b)(2)(A) mandates detention for “an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Pursuant to § 1225(a), “[a]n alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1). Each Petitioner admits that he entered the United States “without inspection or parole.” Petition at ¶¶ 21, 29. Accordingly, under a plain language reading of § 1225, each 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.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioners, Paulino and Isidro Garcia-Gomez, are natives and citizens of Guatemala. *See* Exh. A, A-388 Form I-213, Record of Deportable/Inadmissible Alien, (A-388 Form I-213) dated October 9, 2025; Exh. B, A-389 Form I-213, Record of Deportable/Inadmissible Alien, (A-389 Form I-213) dated October 9, 2025.

Petitioner Paulino Garcia Gomez entered the United States without inspection at an unknown place and unknown date. *See* Exh. A, A-388 Form I-213. Petitioner Isidro Garcia Gomez

entered the United States without inspection at an unknown place on or about October 1, 2004. *See* Exh. B, A-389 Form I-213.

On October 9, 2025, Florida Highway Patrol encountered the Petitioners during a traffic stop. *See* Exh. A, A-388 Form I-213; *see also* Exh. B, A-389 Form I-213. After being unable to provide any state or immigration documents, they were detained by U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). *See* Exh. A, A-388 Form I-213; *see also* Exh. B, A-389 Form I-213; *see also* Exh. C, A-388 Detention History; *see also* Exh. D, A-389 Detention History; *see also* Exh. E, A-388 Form I-200, Warrant for Arrest of Alien dated October 9, 2025; *see also* Exh. F, A-389 Form I-200, Warrant for Arrest of Alien dated October 9, 2025; *see also* Exh. G, A-388 Form I-826 Notice of Rights and Request for Disposition; *see also* Exh. H, A-389 Form I-826 Notice of Rights and Request for Disposition; *see also* Exh. I, A-388 Form I-286, Notice of Custody Determination and Exh. J, A-389 Form I-286, Notice of Custody Determination.²

Paulino Garcia Gomez requested a hearing before the immigration court to determine whether he may remain in the United States, while Isidro Garcia Gomez refused to respond or sign the Notice of Rights and Advisals. *See* Exh. G, A-388 Form I-826 Notice of Rights and Request for Disposition; *see also* Exh. H, A-389 Form I-826 Notice of Rights and Request for Disposition.

On November 4, 2025, ICE ERO placed Petitioners in removal proceedings by filing Notices to Appear with the Executive Office for Immigration Review (EOIR). *See* Exh. K., Declaration of Deportation Officer Shane W. Baksh. Paulino Garcia Gomez was charged with being in the United States in violation of INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Exh. N, A-388 NTA. Petitioner Isidro Garcia Gomez was charged with being in the United States in violation of INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, and §

² On October 9, 2025, DHS issued Petitioners a Form, I-286, Notice of Custody Determination, along with other documents. *See* Exh. L, A-388 Form I-286, Notice of Custody Determination; *see also* Exh. M, A-389 Form I-286, Notice of Custody Determination; *see also* Exh. K, Declaration of Deportation Officer Shane W. Baksh. On November 29, 2025, ICE ERO cancelled the Form I-286 as improvidently issued, as the Petitioners are applicants for admission who are detained pursuant to INA § 235(b)(2)(A). *See* Exh. L, A-388 Form I-286 Canceled; *see also* Exh. M, A-389 Form I-286 Canceled; *see also* Exh. K, Declaration.

212(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. *See* Exh. O, A-389 NTA.

Petitioners' removal proceedings are ongoing before the immigration court. *See* Exh. K, Declaration. On November 25, 2025, Petitioner Paulino Garcia Gomez had an initial master calendar hearing at which his counsel requested attorney preparation time, and the court scheduled another master calendar hearing for January 8, 2026. *See* Exh. P., A-388 Master Calendar Hearing Notice; *see also* Exh. K, Declaration. On November 20, 2025, Petitioner Isidro Garcia Gomez had an initial master calendar hearing at which his counsel requested attorney preparation time, and the court scheduled another master calendar hearing for January 13, 2026. *See* Exh. Q, A-389 Master Calendar Hearing Notice; *see also* Exh. K., Declaration. On November 28, 2025, Petitioners requested a custody determination hearing from EOIR, which is scheduled for December 12, 2025. *See* Exh. K, Declaration.

Petitioners remain detained at the Broward Transitional Center (BTC), in Pompano, Florida. *See* Exh. C., A-388 Detention History and Exh. D., A-389 Detention History.

ARGUMENT

I. Section 1225(b)(2) Mandates Detention of Aliens Like the Petitioners Here, Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of § 1225(b)(2), the Government is required to detain all aliens, like the Petitioners here, who are present in the United States without admission 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.”).

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) deems all aliens who either “arrive[] in the United States” or who are “present in the United States [and] who ha[ve] not been admitted” to be “applicant[s] for admission.” 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). 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 the Government detain all “applicants for admission” who are not clearly and beyond a doubt entitled to be admitted.

Petitioners here fall squarely within the statutory definition. Each is “present in the United States,” and there is no dispute that each has “not been admitted.” 8 U.S.C. § 1225(a); *see* Petition at ¶¶ 21, 29. Moreover, neither Petitioner can establish—and neither has 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 that each 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, each 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 the Petitioners, 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 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).³ No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 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

³ 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 permanent residents returning to the United States are not “applicants for admission” because they are already admitted, but they still may be deemed to be “seeking admission” in some circumstances. *See* 8 U.S.C. § 1103(A)(13)(C).

rewrite” § 1225 “contrary to its text.” *Barton v. Barr*, 590 U.S. 222, 239 (2020); see *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, as the Supreme Court explained in *Barton*, “[s]ometimes the better overall reading of a statute contains some redundancy.” *Id.*

Moreover, “the surplusage cannon ... must be applied with 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.

3. Applicants for admission are seeking admission when they seek to lawfully remain in the United States.

Even if “seeking admission” requires some separate affirmative conduct by the alien, an applicant for admission who attempts to avoid removal from the United States rather than trying to withdraw their admission and depart voluntarily, is “seeking admission.” This position is buttressed by § 1225(a)(4), which authorizes an alien to voluntarily “withdraw the application for admission and depart immediately from the United States.” 8 U.S.C. § 1225(a)(4). An applicant who forgoes that statutory option is attempting to obtain admission to the United States in the same way as someone who is encountered immediately after crossing the border. There is no legal distinction, in § 1225(a)(1) or (b)(2) between the treatment of applicants for admission based upon

when and where they are encountered—either at the interior of the United States or at the border soon after entry. That distinction is only relevant in the application of § 1225(b)(1), the expedited removal statute, which is not at issue here. Section 1225(a)(4) is clear that if an individual is an “alien present in the United States who has not been admitted,” *see* 1225(a)(1), who has not withdrawn their application for admission, the individual is necessarily seeking admission into the United States, *see* § 1225(b)(2).

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

Petitioners’ reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioners’ 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, as explained below, 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. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed “applicants for admission” subject to § 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable, like those who overstay a visa or lawful permanent residents who engage in conduct that renders them removable.⁴ Thus, section 1225(b)(2) is the more specific detention provision. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the specific governs the general”). Accordingly, § 1226(a) does not control Petitioner’s detention.

Section 1226(c) provides for mandatory detention and is an exception to § 1226(a)’s discretionary detention regime. It requires the Executive to detain “any alien” who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Petitioners allege that they “have no known criminal convictions.” Petition at 1. Accordingly, there is no basis to suggest they are detained under § 1226(c).

Earlier this year, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 2 (2025), amending portions of § 1226(c). While that amendment adds some overlap between aliens

⁴ The detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

subject to detention under § 1225(b)(2) and § 1226(c), that overlap does not apply to the Petitioners, and as explained below, it does not create a redundancy as the amendment does independent work.

The Laken Riley Act provides for mandatory detention for an alien who is “present ... without being admitted or paroled”—i.e., is inadmissible under §1182(a)(6)(A)—and “is charged with, is arrested for, is convicted of, admits having committed, or admits committing” one of the enumerated criminal acts. 8 U.S.C. § 1226(c)(1)(E). Aliens subject to detention under § 1226(c)(1)(E) are effectively applicants for admission that committed one of the enumerated acts and, as applicants for admission, would also be subject to mandatory detention under § 1225(b)(2). There is no redundancy, however, because the two statutes provide for different forms of release.

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 a result “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

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.

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 (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).

Petitioners' 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 eliminate. Accordingly, this Court should reject Petitioners' 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.

F. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practice

Petitioners' argument about prior agency practice applying § 1226(a) to them is unavailing because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." *Loper Bright*, 603 U.S. at 411. *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Id.* at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*.

II. Petitioners have failed to exhaust their administrative remedies.

The Court should also dismiss the petition for writ of habeas corpus for lack of jurisdiction because Petitioners have failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Here, on November 28, 2025, Petitioners requested a custody determination hearing from EOIR, and a hearing is scheduled for December 12, 2025. See Exh. K, Declaration. If Petitioners are denied release from custody, the Board of Immigration Appeals will have authority to review the custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). Thus, neither Petitioner has a final administrative order concerning custody.

III. 8 U.S.C. § 1252(e)(3) bars review of Petitioners' claims.

Section 1252(e)(3) of Title 8 deprives this court of jurisdiction, including habeas corpus jurisdiction, over Petitioners' 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 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, Petitioners challenge 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). Petitioners thus seek judicial review of a written policy or guideline implementing § 1225(b), which is covered by § 1252(e)(3)(A)(ii).

IV. 8 U.S.C. § 1252(g) bars review of Petitioner's claim[s].

Section 1252(g) of Title 8, U.S. Code, 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 *Khorrani 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). 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[s] is barred by § 1252(g).

V. 8 U.S.C. § 1252(b)(9) bars review of Petitioner’s claim[s].

Under 8 U.S.C. § 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.*

American-Arab Anti-Discrimination Comm., 525 U.S. 471, 483 (1999) (“AADC”). 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/her], which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [him/her] 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 *do* challenge the government’s decision to detain them in the first place. Though the Petitioner frames their challenge as relating to detention authority, rather than a challenge to DHS’s decision to detain them in the first instance, such framing does not evade the preclusive effect of § 1252(b)(9).

The fact that Petitioners are challenging the basis upon which they are 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 Petitioners’ claims for lack of jurisdiction under § 1252(b)(9). Petitioners must instead present their claims before the appropriate court of appeals because they challenge the

government's decision or action to detain them, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted.

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