

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 25-cv-62585-DAMIAN

RAUL IRURE-RODRIGUEZ,

Petitioner

v.

TODD LYONS et al.

Respondents.

RESPONDENTS' RETURN AND MEMORANDUM OF LAW

Respondents, by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause (ECF No. 5). The undersigned emailed this filing and all attachments to chambers on December 22, 2025, copying counsel for the Petitioner, having attempted to file the same via cmecf. The deadline for the government's filing had been December 23, 2026. Upon returning to South Florida after holiday-related travel, the undersigned learned that her attempts to file the same had been unsuccessful because the case number associated with this matter had been incorrect due to a scrivener's error. The undersigned regrets this error and hereby respectfully moves the Court to accept the government's filed response out of time. (The substance of the government's response, as emailed to the Court and counsel for the Petitioner on December 22, 2025 is unchanged.)

As set forth fully below, the Court should deny the "Petition for Writ of Habeas Corpus" (ECF No. 1) ("Petition").

I. BACKGROUND

Raul Irure-Rodriguez (“Petitioner”) is a native and citizen of Cuba who last entered the United States without inspection on May 20, 2022. *See* Exhibit A, Form I-862, Notice to Appear (“NTA”), dated May 23, 2022. On or about May 23, 2022, a U.S. Customs and Border Protection (“CBP”) agent encountered Petitioner at or near Lukeville, Arizona. *Id.* CBP determined that Petitioner was not then admitted or paroled after inspection by an Immigration Officer. *Id.*

On May 23, 2022, CBP issued Petitioner a Warrant for Arrest. *See* Exhibit B, Form I-200, Warrant for Arrest of Alien, dated May 23, 2022. CBP also served Petitioner with a NTA on May 23, 2022. *See* Exhibit A, NTA. The NTA charged Petitioner with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“Act”), in that Petitioner was an alien present in the United States without being admitted or paroled, or who arrived in the United States at a time or place other than as designated by the Attorney General. *Id.* On that same day, Petitioner was also served a Notice of Custody Determination. *See* Exhibit C, Form I-286, Notice of Custody Determination, dated May 23, 2022. On May 24, 2022, Petitioner was released on his own recognizance. *See* Exhibit D, Form I-220A, Order of Release on Recognizance, dated May 24, 2022.

On January 4, 2023, Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations (“ERO”) issued a new NTA to Petitioner. *See* Exhibit E, Form I-862, NTA, dated January 4, 2023. This NTA, also charging Petitioner with removability pursuant to section 212(a)(6)(A)(i) of the Act, was filed with the Executive Office for Immigration Review (“EOIR”)

on January 6, 2023, thereby initiating removal proceedings. *Id.*; *see also* 8 C.F.R. § 1003.39(a) (removal proceeding commenced upon filing of NTA).

On June 23, 2025, the Immigration Judge granted DHS's motion to dismiss proceedings pursuant to 8 C.F.R. § 1239.2(c). *See* Exhibit F, Order on Motion to Dismiss, dated June 23, 2025. Petitioner reserved appeal of this order. *Id.* On July 8, 2025, Petitioner filed an appeal challenging the Immigration Judge's order granting dismissal. *See* Exhibit G, Filing Receipt for Appeal or Motion, dated July 8, 2025.

On June 23, 2025, ERO Miami arrested Petitioner and transported him to the Miramar Hold Room for processing for Expedited Removal. *See* Exhibit H, Form I-860, Notice and Order of Expedited Removal, dated June 23, 2025; *see also* Exhibit I, Detention History. On that same date, ERO issued Petitioner a Notice and Order of Expedited Removal, charging Petitioner with removability pursuant to section 212(a)(7)(A)(i)(I) of the Act, in that Petitioner was an immigrant who, at the time of application for admission, was 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* Exhibit H, Form I-860.

On July 11, 2025, after making a request for bond before the Immigration Judge, Petitioner withdrew his bond request without prejudice. *See* Exhibit J, Order of Immigration Judge, dated July 11, 2025. On August 1, 2025, after making a second custody redetermination request before the Immigration Judge, the Court found "as an applicant for admission under sec. 235(a)(1) of the

INA, Respondent is subject to mandatory detention pursuant to sec. 235(b)(2)(A) of the INA.” *See* Exhibit K, Order of the Immigration Judge, dated August 1, 2025. On August 28, 2025, Petitioner filed an appeal on this Bond Order. *See* Exhibit L, Filing Receipt for Appeal or Motion, dated September 5, 2025. On September 8, 2025, the Immigration Judge issued a Bond Memorandum reiterating its previous bond order, stating the Court “lacked jurisdiction to redetermine Respondent’s custody status because Respondent is an applicant for admission subject to mandatory detention pursuant to section 235(b)(2)(A) of the INA.” *See* Exhibit M, Bond Memorandum, dated September 8, 2025.

On August 5, 2025, United States Citizenship and Immigration Services (“USCIS”) interviewed Petitioner and found him inadmissible to the United States and ordered him removed pursuant to section 235(b)(1) of the Act. *See* Exhibit N, Form I-869, Record of Negative Finding and Request for Review by Immigration Judge, dated August 5, 2025; *see also* Exhibit O, Form I-863, Notice of Referral to Immigration Judge, dated August 5, 2025. On August 8, 2025, the Immigration Judge vacated DHS’s prior determination finding. *See* Exhibit P, Order of the Immigration Judge, dated August 8, 2025.

On August 9, 2025, ERO issued Petitioner a new NTA, charging Petitioner with inadmissibility pursuant to section 212(a)(6)(A)(i) of the Act and section 212(a)(7)(A)(i)(I) of the Act. *See* Exhibit Q, Form I-862, Notice to Appear, dated August 9, 2025. On August 25, 2025, the Immigration Judge granted Petitioner’s motion to terminate proceedings initiated upon the filing of the August 9, 2025, NTA. *See* Exhibit R, Order of the Immigration Judge, dated August 25, 2025. The Immigration Judge explained that in light of the appeal from the immigration judge’s

decision dismissing the initial NTA on June 23, 2025, the Court does not have jurisdiction over the NTA issued on August 9, 2025. *Id.*

On October 17, 2025, after Petitioner requested another custody redetermination, the Immigration Judge again ruled that the Court “lacked authority to redetermine Respondent’s custody status as Respondent is subject to mandatory detention. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)” *See* Exhibit S, Order of the Immigration Judge, dated October 17, 2025. On November 11, 2025, Petitioner filed an appeal of this Bond Order. *See* Exhibit T, Filing Receipt for Appeal or Motion, dated November 26, 2025. On November 29, 2025, the Immigration Judge issued a Bond Memorandum reiterating its previous bond order, stating that “the Board of Immigration Appeals issued a precedential decision, *Matter of Yajure Hurtado*, that is binding” *See* Exhibit U, Bond Memorandum, dated November 29, 2025.

Petitioner's appeal from the immigration judge's decision to dismiss removal proceedings remains pending before the Board of Immigration Appeals (“BIA”). *See* Exhibit V, Deportation Officer (“DO”) Declaration. In addition, Petitioner's appeals from the custody orders dated August 1, 2025, and October 17, 2025, remain pending before the BIA. *Id.* Petitioner remains in ICE custody at Broward Transitional Center (“BTC”), pending the conclusion of his removal proceedings. *See* Exhibit I, Detention History.

On December 12, 2025, Petitioner filed this habeas petition, challenging his continued detention under 8 U.S.C. § 1225(b).

II. ARGUMENT

Petition should be Dismissed for Lack of Jurisdiction

Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly “aris[es] from” the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]”) (emphasis added); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) (“[Plaintiff’s] detention necessarily *arises from* the decision to initiate removal proceedings against him.”) (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko*

v. Rocha, 509 F.3d 947, 949 (9th Cir. 2007) (“The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. ... Thus, an alien’s detention throughout this process *arises from* the [Secretary]’s decision to commence proceedings[.]” and review of claims arising from such detention is barred under § 1252(g)) (emphasis added).

Put in the Supreme Court’s words, detention pending removal is a “specification” of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”). As such, judicial review of the Petitioner’s claim[s] is barred by § 1252(g).

Furthermore, 8 U.S.C. § 1252(b)(9) bars review of Petitioner’s claim in this case. Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. 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 non-statutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,

627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

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

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that

“§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, the Petitioner *does* challenge the government’s decision to detain him in the first place. Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS’s decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

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

Petitioner is Properly Detained Under 8 U.S.C. § 1225

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as either an “alien *present in the United States who has not been admitted* or [an alien] who arrives in the United States [whether or not at a designated port of arrival.” 8 U.S.C. § 1225(a)(1) (emphasis added); *see generally Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or

inside the country, he or she will still be required to prove eligibility for admission.”). Accordingly, by its very definition, the term “applicant for admission” as used in § 1225 includes two categories of aliens: (1) aliens, such as Petitioner, present in the United States without admission; and (2) arriving aliens. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission ... includes, inter alia, any alien present in the United States who has not been admitted” (citing 8 U.S.C. § 1225(a)(1))).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection”). An applicant for admission seeking admission at a United States POE “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal ... and is entitled, under all of the applicable provisions of the immigration laws ... to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “An alien present in the United States who has not been admitted or paroled or an

alien who seeks entry at other than an open, designated [POE] ... is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

Here, Petitioner does not allege that he was admitted into the United States or that he presented himself at a POE. Rather, Petitioner merely alleges that he is a citizen of Cuba who has been residing in the United States. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

Pursuant to § 1225(b)(2), “an alien who is an applicant for admission,” such as Petitioner, “shall be detained for a proceeding under section 1229a of this title” “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). Aliens present in the United States without admission placed in § 1229a removal proceedings are applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and are, therefore, aliens “seeking admission,” as contemplated in § 1225(b)(2)(A). The term “seeking admission” as used in § 1225(b)(2)(A) refers to legal admission, not mere entry into the United States. Such aliens are subject to mandatory detention under § 1225(b)(2)(A) and are not eligible for release on bond.

On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because 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.” *Yajure Hurtado*, 29 I&N Dec. at 220.¹ The BIA concluded that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*; see *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (concluding that 1996 amendments to the INA were passed to address the unintended and undesirable result of the pre-1996 law in which “non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings” (internal quotation marks omitted)). In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Yajure Hurtado*, 29 I&N Dec. at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.”

¹ Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal proceedings. See, e.g., *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

Id. If the alien “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?” *Id.* (parentheticals in original).

The BIA’s decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with *Jennings v. Rodriguez* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).²

A review of the 1996 amendments to the INA support the reading advocated by the Respondents here. “The statutory definition of an ‘applicant for admission’ at ... § 1225(a)(1), was added to the INA in 1996, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA’), Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579.” *Yajure Hurtado*, 29 I&N Dec. at 222.

Prior to the 1996 amendment, the INA assessed status on the basis of “entry” as opposed to “admission.” See 8 U.S.C. § 1101(a)(13) (1994) (defining “entry” as “any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise”). Non-citizens who had “entered” the United States were processed for deportation; those who had not “entered” were sent into exclusion proceedings. Charles Gordon, Stanley Mailman & Stephen Yale-Loehr, 1-1 IMMIGRATION LAW AND PROCEDURE § 1.03(2)(b) (2010). As a result, “non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,” while non-citizens who actually

² There is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens. Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. See, e.g., *id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

presented themselves to authorities for inspection were restrained by “more summary exclusion proceedings.” *Hing Sum*, 602 F.3d at 1100. To remedy this unintended and undesirable consequence, the IIRIRA substituted “admission” for “entry,” and replaced deportation and exclusion proceedings with the more general “removal” proceeding.

Martinez, 693 F.3d at 413 n.5 (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)).

If, as Petitioner argues, § 1225(b)(2)(A) detention does not apply to him because he entered the United States without presenting himself for inspection or admission, he would be afforded greater substantive rights—specifically permissive detention under § 1226(a) and a bond hearing—than non-citizens who followed the law and presented themselves to authorities for inspection. This is the undesirable result Congress was seeking to avoid by passing the IIRIRA.

Moreover, Congress’s use of the present participle—seeking—in § 1225(b)(2)(A) further supports the Respondents’ position. *See generally United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”). By using the present participle “seeking” § 1225(b)(2)(A) “signal[s] present and continuing action.” *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). Present participle, such as “seeking admission,” “do[] not include something in the past that has ended or something yet to come.” *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that “having” is a present participle, which is “used to form a progressive tense” that “means presently and continuously” (citing Bryan A. Garner, *Garner’s Modern American Usage* 1020 (4th ed. 2016))).

Accordingly, for the reasons discussed above, Petitioner is an applicant for admission and an alien seeking admission and is therefore subject to detention under § 1225(b)(2)(A) and ineligible for release on bond.

Therefore, while Petitioner may have been detained under 8 U.S.C. § 1226 236 in 2018, legal developments and the ongoing evolution of law, starting with *Jennings* and the caselaw that followed, through and including *Yajure Hurtado*, have led us to the conclusion that § 1225(b)(2) is the appropriate detention authority, and the one that applies now.

III. CONCLUSION

For the reasons set forth above, the Court should deny the Petition.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: /s/ Michele S. Vigilance
MICHELE S. VIGILANCE
ASSISTANT U.S. ATTORNEY
Court ID No. A5502091
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Telephone: (305) 432-1406
E-mail: michele.vigilance@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/Michele S. Vigilance

Michele S. Vigilance, AUSA