

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DIEGO EDUARDO
VENTURA GAMEZ,

Petitioner,

Case No. 3:25-cv-01510-JEP-LLL

v.

WARDEN, Baker Correctional
Institution, U.S. Immigration and
Customs Enforcement; FIELD OFFICE
DIRECTOR, Jacksonville Sub Field
Office, U.S. Immigration and Customs
Enforcement; FIELD OFFICE
DIRECTOR, Miami Field Office, U.S.
Immigration and Customs Enforcement

Respondents.

RESPONSE TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

The Federal Respondents,¹ and Warden of the North Florida Detention Center (“NFDC”)² (collectively, the “Respondents”), hereby respond to Plaintiff’s Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241. Doc. 1. As set forth below, the Court should deny habeas relief and dismiss the Petition because the Court lacks

¹ Garrett Ripa is the Field Office Director for the United States Immigration Customs Enforcement (“ICE”) Enforcement and Removal Operations (“ERO”) covering Florida, which includes the Jacksonville Field Office.

² NFDC is operated out of the now closed Baker Correctional Institute in Sanderson, Florida. The facility now has a new name although it is the same place. Ronnie Woodall was the Warden at the Baker Correctional Institute when it was operated by the State of Florida as a men’s prison, *see* www.fdle.state.fl.us, but at the time of this filing, there is not a named person as the facility administrator of the NFDC.

jurisdiction here. Apart from that, Petitioner's detention is lawful. In support, Respondents provide as follows:

I. BACKGROUND


1. Petitioner, Diego Eduardo Ventura Gamez, is a native and citizen of Guatemala who entered the United States without inspection at or near Rio Grand City, Texas, on or about March 21, 2018, when he was 16 years old. *See* Doc. 1-3 (Notice to Appear dated March 23, 2018). Petitioner has not been admitted or paroled. *Id.* As an unaccompanied juvenile, Petitioner was taken into custody of the Office of Refugee Resettlement ("ORR") and personally served with a notice to appear in removal proceedings. *Id.* at 2. In an interview with a border patrol agent, Petitioner admitted that he crossed the U.S.-Mexico border illegally and intended to travel to Apopka, Florida, where his brother lived, to reunite with his brother. *See* **Exhibit A** (2018 Form I-213, Record of Deportable/Inadmissible Alien) at 3.

2. On or about May 16, 2018, while Petitioner was still 16 years old, he was released from ORR custody to that of a sponsor, specifically his adult brother. *See* Doc. 1 at ¶ 4; *see also*, Doc. 1-2 (ORR Verification of Release).

3. On or about October 17, 2019, through counsel, Petitioner filed an application for asylum. Therein, and through counsel, Petitioner admitted the allegations and conceded his removability on October 17, 2019. Due to the pandemic, Petitioner's subsequent hearing, which was scheduled for May 7, 2020, was canceled.

4. In early 2020, Petitioner reached the age of majority.

5. On May 18, 2022, Petitioner's Form I-360 was approved. *See* Doc 1-4 (Form I-797C, Notice of Action). The Notice of Action indicated that "deferred action is an act of administrative convenience to the government which gives some cases lower priority from the United States for a specific amount of time." *Id.* The Notice did not indicate that the granting of deferred action serves as a functional equivalent of a stay of removal. *See id.*

6. On  Petitioner's daughter was born in Orlando, Florida.

7. On August 23, 2024, the immigration court filed a notice of intent to remove the case from its calendar. The notice stated that "absent opposition," the case would be de-calendared because Petitioner "ha[d] a pending application or petition with the USCIS," presumably Petitioner's asylum application. Not opposition was registered and the case was removed from the court's calendar.

8. On April 10, 2025, the court filed a notice re-docketing the case and scheduling a master-calendar hearing for January 5, 2027.

9. On November 11, 2025, U.S. Border Patrol ("USPB") and Florida Highway Patrol ("FHP") observed a grey Ford truck, with an obscured license plate, improperly change lanes on a Florida toll road. *See Exhibit B* (2025 Form I-213, Record of Deportable/Inadmissible Alien). FHP conducted a records check on the license plate, which query revealed that Petitioner was the registered owner of the

vehicle. *Id.* at 2. USBP also conducted an immigration database check that revealed that Petitioner had entered the United States without inspection in 2018. *Id.* FHP activated emergency lights, ordering the truck to stop. When the truck stopped, six occupants of the truck fled. *Id.* Petitioner was the driver and admitted that he was a Guatemalan national who was illegally present in the United States. *Id.* at 3. Upon arrest, Petitioner was taken to the Orlando Border Patrol Station to be processed. *Id.* A further records check indicated that Petitioner's vehicle had been involved in two previous traffic stops: 1) on October 3, 2024, Petitioner was the driver during the traffic stop whereat a number of subjects fled following the traffic stop and three subjects were arrested, and 2) on February 17, 2025, Petitioner was not present when his vehicle was stopped whereat a number of subjects fled following the traffic stop and five subjects were arrested. *Id.* Moreover, Petitioner has been cited for several traffic infractions and toll violations. *See Exhibit C* (Case Log Report).

10. On December 3, 2025, an Immigration Judge ("IJ") denied Petitioner's motion for bond, specifically because "Immigration Judges lack authority to hear bond requests or [to] grant bond to aliens present in the United States without admission and in removal proceedings, based on the plain language of 8 U.S.C. § 1225(b)(2)(A)," citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See Doc. 1-6* (Immigration Judge's Bond Order) at 3; *see also, Doc. 1 at ¶¶ 17-18*. Petitioner has not appealed this bond decision to the Board of Immigration Appeals ("BIA").

11. On December 9, 2025, Petitioner filed the instant Petition for habeas relief. *See* Doc. 1. Specifically, Petitioner asks this Court to “hold that § 1226(a) governs [Petitioner’s] custody and to order Respondents to release Petitioner or at least provide him the individualized custody redetermination hearing before an immigration judge.” *Id.* at ¶ 25.

12. On January 7, 2025, Petitioner had a hearing in immigration court. On or about that date, Petitioner’s counsel confirmed that Petitioner has secured a medical examination while in detention to proceed with Petitioner’s application to adjust status based upon his approved Special Immigration Juvenile Status (“SIJS”) status. *See* 8 U.S.C. § 1255(h). Now, rather than asylum, Petitioner’s proposed relief adjustment of status based upon his approved SIJS status.

13. As of today, January 9, 2026, Petitioner has been in custody for 57 days.

II. LEGAL STANDARDS

It is axiomatic that “[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon MobilCorp. v. Allopeth Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress had separately stripped the court of jurisdiction to hear the claim. To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his custody is in violation of the Constitution, laws,

or treatises of the United States. See 28 U.S.C. § 2241(c)(3). It is Petitioner who bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021); *Martin v. Beto*, 397 F.2d 741, 749 (5th Cir. 1968).

III. STATUTORY AND REGULATORY BACKGROUND

A. Detention of Unlawful Aliens

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as inadmissible, arrest noncitizens subject to removal, and detain noncitizens during their removal proceedings. See *Abel v. United States*, 362 U.S. 217, 232–37 (1960). The Immigration and Nationality Act (“INA”) provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. See generally 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

i. Detention Under 8 U.S.C. § 1225 for Applicants for Admission

“The inspection, detention, and removal of aliens who have not been admitted is governed by section 235 of the INA, 8 U.S.C. § 1225.” *Matter of Yajure Hurtado*, 29 I&N Dec. at 218. Section 1225 applies to “applicants for admission,” who are defined as “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). All “aliens [] who are applicants

for admission ... shall be inspected by immigration officers” to determine if they are admissible to the United States. *Id.*, § 1225(a)(3). The term “admission” is defined by the INA 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). Applicants for admission “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 arriving aliens and “certain other” noncitizens “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 noncitizens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the individual “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An individual “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the individual does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV). Section 1225(b)(2), the provision under which ICE contends Petitioner is detained, 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 individual “who is an applicant for admission”

shall be detained for a removal proceeding “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); see *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (“The third category of applicants for admission . . . are those aliens who are seeking admission and who an immigration officer has determined are ‘not clearly and beyond a doubt entitled to be admitted.’ . . . [T]he INA requires that this third “catchall” category of applicants for admission be mandatorily detained for the duration of their immigration proceedings.”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).

Pursuant to regulation concerning the “scope of examination” for an applicant for admission, an “alien present in the United States who has not been admitted or paroled . . . is subject to the provisions of section 212(a) of the Act [8 U.S.C. § 1182] and to removal under section 235(b) [8 U.S.C. § 1225(b)] or 240 of the Act [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

The Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *Jennings*, 583 U.S. at 302 (“[Section] 1225(b)(2) . . . mandate[s] detention of aliens throughout the completion of applicable

proceedings and not just until the moment those proceedings begin.” (emphasis added)). Once in removal proceedings, an IJ “shall conduct proceedings for deciding the inadmissibility or deportability of an alien.” 8 U.S.C. § 1229a(a)(1). Such proceedings are the “sole and exclusive procedure for determining whether an alien may be admitted to the United States.” *Id.* § 1229a(a)(3).

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.” 8 U.S.C. § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

ii. Detention Under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention with a warrant “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a).³ Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.⁴ Section 1226(a) “does not purport to overrule the mandatory detention requirements for arriving aliens and applicants for admission explicitly set forth” in Section 1225(b)(1)

³ Notably, § 1226 does not use the term “applicant for admission,” who properly fall under 8 U.S.C. § 1225, but instead details treatment of “alien[s].”

⁴ Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security.

and (2). *Matter of Yajure Hurtado*, 29 I&N Dec. at 219. By regulation, immigration officers can release aliens if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). If, after the bond hearing, either party disagrees with the decision of the IJ, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

ICE has broad statutory and regulatory authority to revoke release and return an individual to detention. Pursuant to 8 U.S.C. § 1226(b), ICE “at any time may revoke a bond or parole authorized under [Section 1226(a)], rearrest the alien under the original warrant, and detain the alien.” The relevant regulation explains that when an alien is released by ICE, “such release may be revoked at any time in the discretion of [certain immigration officers], in which event the alien may be taken into physical custody and detained.” 8 C.F.R. § 236.1(c)(9).

B. Special Immigration Juvenile (“SIJ”) Status

“Congress established SIJ status in 1990 to protect abused, neglected or abandoned children who, with their families, illegally entered the United States, ... and

it entrusted the review of SIJ petitions to USCIS, a component of DHS.” *Osorio-Martinez v. Attorney General United States of America*, 893 F.3d 153, 162 (3d Cir. 2018) (quotations and citations omitted).

An individual designated as a SIJ receives several important benefits, but is still subject to arrest, detention, and removal from the United States if a final order of removal is entered against such individual. *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (Explaining that while “[t]he SIJ program offers aliens a multitude of benefits and protections, including the opportunity to seek lawful permanent resident status[,] ... [i]n and of itself, though, an SIJ designation does not strip the U.S. government of all removal powers.”). An individual with SIJ status can apply for adjustment of status if they are eligible, admissible, and an immigrant visa is immediately available. If an application for adjustment of status is granted, the individual receives Lawful Permanent Resident status. 8 U.S.C. § 1255; 8 C.F.R. § 245.1(e)(3)(i). As to an application for adjustment of status, the INA automatically exempts SIJ designees from a set of generally applicable grounds of inadmissibility and provides that other grounds of inadmissibility may be waived at the Attorney General's discretion. 8 U.S.C. §§ 1255(h)(2), 1182(a).

Under the INA, to adjust status, “an immigrant visa [must be] immediately available” at the time an application is filed and adjudicated. 8 U.S.C. § 1255(a). In 2022, USCIS recognized that “[d]ue to ongoing visa number unavailability, the

protection that Congress intended to afford SIJs through adjustment of status is often delayed for years...”.⁵ Consequently, USCIS updated its policy guidance “to provide that USCIS will consider granting deferred action on a case-by-case basis to noncitizens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visa numbers.” *Id.*

USCIS made clear in the Policy Alert, however, that “[n]oncitizens without lawful status who have an approved SIJ petition **remain subject to removal**” because “SIJ classification does not render a noncitizen lawfully present, does not confer lawful status, and does not result in eligibility to apply for employment authorization.” *Id.* (emphasis added). USCIS’s Policy Manual provides that an “alien’s deferred action remains valid for the authorized period, unless terminated by USCIS, on a case-by-case basis, as a matter of discretion.”⁶

⁵ USCIS Policy Alert-2022-10, available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf> (last visited January 9, 2026). On November 19, 2025, Judge Eric Komitee granted a stay of USCIS’s rescission of the 2022 SIJ Deferred Action Policy. *A.C.R. et al. v. Noem, et. al.*, No. 1:25-cv-03962 (E.D.N.Y). As of the date of this filing, SIJS-based deferred action has been restored. See <https://cilacademy.org/2025/12/09/uscis-termination-of-sijs-based-deferred-action/> (last visited January 9, 2026).

⁶ USCIS Policy Manual, Volume 6, Part J, Chapter 4G – Adjudication, available at <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4> (last visited January 9, 2026). In the immediately previous version of the Policy Manual, the Manual described SIJ status for deferred action as “an act of prosecutorial discretion that defers proceedings to remove an alien from the United States for a certain period of time.” USCIS made clear that “[d]eferred action does not provide lawful status” and that USCIS “reserves the right to terminate the grant of deferred action and revoke the related employment authorization at any time as a matter of discretion.” Because USCIS is no longer considering SIJS recipients

Generally, to qualify for lawful permanent residence under 8 U.S.C. § 1255, an individual must have been “inspected and admitted” or “paroled” into the United States. 8 U.S.C. § 1255(a). Parole in the immigration context has a specific meaning: it is an “entry fiction” wherein a paroled noncitizen is considered to be “standing at the border” despite being permitted to physically enter the country. *Michel v. Mayorkas*, No. 1:20-CV-10882-IT, 2021 WL 797810, at *7 (D. Mass. Mar. 2, 2021) (citing *Leng Mey Ma v. Barber*, 357 U.S. 185 (1958)). The Supreme Court has explained that parole “is simply a device through which needless confinement is avoided while administrative proceedings are conducted.” *Leng Mey Ma*, 357 U.S. at 190.

It follows that an individual who enters unlawfully (i.e., has not been inspected and admitted or inspected and paroled into the United States) is generally ineligible for lawful permanent residence through an application for adjustment of status under Section 1255(a) unless an exception applies. *Id.* Many SIJs entered the United States unlawfully—like Petitioner—and as they were neither “inspected and admitted,” nor “inspected and...paroled” in accordance with this eligibility requirement for lawful permanent residence. Congress therefore created a special statutory provision to ensure that the many SIJ-classified individuals who entered the U.S. unlawfully would nonetheless be eligible to apply for adjustment of status under Section 1255 without

for deferred action—although prior grants, like Petitioner’s grant remain in effect—the current version of the Policy Manual no longer contains this language.

having to depart the United States to obtain their immigrant visa. 8 U.S.C. § 1255(h)(1). Under this provision, SIJs “shall be deemed, for the purposes of [admission or parole for adjustment of status under 8 U.S.C. § 1255(a)], to have been paroled into the United States[.]” *Id.* § 1255(h)(1). This provision, however, only deems an SIJ recipient “to have been paroled into the United States” ... “for purpose of subsection (a),” i.e. the paragraph that provides the statutory basis to adjust status to a Legal Permanent Resident and for no other purpose.

Multiple courts have explained that SIJ designation does not forestall detention and removal from the United States. For example, the U.S. Court of Appeals for the Third Circuit considered, and answered in the affirmative, the question of whether an SIJ recipient “is subject to removal simply for presence in the United States ‘without being admitted or paroled.’” *Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 432 (3d Cir. 2023). In that case, the individual (like Petitioner), *see Doc. 1 at ¶ 53*, was charged as inadmissible from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) which provides that “[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.” While this ground of inadmissibility does not prevent an SIJ designee from applying for adjustment of status, *see 8 U.S.C. § 1255(h)(2)*, the court found that it does apply for purposes of removal. *Cortez-Amador*, 66 F.4th 433 (emphasis added).

Like here, in *Cortez-Amador*, the petitioner claimed that because 8 U.S.C. § 1225(h) deems SIJ designees as paroled for purpose of applying for adjustment of status, then the ground of inadmissibility set forth above could not apply to render him subject to removal from the United States. *Id.* The Third Circuit disagreed and explained that Section 1255(h) “expressly states that a noncitizen with SIJ status shall be deemed to have been paroled for purposes of subsection (a) of that section, i.e., for adjustment of status to a legal permanent resident only.” *Id.* The court explained that “if in § 1255(h) Congress had intended a noncitizen with SIJ status to be deemed paroled for purposes of removal, it would have included reference to removability or 8 U.S.C. § 1182,” *i.e.* the statutory provision that details the different grounds of inadmissibility that serve as basis for removal. *Id.* The Third Circuit reasoned that “Congress could have rationally decided that SIJ recipients should be given the opportunity to apply for adjustment of status, while also contemplating that they may be removed if their application is denied or for another appropriate basis.” *Id.*, n.11.

Similarly, in *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018), the court held that “an SIJ designation does not strip the U.S. government of all removal powers.” Instead, the court explained, “the government retained the power to remove Granados-Alvarado in spite of his SIJ status” because of his inadmissibility to the United States. *Id.* The court rejected the argument that Petitioner presents here that an SIJ designee has lawful status because of § 1255(h)

which deems an SIJ “paroled into the United States” because that section only applies for the purpose of applying for adjustment of status. *Id.* at 361. Explained further, “§ 1255(h) does not accord Granados-Alvarado parolee status for any purposes other than for his application for adjustment of status. ... It does not make his presence lawful ...”. *Id.* at 362. *See also*, *Cruz-Gonzalez on behalf of D.M.S.C. v. Kelly*, No. CV 16-5727, [2017 WL 3390234](#), at *5 (E.D. Pa. Aug. 7, 2017) (Rejecting argument that SIJ approval grants immigration status and prevents removal from the United States and also agreeing with government’s argument that being “deemed paroled” under 8 U.S.C. § 1255(h) “does not cancel a final order of removal or an underlying basis of inadmissibility or removability.”).

IV. ARGUMENT

This Court cannot extend the writ of habeas corpus for Petitioner unless he demonstrates that he “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Here, Petitioner cannot.

A. Petitioner’s SIJ Status Does Not Bar Removal.

Petitioner argues that the grounds of an inadmissible non-citizen present in the United States “without being admitted or paroled” does not apply to a special immigrant because he cannot be removed for having entered the country illegally. *Id.* at ¶¶ 53-54. Specifically, Petitioner argues that ICE lacks legal authority to continue

pursuing removal proceedings against him and that it, further, lacks the authority to detain him pending removal proceedings. *See* Doc. 1 at ¶ 55.

Not so. Petitioner USCIS' approval of Petitioner's SIJ petition (Form I-360), *see* Doc. 1-4, did not provide him with lawful immigration status in the United States and did not bar ICE from effectuating his removal. At best, Petitioner's deferred action status makes him a "lower priority for removal from the United States for a specific period of time," *see id.*, but does not serve as a functional equivalent of a stay of removal as ICE retains ultimate authority to execute an outstanding final order even if someone has deferred action. *See supra* at 12; *see also, supra* fn. 5 & 6 (Policy Alert-2022-10). Petitioner's SIJ classification has no effect on the government's statutory or regulatory authority to either detain or remove him because the SIJ designation alone does not render Petitioner lawfully present in the United States. *Id.*

B. Petitioner is Subject to Mandatory Detention.

Through this action, Petitioner contends that his detention by ICE is unlawful because he is not subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). *See* Doc. 1 at ¶ 20. Instead, Petitioner argues that ICE's detention authority emanates from 8 U.S.C. § 1226(a) and asks this Court to "order Respondents to release Petitioner or at least provide him the individualized custody re-determination hearing before an immigration judge." *Id.* at ¶ 21 & 25.

Contrary to Petitioner's assertion, however, his detention is lawful under Section 1225(b)(2). Undoubtedly, Petitioner is present in the United States without prior "admission." See Doc. 1-3. While Petitioner may claim that is not subject to Section 1225(b)(2)'s mandatory detention provision because he is not "seeking admission" to the United States, see Doc. 1 at ¶ 78, Petitioner is currently before an Immigration Judge whose role is to "conduct proceedings for deciding the inadmissibility" through removal proceedings which are "the sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(1)-(3). Because Petitioner does not contend that he is trying to depart from the United States and return to his home country of Guatemala, he is certainly seeking admission to the United States and, therefore, Section 1225(b)(2) requires his detention during such process. As such, this Petition should be denied as Petitioner's detention comports with statute and the Constitution.

i. Petitioner Meets the Statutory Definition of Applicant for Admission.

An examination of the relevant statutory text supports ICE's position that Petitioner is an applicant for admission subject to mandatory detention under Section 1225(b)(2). See *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) ("As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute."); see also, *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017). If the statutory text is clear, the analysis ends. *Bostock v. Clayton County, Ga.*, 590 U.S. 644,

674 (2020). An “applicant for admission” is defined as an “alien present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. §1225(a)(1). Petitioner squarely fit this definition.

Petitioner is present in the United States. Petitioner cannot assert that he has been admitted to the United States.⁷ Indeed, when Petitioner entered the United States, he did so without inspection, admission, or parole by an immigration officer and at a place which was not a port of entry, or another place designated by the Attorney General. *See* Doc. 1-3 (Notice to Appear). Petitioner’s release from CBP custody after illegally entering the United States does not change his inclusion within this definition because he is still: (1) present in the United States and (2) has not been admitted. *See* Doc. 1-2 (ORR Verification of Release).

In short, Petitioner remains an “applicant for admission” as defined by Section 1225(a)(1) until the conclusion of his removal proceedings, where the IJ is charged with “determining whether an alien may be admitted to the United States”. 8 U.S.C. § 1229a(a)(3). As the BIA explained in *Matter of Yajure Hurtado*, “being arrested pursuant to a warrant and placed into removal proceedings does not constitute an admission.” 29 I&N Dec. at 228.

⁷ The term “admission” is defined by the INA to mean “the lawful entry of an alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A).

Applicants for admission under this section fall into one of two categories. First, those initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation fall under § 1225(b)(1). *See* U.S.C. § 1225(b)(1). Second, everyone else not encompassed by § 1225(b)(1) fall under the § 1225(b)(2) catchall. *Jennings*, 583 U.S. at 287 (suggesting that INA § 235(b) applies to all applicants for admission, noting the broad application of INA § 235(b)(2) as a “a catchall provision” representing DHS’s detention authority over applicants for admission not subject to INA § 235(b)(1)(A)(i). *See* 8 U.S.C. § 1225(b)(2)(A), (B). *See also Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019) (Attorney General holding that aliens who are present in the United States without admission or parole (PWAP) and placed into expedited removal (ER) proceedings are detained under INA § 235 even if later placed into removal proceedings); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) (BIA holding that an alien PWAP and apprehended without a warrant while arriving is detained under INA § 235(b)).

Under § 1225(b)(1), aliens are detained for the purpose of expedited removal. Under § 1225(b)(2), the “alien shall be detained for a proceeding under section 1229a”—i.e., full removal proceedings—after “the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Read plainly, these subsections “mandate

detention of applicants for admission until certain proceedings have concluded.”
Jennings, 583 U.S. at 297.

Moreover, Sections 1225(a)(1) and (b)(2) are unambiguous. There are no geographic qualifiers; nor are any time limitations imposed. 8 U.S.C. § 1225(b)(2). Notably, Congress included such time limitations in other parts of the same statute. For instance, 8 U.S.C. § 1225(b)(1)(A)(iii)(II)—enacted contemporaneously with § 1225(b)(2)—applies a two-year continuous physical presence requirement. When Congress includes language in one part of a statute but omits it in another, it does so intentionally. *E.g.*, *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1168 (11th Cir. 2003). Under these principles, the Court cannot read an additional “place of detention” or “period of residence” requirement into § 1225(b)(2) when it simply isn’t there. Short of legislating, the Court cannot impose limitations on § 1225(b)(2) that Congress did not include. *See Germain v. U.S. Att’y Gen.*, 9 F.4th 1319, 1325 (11th Cir. 2021).

As discussed, an alien’s place of detention or period of residence is irrelevant under the plain language. What is relevant, however, is an alien’s manner of entry. 8 U.S.C. § 1225(a)-(b). Congress members said as much when amending the INA. *See Sturgeon v. Frost*, 587 U.S. 28, 54 (2019) (“The legislative history (for those who consider it) confirms, with unusual clarity, all we have said so far.”). The statutory scheme that § 1225 and § 1226 replaced was structured so aliens who entered the

United States undetected retained certain benefits—such as the availability of bond—where those who presented themselves at the border did not:

This subsection is intended to replace certain aspects of the current “entry doctrine,” under which 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 at a port of entry. Hence, the pivotal factor in determining an alien’s status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Recognizing that such a scheme incentivized evasion over presenting oneself at a port of entry, Congress set out to restructure the law to distinguish between deportability—applicable to admitted aliens—and inadmissibility—applicable to those present without admission. *Id.* at 226. Thus, aliens who enter surreptitiously “will not be considered to have been admitted.” *Id.* Petitioner’s reading seeks to retroactively nullify this legislative fix and once again restore incentives to circumvent rather than comply with the INA.

To be fair, there are many recent decisions adverse to ICE’s § 1225 position here. *E.g.*, *Guerrero Orellana v. Moniz*, No. 25-cv-12664, [2025 WL 2809996](#), at *6 (D. Mass. Oct. 3, 2025). There are, however, decisions in support of ICE’s text-based argument. *Vargas Lopez v. Trump* thoroughly addressed this issue and agreed with ICE’s reasoning. No. 8:25CV526, [2025 WL 2780351](#), at *7-10 (D. Neb. Sept. 30, 2025). At least one other court came to the same conclusion. *Chavez v. Noem*, No. 3:25-

cv-02325-CAB-SBC, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025). And the BIA specifically explained this rationale in *Hurtado*, 29 I&N Dec. 216.

For these reasons, as an alien present in the United States who has not been admitted under the INA, Petitioner squarely fits within Section 1225's definition of applicant for admission. Further, Petitioner did not meet his burden to establish detention under § 1226 should apply to him. Section 1226 is far broader than § 1225. Specifically, § 1226 applies to any "alien." 8 U.S.C. § 1226(a). An "alien" is "any person not a citizen or national of the United States." *Id.* § 1101(a)(3). Meanwhile, the phrase "applicant for admission" in § 1225(b)(2) has distinct meaning, and not every single alien entering without inspection falls under this provision. Rather, the facts and circumstances concerning Petitioner demonstrate he is an applicant for admission under § 1225(b)(2).

ii. Petitioner is Subject to Mandatory Detention Under Section 1225(b)(2)

Petitioner, as an applicant for admission, is subject to mandatory detention per Section 1225(b)(2). *Jennings*, 583 U.S. at 288 (applicants for admission are subject to mandatory detention and must seek parole to be released). Section 1225(b)(2) mandates detention when an "examining immigration officer" determines "an alien seeking admission" is "not clearly and beyond a doubt entitled to be admitted."⁸ *Id.*

⁸ An "immigration officer" is defined to include border patrol agents, deportation officers, immigration agents, immigration enforcement agents, and special agents. 8 C.F.R. § 1.2.

Here, the parties do not dispute that Petitioner entered the United States illegally in 2018 and without any authorization to be admitted to the United States. Specifically, Petitioner was recently arrested by ICE immigration officers in November 2025. *See Exhibit B* (Form I-213: Record of Deportable/Inadmissible Alien). Law enforcement performed an inspection and examination of Petitioner as contemplated by 8 U.S.C. § 1225(a)(3) and 8 C.F.R. § 235.1(f)(2) and determined that he was unlawfully present in the United States and not clearly and beyond a doubt entitled to be admitted. *Id.* Due to Petitioner's unlawful immigration status, ICE pursues removal proceedings. Petitioner has not stipulated that he is removable; nor has he indicated he will not contest removal. At any point, Petitioner can seek release from detention to depart the United States voluntarily. 8 U.S.C. § 1229c(a). However, there is no indication Petitioner has any intention of doing so.

Petitioner fits well within this provision. Petitioner admittedly has no status and was never admitted to the United States. Put different, Petitioner must be an applicant for admission if he wants to stay here. *Vargas Lopez*, 2025 WL 2780351, at *9 (Petitioner "wishes to stay in this country. This makes [him] an 'applicant for admission,' consistent with the conclusion of the BIA in *Hurtado* and *Jennings*."). The alternative would be seeking an Order to somehow remain unlawfully in the United States. *Id.* (That petitioner "illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)."); *Hurtado*, 29

I&N at 221 (“If he is not admitted to the United States (as he admits) but he is not “seeking admission” (as he contends), then what is his legal status?”). At bottom, unless Petitioner wants to leave, he is either an applicant for admission or seeking to remain here illegally.

To be clear, any alien intending to stay in the United States on any permanent basis must be admitted even if that’s twenty years after arriving. In the context of immigration law, “admission” is not like sneaking into a second showing at the movie theater where entry is de facto admission. Rather, this is a legal term of art. *Matter of Lemus Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012) (noting “seeks admission” used by Congress “as a term of art”). The terms “admission” or “admitted” here 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).

Congress knows how to use a term of art. *E.g.*, *FAA v. Cooper*, 566 U.S. 284, 292 (2012) (“[I]t is a cardinal rule of statutory construction that, when Congress employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken.” (cleaned up)). Petitioner may have been living in the United States illegally for years; but he was never admitted—which is what makes his presence unlawful in the first instance. 8 U.S.C. § 1182(a)(6)(A)(i) (inadmissibility for presence “without being admitted”). The INA treats aliens as seeking admission even if they entered illegally

and never formally applied. 8 U.S.C. § 1225(a)(1); *Lemus Losa*, 25 I. & N. Dec. at 743 n.6 (Unlawful entrants “deemed *constructive* applicants for admission by operation of” § 1225(a)(1).). Legislative word choices—especially terms of art—must have meaning. Congress chose to define “applicants for admission” as “[a]n alien present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1).

The recent enactment of the Laken Riley Act bolsters this conclusion. *See* Pub. L. No. 119-1, 139 Stat. 3 (2025). There, the categories of individuals subject to mandatory detention expanded to include those who entered the United States and were charged as inadmissible under § 1182(a)(6)(A)(i) or (a)(7) and have committed—or been charged or convicted of—certain specified crimes. *See* 8 U.S.C. § 1226(c)(1)(E). Were “applicant for admission” under § 1225 interpreted as narrow as Petitioner argues, then there would be no need to pass Laken Riley. Those aliens now covered by § 1226(c)(1)(E) would have already been subject to mandatory detention. Even if there are redundancies, those “are common in statutory drafting” and provide no “license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton v. Barr*, 590 U.S. 222, 229 (2020) (“The Court has often recognized: Sometimes the better overall reading of the statute contains some redundancy.” (cleaned up)).

Thus, Petitioner was “seeking admission” into the United States at the time he was initially encountered in 2018 as he was served with an NTA and placed in removal proceedings at that time before an IJ for purpose of determining whether he can “be

admitted to the United States.” See 8 U.S.C. § 1229a(3); see also, Doc. 1-3 (Notice to Appear). When recently encountered by ICE, and through today, Petitioner was and is still seeking admission into the United States and hence subject to Section 1225(b)(2).⁹ As the BIA explained in *Matter of Yajure Hurtado* in rejecting an argument that an individual similarly situated to Petitioner was not “seeking admission” as contemplated by Section 1225(b)(2), “[i]f he is not admitted to the United States (as he admits by his filings) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” 29 I&N Dec. at 221. The same reasoning applies here. Petitioner is in removal proceedings where an IJ will determine if he is to be “admitted to the United States.” 8 U.S.C. § 1229a(3). If Petitioner was not seeking admission to the United States, then surely, he would agree to withdraw his application for admission and return to his respective home country as allowed by 8 U.S.C. § 1225(a)(4). But, no such request has been made, and instead, Petitioner seeks admission to the United States through removal proceedings which are the “sole and exclusive procedure for determining whether an alien may be admitted to the United States.” 8 U.S.C. § 1229a(3). As the BIA explained, there is “no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer seeking

⁹ As noted above, the term “admission” is defined by the INA 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).

admission” and instead falls under Section 1226(a). *Matter of Yajure Hurtado*, 29 I&N Dec. at 221.

Indeed, after employing the canons of statutory interpretation, including analyzing the plain language of the INA, the context of the statute in the larger statutory scheme, and the relevant legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), the BIA held — in an situation materially similar to this case — that “aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220; *see also Matter of Q. Li*, 29 I. & N. Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)”); *Pena*, 2025 WL 2108913, at *2 (explaining that “continued detention is therefore authorized by § 1225(b)(2)(A) and, according to that statute, such detention is mandatory, regardless of whether the alien has been placed in full or expedited removal proceedings.”); *Maldonado v. Bostock*, 2023 WL 5804021, at *3 (W.D. Wash. Aug. 8, 2023) (holding that an individual apprehended near the border and later

processed under § 1226 “appears to be an applicant for admission because he is a noncitizen ‘present in the United States’ and ‘has not been admitted’”).

The BIA has long recognized that “many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Matter of Lemus*, 25 I. & N. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *McDonnell v. United States*, 579 U.S. 550, 569 (2016). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission” under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The words “or otherwise” here “introduce an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). ICE’s determination that Section 1225(b)(2) applies because Petitioner is present in the United States without admission therefore comports with the plain language of the statute and does not violate the INA.

To the extent 8 U.S.C. §§ 1225 and 1226 are in conflict, the “specific provision” governs over the “general one.” See *Edmond v. United States*, 520 U.S. 651, 657 (1997). Section 1226 is the “default” detention authority that “generally governs the process of arresting and detaining that group of aliens pending their removal.” *Jennings*, 583 U.S. at 288 (emphasis added). By contrast, § 1225 is narrower and applies only to “applicants for admission”; that is, individuals, such as Petitioner, present in the United States who have not been admitted. 8 U.S.C. § 1225. See also *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. Mar. 8, 2023) (even if a noncitizen crossing the border “fell within § 1226(a)’s general language, § 1225(b)’s specific mandatory language would trump § 1226(a)’s general permissive language”).

Prior agency practice does not change the analysis here. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)); *Maldonado*, 2023 WL 5804021, at *3-4 (noting the agency provided “no authority for the proposition that DHS retains discretion to sidestep or override Section 1225 . . . and choose Sections 1225 and 1226 when it processes an applicant for admission.”). The agency’s prior practice therefore carries little weight. See *Loper Bright*, 603 U.S. at 432–33. See also *Matter of Yajure Hurtado*, 29 I & N Dec. at 226 (“The

Supreme Court in *Loper Bright* did not hold that the long-standing practice of the government can somehow change, or even eviscerate, explicit statutory text that is contrary to that practice.” “[R]ead most naturally, §§ 1225(b)(1) and (b)(2), mandate detention for applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). The BIA also rejected the argument that because DHS issued an arrest warrant in conjunction with the NTA and a Notice of Custody Determination, the detention authority was controlled by Section 1226(a). *Matter of Yajure Hurtado*, 29 I & N Dec. at 226-27. See also *Romero*, 2025 WL 2490659, at *2–3 (Finding that the erroneous issuance of a Notice of Custody Determination “cannot change [p]etitioner’s status [as an applicant for admission] under the law.”).

When the plain text of a statute is clear, “that meaning is controlling” and courts “need not examine legislative history.” *Succar v. Ashcroft*, 394 F.3d 8, 31 (1st Cir. 2005). But to the extent legislative history is relevant here, the legislative history of § 1225 “confirm[s] [that] the plain text reading is correct.” See *id.*; see also *Matter of Yajure Hurtado*, 29 I & N Dec. at 222-25 (discussing legislative history). Congress passed the IIRIRA to correct “an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), declined to extend by *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); see also *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108, 140 S. Ct. 1959, 1964, 207 L. Ed.

2d 427 (2020) (noting that immigration laws tried those who arrive at a port of entry the same as those that are caught trying to enter); *Matter of Yajure Hurtado*, 29 I & N Dec. at 223 (“Congress acted, in part, to remedy 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 restrained by “more summary exclusion proceedings,” and were subject to mandatory custody.” (quoting *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012))). Congress therefore “intended to replace certain aspects of the [then] current ‘entry doctrine,’ under which 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 at a port of entry.” *Torres v. Barr*, 976 F.3d at 928 (quoting H.R. Rep. 104-469, pt. 1, at 225).

Finding Petitioner entitled to bond would put aliens who crossed the border unlawfully in a better position than those who present themselves for inspection at a port of entry. Aliens who presented at port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally between those ports, like Petitioner, would be eligible for a bond under § 1226(a) when later arrested in the

United States. This is not the law that Congress passed nor the result that Congress intended. For these reasons, Petitioner's detention is lawful under Section 1225(b)(2).

C. Petitioner's Detention Does Not Violate the Constitution.

The Supreme Court has consistently recognized that applicants for admission to the United States have limited due process rights and the Court has also upheld the constitutionality of detention during removal proceedings, even in the absence of access to a bond hearing.

i. Applicants for Admission Have Limited Due Process Rights.

The Supreme Court has held that applicants for admission lack any constitutional due process rights with respect to admission: “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned,” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“*Mezei*”), and “it is not within the province of any court, unless expressly authorized by law, to review [that] determination”. *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). As recently explained by the Supreme Court, courts recognize a “century-old rule regarding the due process rights of an alien seeking initial entry” where applicants for admission—like Petitioner— “ha[ve] only those rights regarding admission that Congress has provided by statute” and “Due Process provides nothing more”. *Thuraissigiam*, 591 U.S. at 139-40.

As such, applicants for admission may be detained without a bond hearing pending admission or removal without running afoul of the Constitution because statute does not provide for bond hearings and only allows for release through the agency's exercise of parole. In *Mezei*, for example, the Supreme Court held that a returning lawful permanent resident's detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. The Supreme Court held that Mr. Mezei's detention did not "deprive[] him of any statutory or constitutional right." *Id.* at 215. Instead, the Court reiterated that "the power to expel or exclude aliens" is a "fundamental sovereign attribute exercised by the Government's political departments" that is "largely immune from judicial control." *Id.* at 210.

The Supreme Court's decision in *Thuraissigiam* reinforces *Mezei*'s holding. In relevant part, *Thuraissigiam* concerned a due process challenge raised by an alien apprehended 25 yards from the border, which he crossed illegally. 591 U.S. at 139. In its decision, the Supreme Court delineated the boundaries of due process claims that can be made by applicants for admission. Specifically, the Court held that for such aliens stopped at the border, even if paroled thereafter, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 131 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). In reaching this conclusion, *Thuraissigiam* cited *Mezei* authoritatively, *see* 591

U.S. at 139, because of the basic distinction between aliens already “present” in the United States and those who stand at the “threshold of entry,” *Mezei*, 345 U.S. at 208, 214.

Petitioner can ask ICE to exercise its discretion and parole him from its custody while his removal proceedings occur. Such possible avenue for release provides another means of due process and should be exhausted prior to making a claim that due process rights were violated. See *Traore v. Decker*, No. 19-CV-4612 (ALC), 2019 WL 3890227, at *4 (S.D.N.Y. Aug. 19, 2019) (Explaining that “by failing to file an application for or even request[ing] parole, [p]etitioner has failed to exhaust his administrative remedies.”); *Alexandre v. Decker*, No. 17CIV5706GBDKHP, 2019 WL 1407353, at *5 (S.D.N.Y. Mar. 28, 2019) (concluding that “the parole procedure, as currently enforced, satisfies due process for arriving aliens because (1) they are differently situated than individuals within our borders, and (2) the period of detention during such a proceeding is not indefinite—it will end upon the conclusion of the removal proceeding.”)

In seeking release to remedy an alleged due process violation, Petitioner ignores *Mezei*’s holding, reaffirmed in *Thuraissigiam*, that “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” 345 U.S. at 212. Here, 8 U.S.C. § 1225(b)(2)(A) makes plain that applicants for admission who are inadmissible “shall be detained for a proceeding” in

Immigration Court. As such, Petitioner is not entitled to release because “an alien in [Petitioner’s] position has only those rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140.

ii. Detention During the Course of Removal Proceedings is Constitutional

Regardless of the level of due process Petitioner is entitled to as an applicant for admission to the United States, his due process challenge to his detention fails as the Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional.

In *Demore v. Kim*, 538 U.S. 510, 522, 123 S. Ct. 1708, 1717 (2003), the Supreme Court upheld the constitutionality of a statutory provision that requires mandatory detention during removal proceedings without access to bond hearings. The Court “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Id.* at 523. The Court re-affirmed its “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings”. *Id.* at 526. The Court explained that “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* The Court recognized as to due process concerns that it “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 522 (citations omitted).

The *Demore* Court distinguished this case from *Zadvydas v. Davis*, 533 U.S. 678, 678, 121 S.Ct. 2491, 2492 (2001), where the Court confronted a due process challenge to detention of aliens following a final order of removal. *Id.* at 527. The Court explained that unlike potentially indefinite detention at issue in *Zadvydas*, detention during removal proceedings has “a definite termination point” and therefore did not implicate due process concerns. *Id.* at 529. And as the First Circuit recognized in *Aguilar v. U.S. Immigr. & Customs Enft*, 510 F.3d 1, 22 (1st Cir. 2007), the government has a “legitimate interest in effectuating detentions pending the removal of persons illegally in the country”.

Here, there is no dispute that Petitioner is detained for the limited purpose of removal proceedings where he can challenge his inadmissibly determination and seek relief from removal. Petitioner’s detention is not punitive or for other reasons than to address his inadmissibly to the United States. His detention is also not indefinite, it will end upon the conclusion of his proceedings or sooner if Petitioner decides he is not actually seeking admission to the United States and withdraws his application for admission as contemplated by 8 U.S.C. § 1225(a)(4).

D. The INA Divests This Court’s Jurisdiction.

This Court lacks jurisdiction over Petitioner’s claims for three reasons.

1. Jurisdiction Stripping

Federal courts have limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They “possess only that power authorized by Constitution and statute.” *Id.* (citations omitted).

In immigration habeas cases related to removal proceedings—as here—the INA divests this Court’s jurisdiction to consider Petitioner’s claims challenging his detention pending a removal determination. 8 U.S.C. § 1252(g). “APA review does not apply when ‘(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law.’” *Kanapuram v. USCIS*, 131 F.4th 1302, 1306 (11th Cir. 2025) (quoting 5 U.S.C. § 701(a)).

There is no jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (cleaned up). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

When construing § 1252(g), one must limit the application “to just those three specific actions” listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, “courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). At bottom, § 1252(g) bars review if the conduct “to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim.” *Gupta*, 709 F.3d at 1065.

The law is clear:

Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings.

Id.; see also *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“Because [the alien] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*.”); *Johnson v. U.S. Attorney General*, 847 F. App’x 801, 802 (11th Cir. 2021). “By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.” *Alvarez*, 818 F.3d at 1203. Thus, § 1252(g) strips the Court’s jurisdiction over habeas petitions challenging detention pending removal proceedings.

Here, Petitioner is being detained pending the commencement of removal proceedings. See Doc. 1-3 (Notice to Appear). Petitioner’s detention is a decision or

action related to the decision and actions by the Secretary to begin and pursue Petitioner's removal proceedings. *See Gupta*, 709 F.3d at 1065 (citing § 1252(g) and stating “[f]ederal courts lack subject-matter jurisdiction over ‘any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.’”) Under *Gupta*'s binding interpretation of § 1252(g), the Court plainly has no jurisdiction. *Id. But see Garcia v. Noem et al.*, Case No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895, at *2 (M.D. Fla. Oct 31, 2025) (concluding § 1252(g) jurisdiction exists to determine whether petitioner is subject to mandatory or discretionary detention under 8 U.S.C. § 1225 or § 1226, respectively).

In *Gupta*, the petitioner was initially detained pursuant to DHS decision to process him as an expedited removal pursuant to § 235(b)(1), as amended, 8 U.S.C. § 1225(b)(1), and the district court dismissed for lack of subject matter jurisdiction. On appeal, the Eleventh Circuit affirmed, reasoning that petitioner's claims were subject to dismissal because “[s]ecuring an alien while awaiting a removal determination constitutes an action taken to commence proceedings.” 709 F.3d at 1065. *Gupta* was initially detained pursuant to DHS decision to process him as an expedited removal pursuant to §235(b)(1). Here, like in *Gupta*, Petitioner's claims arise from a decision or action to begin proceedings (removal proceedings, albeit not expedited removal proceedings).

As the Eleventh Circuit made clear, what matters is whether the challenged conduct arose from decisions or actions to commence removal proceedings. *Gupta*, 709 F.3d at 1065 (“Each of these claims, then, challenges the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.”). The Eleventh expressly reaffirmed this in several other decisions (both published and unpublished):

Because [plaintiff] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*.

Alvarez, 818 F.3d at 1204; *see also Johnson*, 847 F. App’x at 802. The decisions and actions to detain Petitioner (under either § 1225 or § 1226) arise from the commencement of removal proceedings. The INA strips jurisdiction over that review. *Gupta*, 709 F.3d at 1065; 8 U.S.C. § 1252(g).

What’s more, “the sole function of habeas corpus is to provide relief from Unlawful imprisonment or custody, and it cannot be used for any other purpose.” *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979). Thus, the only relief a habeas petitioner may receive is release. *Thuraissigiam*, 591 U.S. at 119. In addition to seeking release, Petitioner decided to pursue habeas seeking declarations and orders related to his release from confinement. Doc. 1 at 20. Put different, this case is only about whether ICE can detain Petitioner pending removal proceedings. *Gupta* and its progeny hold the Court has no jurisdiction over such actions.

The Court also lacks jurisdiction on separate grounds.

2. *Zipper Clause*

The INA precludes review of “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” except judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause” and applies where a petitioner seeks “review of an order of removal [or] the decision to seek removal.” *Canal A*, 964 F.3d at 1257; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—which limits review—courts conclude petitioners must funnel all aspects of challenges to removal proceedings through the avenue set out in § 1252(a)(5). *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”).

The zipper clause restrictions are broad but not unlimited. *Canal A*, 964 F.3d at 1257. Still, a claim arising from actions or proceedings brought to remove an alien clearly falls within the clause. *See Regents of Cal.*, 591 U.S. at 19.

Here, Petitioner challenges ICE’s detention determination. This was an action arising from ICE’s choice to carry out proceedings to remove him from the United

States. The zipper clause is in full force; judicial review by this Court is inappropriate and contrary to the INA. 8 U.S.C. § 1252(b)(9).

There is one final jurisdictional issue.

3. Failure to Exhaust

DHS makes initial decisions about custody and bond—which an IJ may review. 8 C.F.R. § 1003.19(a). But to get a bond hearing, the alien (or his lawyer) must make an application to the IJ for bond redetermination. *Id.* § 1003.19(b)-(c). The IJ’s bond redetermination is “separate and apart from” the removal proceedings. *Id.* § 1003.19(d). If the alien disagrees with the IJ’s decision, he may appeal to the Board of Immigration Appeals (“BIA”). *Id.* § 1003.1(b)(7).

Here, Petitioner has yet to exhaust his administrative remedies. At the time of this writing, there is no evidence that Petitioner has appealed to the BIA. As such, administrative remedies are still potentially available to Petitioner.

To the extent that Petitioner implies any futility in pursuing a bond hearing and BIA appeal, he is mistaken. *See McGee v. Warden, FDC Miami*, 487 F. App’x 516, 518 (11th Cir. 2012) (finding no jurisdiction on habeas petition where petitioner failed to exhaust remedies despite argument doing so would be futile). Futility is not a blank check to relieve petitioner’s duty to exhaust his remedies. Under exceptional circumstances, courts may excuse an exhaustion requirement. *See Sanchez v. Warden, FCC Coleman - Low*, No. 5:23-CV-79-WFJ-PRL, 2023 WL 4489472, at *2 (M.D. Fla.

July 12, 2023); *Faison v. Warden, FCC Coleman*, No. 5:23-CV-67-WFJ-PRL, 2023 WL 4489471 (M.D. Fla. July 12, 2023); *Vasquez v. Warden, FCC Coleman Low*, No. 5:22-CV-517-WFJ-PRL, 2023 WL 4157364, at *2 (M.D. Fla. June 23, 2023). Yet, there are no facts alleged to support that relief in this case.

CONCLUSION

For those reasons, Petitioner's detention is authorized by statute and does not violate the Constitution. As such, this Court must deny Petitioner's request to issue a writ of habeas corpus.

Dated: January 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participant:

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